

# Deposits

Version 1.2



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**This document would assist the reader in understanding the requirements for accepting / renewing DEPOSITS under Companies Act, 2013 incorporating amendments to Deposit Rules w.e.f. 15th September 2015.**

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## DEPOSITS

Pursuant to amendment in Companies (Acceptance of Deposit) Rules 2014 w.e.f. 15<sup>th</sup> September 2015, it was thought prudent to amend the original document dated 17<sup>th</sup> August 2015 to make it relevant as on the date of the amendment. Hence this document is updated as version 1.2.

### STATUTORY SUMMARY

Sections	Rules	Forms	
73-76A	Companies (Acceptance of Deposit) Rules 2014 <ul style="list-style-type: none"><li>• 21 Rules</li></ul>	DPT 1	Circular or Circular in the form of advertisement inviting deposits
		DPT 2	Deposit Trust Deed
		DPT 3	Return of Deposits
		DPT 4	Statement regarding deposits existing on the commencement of the Act

### AMOUNTS NOT TREATED AS DEPOSITS (FOR ALL COMPANIES)

There is a difference between a loan and a deposit. A deposit includes a loan, but every loan may not be a deposit. Following amounts can be taken by all companies (may be a loan) but same are not deposits as per the Companies (Acceptance of Deposit) Rules 2014:-

- Amount received from Central Government, State Government, Local Authority, Statutory Authority
- Amount received from foreign government, foreign or international banks, multilateral financial institutions, foreign export credit agencies, foreign collaborators, foreign bodies corporate and foreign citizens, foreign authorities or persons resident outside India subject to the provisions of Foreign Exchange Management Act
- Amount received as a loan or facility from banking Company, SBI, etc notified by CG as per RBI Act



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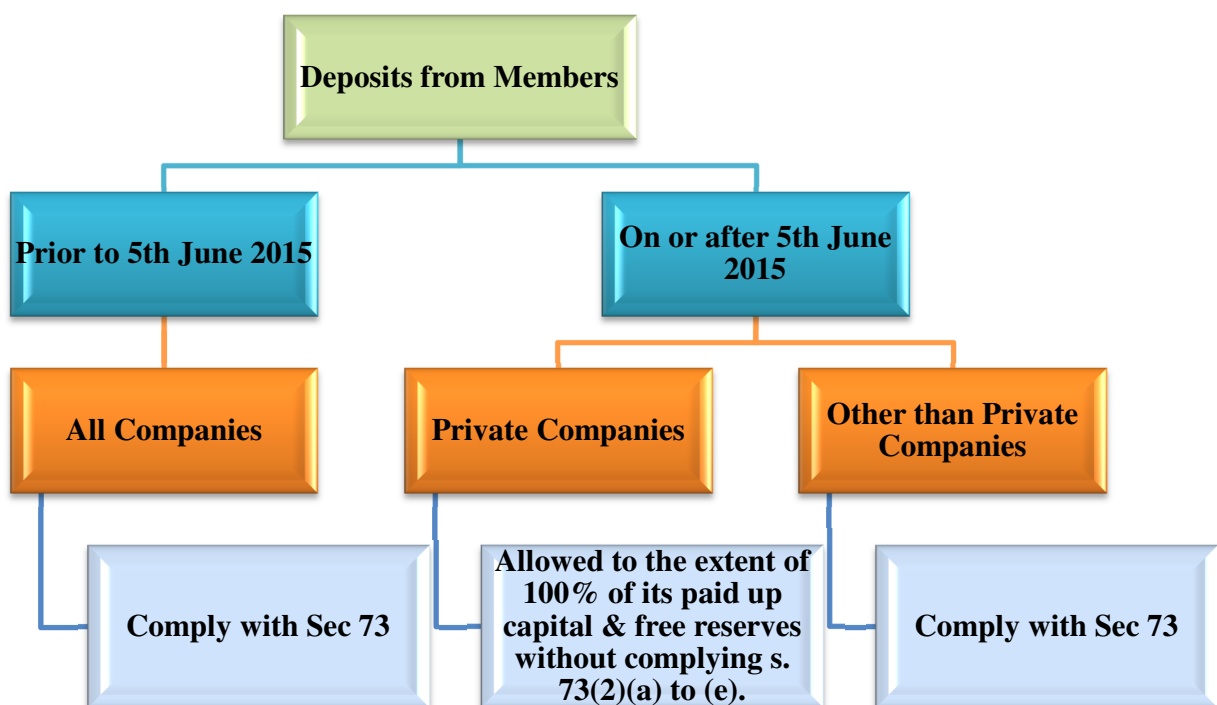
- Amount received as loan or financial assistance from Public Financial Institutions, Regional Financial Institutions, Insurance Companies or Scheduled Banks
- Amount received against Commercial Papers, etc.
- Amount received by a Company from any other company [which is normally termed as Inter Corporate Deposits (ICD)]
- Amount received pursuant to an offer towards subscription to any securities, including share application money or advance, pending allotment
  - Exception: If the securities not allotted within 60 days from the date of receipt of the application money or advance and such amount is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit.
  - Further any share application money is pending allotment prior to 1<sup>st</sup> April 2014 is also pending as on 31<sup>st</sup> March 2015, then it was to be refunded by 1<sup>st</sup> June 2015.
- Amount received from its director out of his own funds
- Bonds / debenture secured by first charge on any assets (excluding intangible assets) or convertible into shares within 5 years
- Interest free security deposit from employee not exceeding his annual salary
- Interest free amount received in Trust
- Business advances:
  - For supply of goods or provision of services provided that such advance is appropriated against supply of goods or provision of services within a period of 365 days. However, if the advance is subject matter of any legal proceedings before any court of law the limit of 365 days would not be applicable.
  - In connection with consideration for immovable property, provided that such advance is adjusted as per agreement.
  - Security deposit for performance of contract for supply of goods or provision of services
  - Advance under long term projects for supply of capital goods
  - Exception- If Company accepting money does not have necessary permission or approval to deal in goods or properties or services, then amount received deemed to



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- be deposits on the expiry of 15 days from the date they become due for refund (except security deposit).
- Amount brought in by promoters as unsecured loans in stipulation of any lending Financial Institution or Banks subject to:-
    - Loan is brought in pursuance of stipulation imposed by lending institutions on promoters to contribute such finance; and
    - Loan is provided by the promoters themselves and/or by their relatives.
    - Exemption available only till loans are repaid
  - Amount received by Nidhi companies

## DEPOSITS FROM MEMBERS



### Deposits from Members by Private Companies (w.e.f. 5<sup>th</sup> June 2015)

Private companies can accept deposits from its members to the extent of 100% of its paid up capital and free reserves without complying with the conditions as stated in section 73(2) (a) to (e).



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However, it is pertinent to note that as these amounts received would be deposits and such company would have to:

- Comply with the terms and conditions of Companies (Acceptance of Deposit) Rules 2014; and
- File the details of monies so accepted to the Registrar in Form DPT 3 duly certified by its statutory auditor.

### **Deposits from Members by Public Company and Private Companies prior to 5<sup>th</sup> June 2015**

Subject to the passing of a resolution in general meeting and fulfilment of the following condition a company can take deposit from its members [to the extent of 25% of paid up capital and free reserves (and securities premium account w.e.f. 15<sup>th</sup> September 2015)]:-

- File DPT-1 with ROC

Issue a circular (DPT-1) to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form;

File a copy of the circular and statement with the Registrar within 30 days before the date of issue of the circular. Such circular has to be issued to members by registered post with acknowledgement due or speed post or by electronic mode.

- Deposit Trust Deed

The company shall execute a deposit trust deed in Form (DPT-2) at least seven days before issuing the circular.

- Maintenance of Liquid Fund

Deposit sum which shall not be less than 15% of the deposits maturing during a financial year and the financial year next following, and keep in a scheduled bank in a separate bank account to be called as deposit repayment reserve account.

- Certificate from the Company

Certify that the company has not committed any default in the repayment of deposits accepted or payment of interest on such deposits.

- Security for the repayment at the option of the Company



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In case of issue of secured deposits, provide security, way of a charge on its assets excluding intangible assets of the company for the repayment of the amount of deposit and interest thereon for an amount which shall not be less than the amount remaining unsecured by the deposit insurance.

- Deposit Insurance

Company shall enter into a contract for providing deposit insurance at least 30 days before the issue of circular. However the company is exempted from obtaining deposit insurance till 31<sup>st</sup> March 2016 or availability of deposit insurance product whichever is earlier.

- Deposit Receipt

Furnish receipt within 21 days of amount received, to the depositors.

- No company shall accept deposits from members which are repayable on demand or upon receiving a notice within a period of less than 6 months or more than 36 months from the date of acceptance or renewal of such deposit.

Exception-company may, accept or renew such deposits subject to the condition that

- Such deposits shall not exceed 10% paid up share capital and free reserves (and securities premium account w.e.f. 15<sup>th</sup> September 2015) of the company, and
  - Such deposits are repayable not earlier than 3 months from the date of such deposits or renewal.
- No company shall accept or renew any deposit from its members, if Total Deposits from members exceeds 25% of its paid up capital and free reserve (and securities premium account w.e.f. 15<sup>th</sup> September 2015). Please note that free reserves does not include share premium. However an eligible company can only accept deposits from its members to the extent of 10% of its paid up capital and free reserve (and securities premium account w.e.f. 15<sup>th</sup> September 2015).

## DEPOSITS FROM DIRECTORS

Any company can accept amount from a person who is its director at the time of receipt of the amount out of his own funds. For this purpose the director will have to 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. Such amounts are not deposits as per Companies (Acceptance of Deposit) Rules, 2014.



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However, consequent to amendment in Companies (Acceptance of Deposit) Rules 2014 w.e.f. 15<sup>th</sup> September 2015 amounts received from directors out of their own funds are to be reported in Directors Report. Hence, any Director's Report prepared after 15<sup>th</sup> September 2015 would require disclosing this information.

## DEPOSITS FROM RELATIVES OF DIRECTORS

Under Companies Act, 1956 only a private company could have received a loan from relatives of a director. However, under the Companies Act 2013 no company was allowed to receive any loan from relatives of its director.

However, Companies (Acceptance of Deposit) Rules 2014 was amended w.e.f. 15<sup>th</sup> September 2015 to allow private companies to accept amounts from relatives of a director out of their own funds. For this purpose the relative will have to submit a declaration with the Company that amount is not being given out of funds acquired by them by borrowing or accepting loans or deposits from others. Such amounts are not deposits as per amended Companies (Acceptance of Deposit) Rules, 2014. Please note that even after the amendment a public company cannot accept amounts from relatives of its directors.

Relatives for this purpose means:

- Husband and wife;
- Father (including step-father);
- Mother (including step-mother);
- Son (including step-son);
- Son's wife;
- Daughter;
- Daughter's husband;
- Brother (including step-brother); and
- Sister (including step-sister).

However, consequent to amendment in Companies (Acceptance of Deposit) Rules 2014 w.e.f. 15<sup>th</sup> September 2015 amounts received from relatives of directors by a private company out of their own funds are to be reported in Directors Report. Hence, any Director's Report prepared after 15<sup>th</sup> September 2015 would require disclosing this information.





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## DEPOSITS FROM PUBLIC

Following may invite, accept or renew public deposits:

- Banking companies defined in Reserve Bank of India Act, 1934.
- Non-Banking Financial Companies defined in the Reserve Bank of India Act, 1934.
- Notified companies, by central Government after consultation with RBI.
- Public company having net worth not less than Rs. 100 Crs. or turnover not less than Rs. 500 Crs. (Eligible Company)

An Eligible Company shall be required to:-

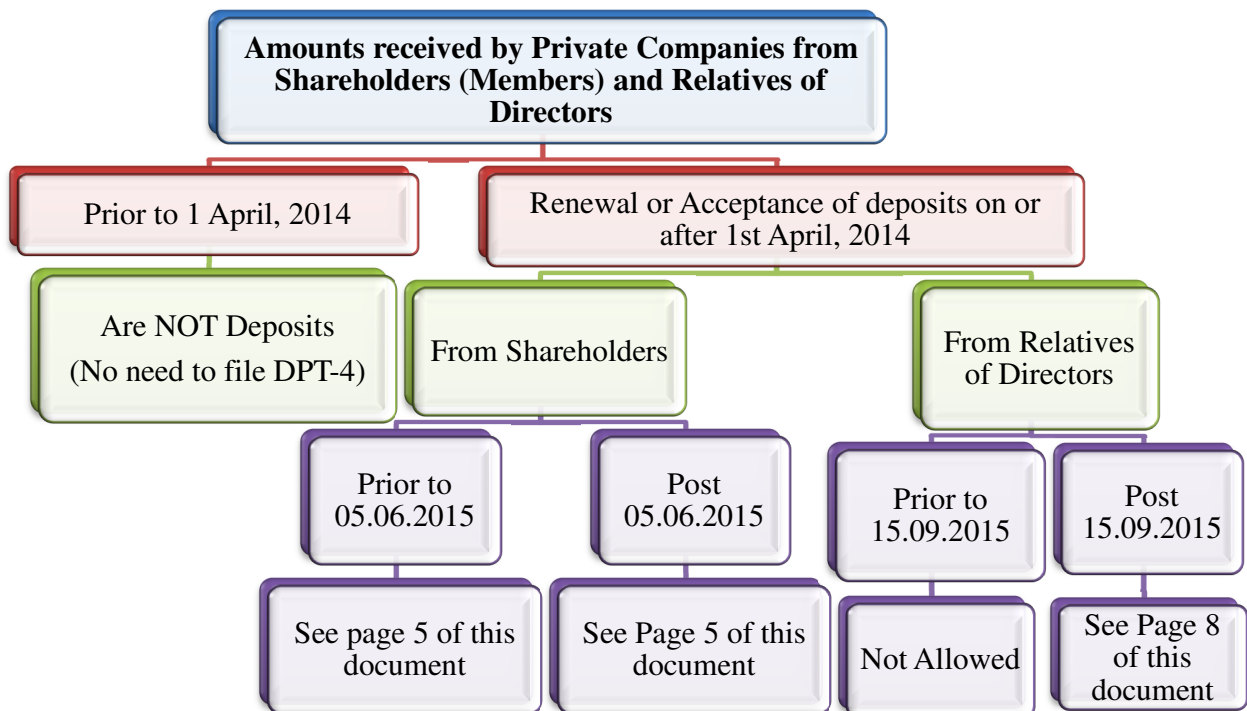
- Pass Special resolution and file the same with the Registrar of Companies before making any invitation to the Public.
- Obtain rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency and file the same along with Return of Deposits in Form DPT 3.
- Company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted.
- Issue a circular (DPT-1) in English language and in vernacular language in one vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.
- Company shall enter into a contract for providing deposit insurance at least 30 days before the issue of circular. However the company is exempted to obtain deposit insurance till 31<sup>st</sup> March 2016 or availability of deposit insurance product whichever is earlier.
- The company shall execute a deposit trust deed in Form (DPT-2) at least seven days before issuing the circular.
- Furnish receipt within 21 days of amount received to the depositor.
- Deposit sum which shall not be less than 15% of the deposits maturing during a financial year and the financial year next following, and keep in a scheduled bank in a separate bank account to be called as deposit repayment reserve account



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- Government company shall not accept or renew any deposit, if Total Deposits exceeds 35% of paid up capital and free reserves (and securities premium account w.e.f. 15<sup>th</sup> September 2015).
- No company shall invite or accept or renew any deposit in any form, carrying a rate of interest or pay brokerage thereon at a rate exceeding NBFC norms.
- An eligible company can accept deposits from public only to the extent of 25% of its paid up capital and free reserve (and securities premium account w.e.f. 15<sup>th</sup> September 2015).

## EXISTING DEPOSITS



Except for amounts received by Private companies from Shareholders and Directors' Relatives (which has been summarised in the table above, the remaining deposits accepted before commencement of Companies Act, 2013 has to be treated as under:-

- File within a period of three months, the amounts of:
  - deposits or
  - parts of deposits or
  - any interest on deposits



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remaining unpaid on such:

- commencement of the Act, or
- becomes due at any time thereafter

with the Registrar, a statement (DPT-4) of all the deposits accepted by the company and sums remaining unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment,

- Repay within one year from such commencement or from the date on which such payments are due, whichever is earlier.
- CLB may on an application made by the company, after considering the financial condition of the company allow further time as considered reasonable to the company to repay the deposit.
- If a company fails to repay the deposit or part thereof or any interest thereon within the time and further the time as may be allowed by the Tribunal, then in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable.

### **PREMATURE SURRENDER OF DEPOSITS**

Subject to certain conditions, a depositor may request for premature of deposit. In such case if the repayment of the deposit is made after the expiry of 6 months from the date of deposit, but before the maturity date of deposit, then the interest rate on such deposit has to be reduced by 1%.

### **RETURN OF DEPOSITS**

Every Company accepting or renewing deposits u/s 73 or 76 has to:

- File with the Registrar an annual return of deposits in Form DPT 3
- Before the 30th day of June (as on 31st March) each year
- Audited by the statutory auditor of the company

### **PENAL INTEREST**

A company shall have to pay an interest of 18% p.a. for the overdue period of deposits, matured and claimed but remaining unpaid.



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## PUNISHMENT

### *Contravention*

- Accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made thereunder or
- Fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73

### *On Company*

- Payment of the amount of depositor part thereof and the interest due; and
- Fine which shall not be less than Rs. 1 Crore rupees but which may extend to Rs. 10 Crore

### *On Officer in Default*

- Imprisonment which may extend to 7 years; or
- Fine which shall not be less than Rs. 25 Lacs but which may extend to Rs. 2 crores; or
- Both

If it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447 (fraud).

### *Contravention of Rules*

If any company contravenes any provisions of Companies (Acceptance of Deposit) Rules, 2014 for which no punishment is provided in the Act, then the company and every officer in default shall be punishable with fine which may extend to Rs. 5000/- and in case of continuing default Rs. 500/- per day during which the default continues.

I hope this document is of use to you. Your suggestions and comments would be highly appreciated

Best Regards

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