

## Acceptance of Deposits by Private Companies



*With the enforcement of a large number of Sections of the Companies Act, 2013 and relevant Rules, the Government of India has given a big push to the enforcement of the new Company Law with effect from 1<sup>st</sup> April, 2014. Whereas the Companies Act, 1956 provided for a number of privileges and exemptions to the private companies, most of them are withdrawn in the new regime. One such privilege for the private companies was its eligibility to accept deposits from its members, directors and their relatives, without doing much paper work. However, the new law has restricted this privilege and prescribed for detailed compliance with reference to the repayment of existing deposits and acceptance of the fresh deposits. This article covers the key features of these provisions and the procedure to be followed by the private companies for accepting deposits. This article covers the impact of these provisions on private companies. Read on...*

### Acceptance of Deposits

Provisions relating to the invitation, acceptance and repayment of deposits are comprised under Chapter V of the Companies Act, 2013 (the 'Act'). Deposits-related matters like (i) the existing deposits; (ii) acceptance of deposits from members; and (iii) acceptance of public deposits, are sought to be regulated through this Chapter. Key sections of this Chapter, namely, Section 73, Section 74(1) and Section 76 have already been brought into force from 1<sup>st</sup> April, 2014. Exercising its powers under the Act, the Central Government has, in



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consultation with the Reserve Bank of India (RBI), made the rules which are notified as the Companies (Acceptance of Deposits) Rules, 2014 (the 'Rules'). The notified Sections would affect a large number of private companies who have accepted deposits from their members, directors and their relatives. Some of the recently notified provisions would require immediate compliance by these private companies. Since this would include the certification of certain information by the auditors, timely examination of the relevant records by the auditors would be equally essential.

### Meaning of Deposit

According to Section 2(31) of the Act, *deposit* includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the RBI.

According to Rule 2(1)(c) of the Rules, the *deposit* includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include certain receipts as listed under this Rule. The list given under Rule 2(1)(c) states 14 types of transactions in the nature of the receipt, which are specifically excluded from the ambit of the term *deposit*. The said list includes amount received from the Central Government or a State Government, foreign Government, *etc.*, loan or facility from banks, public financial institutions, *etc.*, amount received against issue of commercial paper, *etc.*, amount received from any other company, amount received towards subscription to any securities, amount received from a director of the company, amount raised by the issue of secured bonds or debentures, non-interest bearing security deposit from an employee, non-interest bearing amount received or held in trust, amount received in the course of, or for the purposes of, the business of the company, amount brought in by the promoters, in pursuance of the stipulation of any lending financial institution or a bank, and amount accepted by a *Nidhi* company. To be treated as an exempt deposit, receipts falling in the above categories should be in conformity with the terms mentioned in the specific clause.

Two key categories of transactions which would affect a large number of private companies are:

- a) Rule 2(1)(c)(vi): any amount received by a company from any other company.
- b) Rule 2(1)(c)(viii): any amount received from a person who, at the time of the receipt of the

**Private companies can accept the deposit from its members only if it has complied with the provisions of Section 73(2) of the Act. Of course, no such compliance is necessary if the company accepts the deposit only from such member(s), who also happen to be the director(s) of the company, at the time of making the said deposit [Rule 2(1)(c)(viii)].**

amount, was a director of the company—provided that the director from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.

### Depositor

Rule 2(1)(d) defines a *depositor*, which means:

- (i) any member of the company who has made a deposit with the company in accordance with the provisions of sub-Section (2) of Section 73 of the Act, or,
- (ii) any person who has made a deposit with a public company in accordance with the provisions of Section 76 of the Act.

The said definition of the term *depositor* makes it clear that -

- a) by complying with the provisions of Section 73(2), any company, be it private or public, can accept deposit from its members only; and
- b) by complying with the provisions of Section 76, only a public company can accept deposit from any person, who can be a non-member also. Of course, such public company should also be an *eligible company* as defined under the Rule 2(1)(e).

### Deposits and Private Companies

Private companies can accept the deposit from its members only if it has complied with the provisions of Section 73(2) of the Act. Of course, no such compliance is necessary if the company accepts the deposit only from such member(s), who also happen to be the director(s) of the company, at the time of making the said deposit [Rule 2(1)(c)(viii)]. The wordings of this imply that the exemption would continue to be available throughout the tenure of the deposit even if the said depositor ceases to be a director at a later date.

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Section 3(1)(iii)(d) of the Companies Act, 1956, prohibited a private company to invite or accept deposits from persons other than its members, directors or their relatives. In other words, a private company was allowed to accept deposits only from its members, directors or their relatives. In case of private companies, acceptance of deposits from these people is a general practice.

However, a recently notified Section 74(1) of the Act mandates that all those private companies, who have accepted the deposits, are required to ensure certain compliance on immediate basis, to avoid penal consequences. Moreover, Section 73 provides that the private companies can accept deposits from the members, only by complying with the detailed process as prescribed under the Act and the relevant Rules. Hence, on 1<sup>st</sup> April, 2014, the deposit-acceptance activities of a private company may be divided into two parts:

- (i) Treatment of existing deposits (Section 74) and
- (ii) Acceptance of fresh deposits (Section 73).

## Treatment of Existing Deposits (Section 74)

Sub-Section (1) of Section 74 of the Act provides for the repayment of all deposits which have been accepted by the private companies on or before 31<sup>st</sup> March, 2014. The said sub-Section reads:

*“(1) Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall –*

*(a) file, within a period of three months from such commencement or from the date on which such payments, are due, with the Registrar a statement of all the deposits accepted by the company and sums remaining unpaid on such amount with the interest payable thereon along with the*

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**The company is required to obtain the auditor's certificate and attach the same to Form DPT-4. No specific format is prescribed for the said certificate; however, we can presume that the said Certificate has to state that the information disclosed under the Form is correct.**

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*arrangements made for such repayment, notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law ; and*

*(b) repay within one year from such commencement or from the date on which such payments are due, whichever is earlier.”*

To comply with this provision, every private company that has taken deposits from its members, directors or their relatives and such deposits were either outstanding as on 31<sup>st</sup> March 2014 or due but not paid (including interest, if any) as on 31<sup>st</sup> March, 2014, has to take the following actions, as early as possible:

- (a) File Form DPT-4: The statement regarding the deposits in existence as on 1<sup>st</sup> April, 2014 needs to be filed within 3 months from 1<sup>st</sup> April, 2014 or from the date on which such payments are due.
- (b) Repayment of deposits: The deposits which are in existence on 1<sup>st</sup> April, 2014 must be repaid before 31<sup>st</sup> March, 2015 or within one year from the date on which such payments are due, whichever is earlier.

## Filing of Form DPT-4

A statement regarding deposits existing as on 1<sup>st</sup> April, 2014, is required to be submitted through Form DPT-4. In addition to giving the statutory information about the company's name, address, status, etc., a company is also required to give the following important information in this Form:

- (i) Total deposits outstanding as on 1<sup>st</sup> April, 2014:
  - (a) amount; and
  - (b) number of depositors.
- (ii) Details of above deposits under following heads:
  - (a) deposits due but not paid;
  - (b) interest due thereon but not paid;
  - (c) deposits due but not claimed;
  - (d) interest due thereon but not claimed; and
  - (e) deposits not yet due for repayment.
- (iii) Deposits due for repayment in next three months.
- (iv) Arrangements made for repayment of deposits due for repayment.

Following documents are required to be attached to this Form:

1. Auditor's certificate;
2. List of depositors indicating name, address, amount deposited, repaid during the year and

**All private companies who held deposits on 1<sup>st</sup> April, 2014 will have to obtain a certificate on correctness of information as given in Form DPT-4 from the auditors. Private companies deciding to invite and accept deposits from 1<sup>st</sup> April, 2014, will need to get the audited cash flow statement for the three years immediately preceding the date of issue of circular.**

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; and

- List of deposits matured, cheques issued but not yet cleared.

#### Auditor's Certificate

The company is required to obtain the *auditor's certificate* and attach the same to Form DPT-4. No specific format is prescribed for the said certificate; however, we can presume that the said *Certificate* has to state that the information disclosed under the *Form* is correct.

#### Acceptance of Fresh Deposits (Section 73)

Under the new Act, the deposits accepted by a private company from its directors are exempt. However, if a private company wants to accept the deposits from its members, it is supposed to comply with the detailed process prescribed under the Section 73 and the Rules. *Box 1* gives the overview of Section 73 and *Box 2* gives overview of the relevant Rules.

#### Box 1: Key Provisions on Acceptance of Deposits from Members

Section	Provision
73 (1)	Company to accept of deposits from public in specific manner alone
73 (2)	Acceptance of deposit by a company from its members
73 (2)(a)	Issuance of a circular to the members
73 (2)(b)	Filing a copy of the circular with the Registrar of Companies
73 (2)(c)	Deposit of 15% amount in a scheduled bank in a separate bank account to be known as Deposit Repayment Reserve Account
73 (2)(d)	Deposit insurance
73 (2)(e)	No default certificate

Section	Provision
73 (2)(f)	Creation of charge on the property or assets of the company, if needed
73 (3)	Repayment of deposits with interest in accordance with the terms and conditions
73 (4)	Failure in repayment of the deposit or interest, application to the Tribunal
73 (5)	Utilisation of Deposit Repayment Reserve Account only for repayment of deposits

#### Box 2: Key provisions of Companies (Acceptance of Deposits) Rules, 2014 (as applicable to private companies)

Rule	Provision	Form, if any
4	Form and particulars of advertisements or circulars	Form DPT-1
5	Manner and extent of deposit insurance	
6	Creation of security	
7	Appointment of trustee(s) for depositors	Form DPT-2
8	Duties of trustee(s)	
9	Meeting of depositors	
10	Form of application for deposits	
11	Power to nominate	
12	Furnishing of Deposit Receipts to depositors	
13	Maintenance of liquid assets and creation of Deposit Repayment Reserve Account	
14	Registers of deposits	
15	General provisions regarding premature repayment of deposits	
16	Return of Deposits to be filed with the Registrar	Form DPT-3
17	Penal rate of interest	
18	Power of Central Government to decide certain questions	
20	Statement regarding deposits existing as on 1 <sup>st</sup> April, 2014	Form DPT-4
21	Punishment for contravention	

Sub-Section (2) of Section 73 permits a company to accept deposits from its members, if the same is approved by the members in general meeting. The

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company wanting to invite and accept such deposit has to follow the following procedures:

- (a) *Issue the circular*: Issue a circular, approved by the Board, to all the members, by registered post with acknowledgement due or speed post or by electronic mode, including therein a statement showing the financial position, the credit rating and all other details as given in the Form DPT-1.
- (b) *File the Form*: Not less than 30 days before issuing the circular, file Form DPT-1 with the Registrar of Companies.
- (c) *Deposit Repayment Reserve account*: Open a separate bank account to be called as “*Deposit Repayment Reserve Account of \_\_\_\_\_ Pvt. Ltd.*” with a scheduled bank. An amount, not less than 15% of the amount of its deposits maturing during the current financial year and the next financial year needs to be kept in this account.
- (d) *Deposit insurance*: At least 30 days before issue of circular, enter into a contract for providing deposit insurance, in conformity with the Rule 5.
- (e) *No-default certificate*: Request the Board to pass a resolution certifying that the company has never committed any default in the repayment of deposits accepted or interest thereon.
- (f) *Creation of security*: If the company is accepting secured deposits, create the security by way of charge on the property or assets of the company.
- (g) *Unsecured deposits*: In case, the company does not secure the deposits, the deposits shall be termed as *unsecured deposits*. This fact needs to be quoted in every communication or document related to invitation or acceptance of deposits.
- (h) *Appointment of trustees*: In case of acceptance of secured deposits, appoint one or more trustees for depositors for creating security for the deposits and execute a deposit trust deed in the Form DPT-2 at least seven days before issuing the circular.
- (i) *Form of application*: Receive the deposit from an intending depositor in the prescribed form only. The depositor should be allowed to appoint a nominee.
- (j) *Deposit Receipt*: Whenever a deposit is accepted or renewed, issue a deposit receipt within 21 days.
- (j) *Register of Deposits*: Maintain the *Register of Deposits* at the registered office of the Company and make necessary entries within seven days of issuance of the *Deposit Receipt*.
- (k) *Premature repayment*: Make the premature



mature repayment only in accordance with the directives contained in the Rule 15.

- (l) *Return of Deposits*: File before June 30 every year, a return in the Form DPT-3, with the Registrar of Companies, giving information as of 31<sup>st</sup> March of that year. The said return should be duly audited by the auditors of the company.
- (m) *Penal interest*: In case, of delayed repayment, pay a penal of interest @ 18% per annum, for the overdue period.

## Role of Auditors

Auditors of the companies accepting the deposits have an important role to play in the deposit and inviting-accepting exercise of companies. All private companies who held deposits on 1<sup>st</sup> April, 2014 will have to obtain a certificate on correctness of information as given in Form DPT-4 from the auditors. Private companies deciding to invite and accept deposits from 1<sup>st</sup> April, 2014, will need to get the audited cash flow statement for the three years immediately preceding the date of issue of circular. The same is required to be incorporated in the Form DPT-1. Annual *return of deposits*, in the Form DPT-3, to be filed by a company accepting deposits has to be supported by the *auditor's certificate*.

## Conclusion

Imposing restrictions on private companies to accept deposits from members is bound to disappoint the people managing such companies. Moreover, taking deposit insurance, getting credit rating, appointing trustees may involve considerable costs. These companies may, therefore, stop accepting deposits from the members, who are not directors. However, till the time the existing deposits are paid, such companies will have to ensure a timely compliance to avoid the contravention resulting into the imposition of any kind of penalty. ■