

## Loan from Director or Shareholders

### **SHORT SUMMARY:**

In this editorial, Author shall discuss about concept of deposit in relation to most common question between professionals i.e.

“If a Company accepted loan from an Individual and such individual is **Director as well as shareholder** of the Company. Whether loan from such person shall be considered as Loan from Shareholder or Loan from Director?”

### **A. LOAN FROM DIRECTOR:**

Definition of deposit mentioned under Deposit Rules state that, Loan received from the Directors of the Company shall be considered as Exempted Deposit. However, there is one condition that such loan shall be given out of his own funds not from borrowed funds.

### **B. LOAN FROM SHAREHOLDER:**

- ✓ 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 01<sup>st</sup> April, 2014 it was not allowed to accept deposit/ Loan from shareholder
- ✓ MCA issue **Exemption notification** for Private Limited Companies on 05<sup>th</sup> 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 13<sup>th</sup> 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
  - (c) such a company has no default in repayment of such borrowings subsisting at the time of accepting deposits under this section.”
- 

### **C. PROCESS OF ACCEPTANCE OF LOAN FROM DIRECTOR:**

Brief process of acceptance of Loan from Director of the Company.

- 1) Passing of Resolution in Board Meeting
  - 2) Declaration of own funds from Director.
- 

### **D. PROCESS OF ACCEPTANCE OF LOAN FROM DIRECTOR:**

Brief process of acceptance of Loan from Director of the Company.

- 1) To check whether exemption available with the Company or not.

- 
- 2) Pass a Resolution in Board meeting for acceptance of Loan.
  - 3) Call General Meeting
  - 4) Pass Ordinary Resolution in General Meeting.
- 

## CONCLUSION:

If Company received loan from a person who is Director as well as shareholder of the Company on the date of acceptance of Loan then whether such loan shall be considered as Loan from Director or Loan from Shareholder totally depend upon the compliances done by the Company for acceptance of such loans.

- 
- If Company has complied with provisions / compliances of Loan from Director then consider this as Loan from Director and show in “particular not consider as deposit” in DPT-3.
  - If Company has complied with provisions / compliances of Loan from shareholders than consider this as Loan from shareholder and show in “deposit” in DPT-3.
- 

**Hello Professionals,**

**Join us on below mentioned \*social Media Channel\* for better reach: \_**

**1. LinkedIn: <https://www.linkedin.com/in/fcs-divesh-goyal-9b7a8b58/>**

**2. Facebook: <https://www.facebook.com/divesh.goyal.583/>**

**3. If you are looking for any CS vacancy or in a need of updating any vacancy, Please join our Facebook group by clicking on the below link:**

**<https://www.facebook.com/groups/csjobs2020>**

**4. Instagram: [https://www.instagram.com/cs\\_divesh\\_goyal/](https://www.instagram.com/cs_divesh_goyal/)**

**5. Telegram <https://t.me/joinchat/RWi6Ptp5oKQJaTdk>**

For daily Whatsapp broadcast updates, kindly save my contact No. 8130657778 in your contact list.

Also, Kindly mention your Name, City, and Profession for a better reach and a most productive way of networking

pls share in ur contact also

Thank you  
Regards  
CS Divesh Goyal

**Author** - CS Divesh Goyal, GOYAL DIVESH & ASSOCIATES Company Secretary in Practice from Delhi and can be contacted at [csdiveshgoyal@gmail.com](mailto:csdiveshgoyal@gmail.com)).

**Disclaimer:** The entire contents of this document have been prepared based on 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 professional advice and is subject to change without notice. I assume no responsibility for the consequences of the 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**