

## PERMISSIBLE DEPOSITS – PRIVATE COMPANIES

### SHORT SUMMARY:

In this spark editorial, the author begins by referring to the provisions of section 73 of Companies Act, 2013 relating to Acceptance of Deposit by Companies. Author shall Shed Some Light on sources of permissible deposits, limits of deposits, provisions of deposits, compliances for acceptance of such deposits etc. The main thrust of the article, however, is upon the “Private Companies” along with discussion of circulars, notifications, amendments made by MCA.

This editorial would assist in understanding the provisions, requirement of acceptance/ renewing of deposit under CA, 2013.

### INTRODUCTION:

To run any business one of the most important factor is Money “Paisa”. Source of funding for Companies are Share Capital, Loan, Borrowings etc. Loans are the major source of funding for most of the Companies apart from their Share Capital. Companies borrow from various sources like banks, financial institutions, Inter Corporate Borrowings, Stake Holders etc. while Public Limited Companies borrows from mass public by accepting public deposits. Private Companies are strictly prohibited from accepting any loan or deposits from the public.

At the time when Company Act, 2013 introduced sources to accept deposit by Private Companies was hardly any (like: Directors, Inter Corporate Deposits, Banks and Financial Institutions). On the other hand, Private Company by and large are family concerns only. There was need for amendment in the Law by grant relaxation to Private

Companies to accept Loan from the other Stake Holders or Relatives as there are no public interest indulges in the Private Companies.

### FIRST QUEST:

**What shall be the treatment of the Deposit accept by the Private Companies before 01.04.2014 which was allowed in Act, 1956 but not allowed in Act, 2013.**

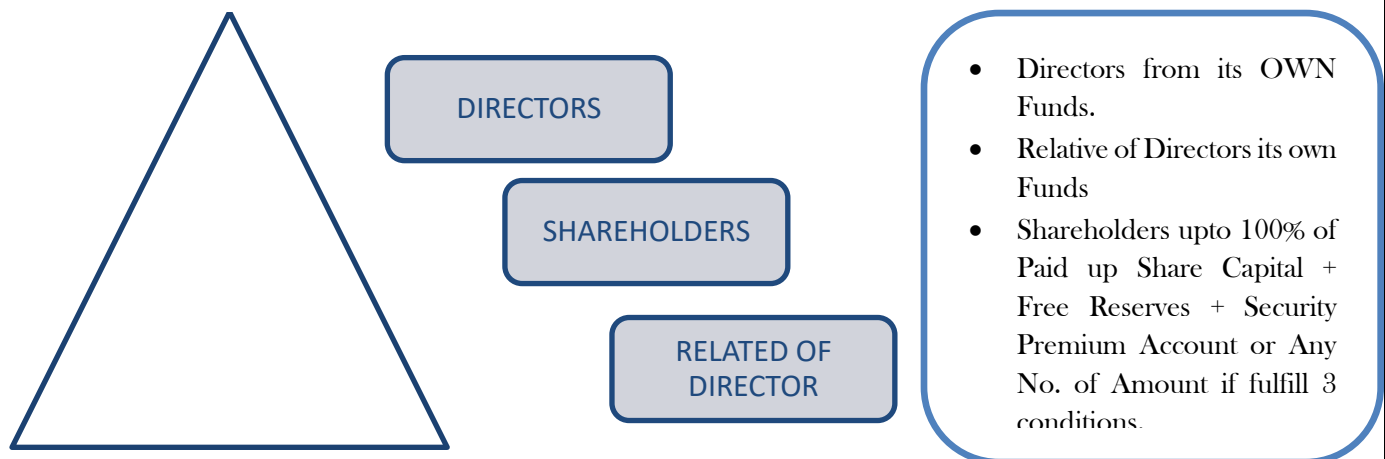
MCA has issued a Circular No. 05/2015 dated: 30<sup>th</sup> March, 2015 and clarified that “such amount shall not be treated as deposit subject to the condition that relevant such private company shall disclose about the same in Notes to its Financial Statement”.

### MEANING OF DEPOSIT:

2(31) 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 Reserve Bank of India.

## PRIVATE LIMITED COMPANIES

### **COMPANIES ACT, 2013 PERMITTED PRIVATE COMPANIES TO BORROW FROM**



**A. ACCEPTANCE OF DEPOSIT FROM DIRECTOR:**

As per Chapter V, Acceptance of Deposits of Companies Rules, 2014, point VIII of definition of Deposit. Any amount receipt from a person who at the time of acceptance was a Director of the Company, will not be considered as Deposit.

**Note:**

- Position at the time of acceptance of Deposit will be considered.
- The Director will submit a declaration with the Company that amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.
- The company can accept any amount of loan from the Director.

**B. ACCEPTANCE OF DEPOSIT FROM RELATIVES OF DIRECTORS:**

Company can't accept loan from relatives of the director as per Companies Act, 2013 But as per 'The Companies (Acceptance of Deposit) second amendment Rules, 2015' dated 15th September, 2015 G.S.R. 695(E) Private Limited Company can accept loan from the relative of the Director if relative furnish 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.

**Note:**

- Position at the time of acceptance of Deposit will be considered.

**C. ACCEPTANCE OF DEPOSIT FROM MEMBERS:**



**A. Procedures to be followed for taking Loan from Members (Company):**

As per Chapter V, Rule 2(1) (c) (VI), any amount received by a Company from any other company is excluded from the definition of deposits. Therefore, loans taken by a Company from any other Company, even if such other Company is its member, will not be treated as deposits. Hence the provisions and procedures required to be followed for accepting deposits in Chapter V under the Companies Act, 2013 will not be applicable in such cases.

**B. Procedures to be followed for taking Loan from Members (Company):**

As per Chapter V, Rule 2(1) (c) (VII), any amount received by a Company from a person who, at the time of the receipt of the amount, was not a Director of the Company but was member of the Company will not be considered as deposit, Because Private Companies are allowed to accept Deposits from the members upto 100% of Paid up Share Capital and Free Reserves.

**C. Procedures to be followed for taking Loan from Members (Other than Company & Directors):**

Private Company can accept deposits from the Members. However, for this purpose Private Companies are divided into 3 (three) categories i.e. followings:

## CATEGORIES OF PRIVATE COMPANIES

**Category - 1** Accept from its members monies not exceeding 100% percent of aggregate of the paid up share capital, free reserves and Securities Premium account

**Category - 2** Which is a start-up, for five years from the date of its incorporation

**Category - 3** Fulfill all of the following conditions, namely-

- Which is not an associate or a subsidiary of any other Company
- Borrowing of Co. from Bank, FI, any body corporate- less than twice of its paid up share capital or fifty crore rupees, whichever is lower.
- company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under the section.

## TABLE OF EXEMPTED DEPOSIT DATE WISE

EXEMPTED DEPOSIT						
	Source	Before 01.04.2014	After 01.04.2014 to 05.06.2015	After 01.04.2014 to 15.09.2015	After 05.06.2015 To 13.06.2017	After 13.06.2017 To 19.09.2017
1	Members	Any No. of amount before 01.04.2014	Cant receive in this period	Same earlier	upto 100% of paid up share capital and free reserve  <b>After 29.06.2016</b> Upto 100% of paid up share capital, free reserve and Security	*Company can accept any no. of amount if fulfill conditions given below the chart.  A private company which is a start-up, for five years from

					Premium Account.	the date of its incorporation
2	<b>Directors</b>	Allowed any amount	Allowed any amount Condition money must be belonging to director only. Not borrowed fund	Same earlier	Allowed any amount Condition money must be belonging to director only. Not borrowed fund	Same earlier
3	<b>Relative of Directors</b>	Allowed any amount	Not allowed	Allowed any amount Condition money must be belonging to relative only. not borrowed fund	Allowed any amount Condition money must be belonging to relative only. not borrowed fund	Same earlier
4	<b>Other Company</b>	Allowed any amount.	Allowed any amount. But check relation of section 185.	Same earlier	Same earlier	Same earlier

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