**[Companies Acceptance of Deposit (Section 73 to 76 of Companies Act 2013)](http://taxguru.in/company-law/companies-acceptance-deposit-section-73-76-companies-act-2013.html" \o "Permanent Link to Companies Acceptance of Deposit (Section 73 to 76 of Companies Act 2013))**

283 sections of the Companies Act 2013 have been made effective now. Private Companies have also been brought under the purview of the compliances of Companies Act 2013. Earlier private companies were allowed to take loans from relatives and shareholders which were the major sources of funds for most of the private companies apart from banks. The draft rules of the new Act had specifically exempted deposits from shareholders from the definition of deposits. However the final rules have removed the exemption and, only deposits taken from directors are exempted from the definition of deposits provided he gives a declaration that the amount he is giving is not out of borrowed funds. Going forward private companies shall have to adhere to strict norms for borrowing from any person other than directors thereby increasing the compliance costs for small private companies.

**Key Highlights**

1) A private Company and an un-eligible public company cannot accept loans or deposits from any person other than its Directors. For accepting any loan from person other than Directors the company will have to comply with all the conditions mentioned including creation of reserve account, deposit insurance, credit rating, etc.

2) Share application money received but not allotted shall be treated as deposit.

3) Any money received as advance in the course of ordinary business shall be treated as deposit if goods or services are not provided within 365 days of receipt.

4) Private Companies and an un-eligible public company will have to file a return of deposits on 30th June if they have any deposit received from person other than director.

5) As of now if the private companies have any loan received from any person other than director then they have to file a statement with the Registrar within 3 months of the commencement of the Act i.e. 30th June 2014 in Form DPT-4.

The Companies Acceptance of Deposit rules are **not applicable** to:

1) A Banking Company,

2) A Non Banking Finance Company registered with RBI,

3) A Housing Finance Company registered with National Housing Bank,

4) Any other Company which the Central Government may specify.

**Deposit :**

Deposit includes **any receipt** of money by way of **deposit or loan or in any other form**, by a Company.

Following amount received **shall not be considered Deposits** under this Chapter

1) Any amount received from Central Government /State Government/ local authority/statutory authority constituted under an Act of Parliament or State legislature /any other source whose repayment is guaranteed by Central Government or State Government.

2) Any amount received from Foreign or international banks / multilateral financial institutions/Foreign Government owned development financial institutions / foreign export credit agencies / foreign collaborators/ foreign body corporate /foreign citizens / foreign authorities / persons resident outside India subject to the provisions of Foreign Exchange Management Act,1999.

3) Any amount received as a loan from a Banking Institution including co-operative banks notified under Banking Regulation Act.

4) Any amount received as a loan from Public Financial Institution /Regional Financial Institutions / Insurance Companies / Scheduled Banks.

5) Any amount received against commercial paper or any other instruments issued in accordance with the guidelines of Reserve Bank of India.

**6) Any amount received from any other Company.**

7) Any amount received against subscription to any securities including share application money provided the securities are allotted within 60 days from the date of receipt of the application money or advance.

If the securities are not allotted within 60 days then the same should be refunded within 15 days else the same shall be treated as deposit after completion of 15 days.

8) Any amount received from a person who at the time of receipt was a director provided the director furnishes a declaration that the amount given is not out of borrowed funds.

9) Any amount raised by issue of bonds or debentures secured by first charge on any assets referred to in Schedule III of the Act excluding intangible assets.

10) Any amount received from an employee of the company not exceeding his annual salary in the nature of non interest bearing security.

11) Any amount received as a Non- interest bearing amount received or held in trust.

12) Any amount received in the course of or the purpose of the business for the following :-

a. As advance for the supply of goods or provision of services provided such advance is appropriated against supply of goods or provision of service within 365 days from the receipt of such amount,

b. As advance received in connection with consideration for property under an agreement or arrangement,

c. As security deposit for the performance of the contract for supply of goods or provision of services.

d. As advance received under long term projects for supply of capital goods.

If any amount received under clause (a),(b) and (d) becomes refundable due to the reasons that the company accepting money does not have necessary permission or approval to deal with the goods or services then the amount received shall be deemed to be a deposit after the expiry of 15 days from the date they become due for refund.

13) Any amount brought in by the promoters themselves or their relatives by way of unsecured loan in pursuance of a stipulation of any lending institution on the promoters. Such exemption shall be available only till the loans of the Financial Institutions are not repaid and not thereafter.

14) Any amount accepted by a Nidhi Company in accordance with rules made u/s 406 of the Act.

**Section 76 Eligible Company**

Eligible Company means:-

1) A public Company and it has either of the following

2) Net worth of not less than one hundred crore rupees or turnover of not less than five hundred crore rupees.

3) It has obtained the prior consent of the company in general meeting by means of a special resolution

4) It has filed the above resolution with the Registrar of Companies before making any invitation to the Public for accepting deposits.

Exception: An eligible company may accept deposits my means of an ordinary resolution if it is accepting deposits within the limit specified under clause (c) of sub section (1) of section 180.

**Conditions for acceptance of Deposit**

1) No Company shall accept or renew deposit whether, secured or unsecured, which is 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 : A company may for the purpose of meeting its short term requirements of funds accept or renew deposits whose repayment is before six months provided they do not exceed 10% of the aggregate of the paid up share capital and free reserves of the company and they are not repayable before 3 months from the date of deposits.

2) Deposits may be accepted in Joint names not exceeding 3.

3) A non Eligible company Shall accept deposit only to the extent of 25% of the aggregate of paid up share capital and free reserves.

4) A Eligible companies 1) Deposit from members shall not exceed 10% of the aggregate of paid up share capital and free reserves. 2) Deposit from others shall not exceed 25% of the aggregate of paid up share capital and free reserves (excluding deposit from members)

5) A Government companies shall not accept deposit more than 35% of the aggregate of paid up share capital and free reserves.

6) Interest or Brokerage paid should not exceed the maximum rate of interest or brokerages prescribed by the RBI for acceptance of deposits by Non Banking Finance Companies.

7) The Company shall not reserve to itself whether directly or indirectly a right to alter, to the prejudice or disadvantage of the depositor, any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract.

**Validity of Circular**

The circular shall be valid until the expiry of six months from the date of closure of the financial year in which it is issued or until the date on which the financial statement is laid before the company in annual general meeting. For the purpose of this rule the date of the issue of the newspaper in which the advertisement appears shall be taken as the date of the issue of the newspaper and for the issue of circular effective date shall be the date of dispatch of circular.

**Guidelines for inviting deposits from members and public**

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|  | **Non Eligible Company** | **Eligible Company S. 76** |
| Resolution | The Company should pass a resolution in general meeting. | The company should pass a **special resolution** in general meeting and **file the same with Registrar.(If within limit specified u/s 180 then ordinary resolution shall suffice).** |
| Limit | The total amount of outstanding deposits along with the deposits invited should not exceed 25% of the aggregate of paid up share capital and free reserves. | The total amount of outstanding deposits from members along with the deposits invited from members should not exceed 10% of the aggregate of paid up share capital and free reserves and for others it should not exceed 25% of the aggregate of paid up share capital and free reserves. |
| Interest / Brokerage | Interest or brokerage payable shall not exceed the maximum rate of interest or brokerage prescribed by RBI | Interest or brokerage payable shall not exceed the maximum rate of interest or brokerage prescribed by RBI |
| Tenure of deposit | The deposit should not be repayable on demand or upon receiving a notice within a period of less than 6 months or more than 36 months. | The deposit should not be repayable on demand or upon receiving a notice within a period of less than 6 months or more than 36 months. |
| Circular | Circular shall be issued to its members by registered post with acknowledgement due /speed post/electronic mode in Form DPT-1 / advertisement in Form No. 1 / publish in one English newspaper and one vernacular language newspaper having circulation in the state of registered office of the company. | Circular shall be issued in Form No. DPT-1 published in one English newspaper and one vernacular language newspaper having circulation in the state of registered office of the company. It shall also upload the circular on its website. |
| Statement | Along with the circular a statement shall be circulated which shall contain the financial position of the company, the credit rating, the number of depositors and the amount due. | Along with the circular a statement shall be circulated which shall contain the financial position of the company, the credit rating, the number of depositors and the amount due. |
| Registration of Circular | The circular signed by majority of directors or their agents duly authorized along with the statement shall be submitted to registrar 30 days before the date of such issue. | The circular signed by majority of directors or their agents duly authorized along with the statement shall be submitted to registrar 30 days before the date of such issue. |
| Validity of circular | 6 months from the end of the financial year in which it was issued or the date on which the AGM is held whichever is earlier. | 6 months from the end of the financial year in which it was issued or the date on which the AGM is held whichever is earlier. |
| Insurance | Deposit insurance shall be taken 30 days prior to the date of issuance of the circular or renewal .Ceiling is Rs. 20000 per depositor for principal and interest | Deposit insurance shall be taken 30 days prior to the date of issuance of the circular or renewal .Ceiling is Rs. 20000 per depositor for principal and interest |
| Security | If secured deposits are invited then the company shall create a charge on its assets referred to in Schedule III excluding intangible assets which shall not be less than the amount remaining unsecured by deposit insurance. | If secured deposits are invited then the company shall create a charge on its assets referred to in Schedule III excluding intangible assets which shall not be less than the amount remaining unsecured by deposit insurance. |
| Form | Form prescribed by the company shall be submitted by the intending depositor. | Form prescribed by the company shall be submitted by the intending depositor. |
| Declaration | The form shall contain a declaration that the deposit is not made out of borrowed funds. | The form shall contain a declaration that the deposit is not made out of borrowed funds. |
| Deposit receipt | A receipt shall be furnished within 2 weeks from the date of receipt of money or realization of cheque | A receipt shall be furnished within 2 weeks from the date of receipt of money or realization of cheque |
| Deposit repayment reserve account | On or before 30th April of each year a sum not less than 15% of the amount of deposits maturing in the current financial year and the next financial years shall be deposited in a scheduled bank in a separate account called deposit repayment reserve account which shall be free from charge or lien. | On or before 30th April of each year a sum not less than 15% of the amount of deposits maturing in the current financial year and the next financial years shall be deposited in a scheduled bank in a separate account called deposit repayment reserve account which shall be free from charge or lien. |
| Register | A register of deposits shall be maintained at the registered office and entries shall be made within 7 days from the date of issuance of deposit receipt. | A register of deposits shall be maintained at the registered office and entries shall be made within 7 days from the date of issuance of deposit receipt. |
| Return of deposits | A return shall be filed on or before 30th June of every year with the Registrar in Form No.DPT – 3 along with fee giving the status as on 31st March. | A return shall be filed on or before 30th June of every year with the Registrar in Form No. DPT- 3 along with fee giving the status as on 31st March. |
| Penal Rate of Interest | A penal Rate of 18% p.a. shall be payable on all overdue deposits | A penal Rate of 18% p.a. shall be payable on all overdue deposits |

***Transitory Provision***

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—

1) File with the Registrar a statement in form DPT-4 a statement of all deposits accepted by the company and sums remaining unpaid along with the interest payable thereon along with the arrangements made for such repayments.

2) Repay within one year from such commencement or from the date on which such payments are due whichever is earlier.