

Concept of Deposits under Companies Act, 2013

April 23, 2020

In brief

Companies are run on three measures, those measures would be **customer satisfaction, employee satisfaction, and cash flow**. Having continuous cash flows and raising funds for long term projects is the need of the hour. Funds can be raised by the Company by issuing shares, debentures, or by taking loan or by inviting deposits from public.

But the question pops in the mind of the reader that why would a Company accept deposits when there are other alternatives of raising funds. The advantages of issuing deposits are that the ownership of the Company is not transferred and the share price is unaffected. Thus, the deposit would help the Company not only by fulfilling their financial requirements but would also prevent the Company from diluting its equity. Acceptance of deposits by Companies is governed by the Companies Act 2013 and Companies (Acceptance of deposits) Rules, 2014.

Relevant provisions

Chapter -V Acceptance of Deposits by Companies

Section- 73 to 76 A of the Companies Act, 2013

Rules- The Companies (Acceptance of Deposits) Rules, 2014

In detail

What is the meaning of deposits?

As defined in the Companies Act 2013 read with Companies (Acceptance of Deposits) Rules 2014, Deposit include any receipt of money by way of deposit or loan or in any other form by Company, but does not include certain types of amount, which we can be broadly categorised into five different heads:

Receipt of money from or in the form of:

1. Governments, Bank, PFI, Other Company.
2. Commercial papers, subscription for securities, secured bonds or debentures having maturity less than or equal to 10 years.
3. Nidhi Company, chit fund, start up, CIS, AIF/MF/VCF.
4. Directors, employees with respect to their annual salary, promoters.
5. Non-interest-bearing amount held in trust, trade advances.

Who can invite deposits?

A private Company can invite

deposits from its members only up to 100% of aggregate of its Paid-up share capital (PSC) and free reserves (FR).

However, such private Company will have to file details of money so raised with the Registrar of Companies (ROC).

A public Company can invite deposit from its members as well as from public subject to compliance with eligibility criteria, i.e. it shall have net worth of INR 100 crore or more or turnover of INR 500 crore or more, by way of special or ordinary resolution in general meeting as per the case.

Conditions to be met with respect to duration of deposits

1. No Company or eligible Company shall accept deposits, which matured in less than 6 months or last for more than 36 months from the date of acceptance or renewal of such deposit.
2. Provided that a Company may, for the meeting of its short-term requirement accept deposits for a term less

than 6 month, if following conditions are fulfilled –

- a. aggregate of such deposits shall not exceed 10% of ((PUSC+FR+SPA) and
- b. deposits are repayable not earlier than three months.

Additional conditions to be met by Company for inviting deposits

1. No Company referred to in Section 73(2) shall accept or renew any deposit from its members, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds 35% of the aggregate of the (PUSC+FR+SPA) of the Company.

The maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private Companies, namely:

- i. A private Company which is a start-up, for 5 years from the date of its incorporation;
 - ii. 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. the borrowings of such a Company from banks or financial institutions or anybody corporate is less than twice of its paid-up share capital or Rs. 50 crores, whichever is less; and;
 - c. such a Company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73.
2. Provided also that all the Companies accepting deposits shall file the details of monies so accepted to the Registrar in Form DPT-3.
 3. Eligible Companies shall not accept or renew deposits if the amount of such deposit together with the amount of deposits outstanding from its members exceeding 10% of (PUSC+FR+SPA) any other deposit, other than the deposit referred to in clause (a), outstanding on the date of acceptance or renewal exceeding 25 % of (PUSC+FR+SPA).
 4. Government Company is eligible to accept deposits shall not accept or renew deposit if outstanding deposits is more than 35% of (PUSC+FR+SPA).
 5. Rate of interest for deposits shall be not more than prescribed by reserve bank of India for acceptance of deposits by NBFC.
 6. Credit rating obtained for deposits shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits from any one of the approved credit rating agencies.
 7. Every Company accepting deposits shall maintain at its registered office on or more separate registers for deposits accepted or renewed having such particulars as prescribed.
 8. All the information shall be filed with Registrar in form DPT-3.
- Other compliances to be made by Company after acceptance of deposits**
1. **Furnishing of Deposit Receipts to Depositors**
The Company shall, on the acceptance or renewal of a deposit, furnish to the depositor or his agent a receipt for the amount received by the Company, within a period of 21 days from the date of receipt of money or realisation of cheque or date of renewal.
 2. **Maintenance of Liquid Assets and creation of Deposit Repayment Reserve Account**
Every eligible Company shall on or before the 30th April of each year deposit with any scheduled bank and the amount so deposited shall not be utilised for any purpose other than for the repayment of deposits:
The amount remaining deposited shall not fall below 20% of the amount of deposits maturing during the financial year.
 3. **Registers of Deposits**
Company accepting deposits shall maintain at its registered office one or more separate registers for deposits accepted or renewed.
4. **General provisions regarding premature repayment of Deposits**
Where the Company made any premature return of deposits, after the 6 months, rate of interest payable on such deposit shall be reduced by 1% from the rate which the Company would have paid as agreed at the time of issue.
Exceptions:
 - complying with the provisions of rule 3 i.e. Terms and Conditions of Acceptance of Deposits by Companies; or
 - providing war risk or other related benefits to the personnel of the naval, military or air forces or to their families during the period of emergency declared under article 352 of the Constitution
 5. **Return of Deposits to be Filed with the Registrar**
Company shall on or before the 30th day of June, of every year, file with the Registrar, a return in form DPT – 3 except government Company, along with the fee and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the Company.
Note: Form DPT-3 shall be used for filing return of deposit or particulars of transaction not considered as deposit or both by every Company other than Government Company.
 6. **Disclosures in the financial statement**
Every Company, other than a private Company, shall disclose in its financial statement, by way of notes, about the money received from the director.
Every private Company shall disclose in its financial statement, by way of notes, about the money received

from the directors, or relatives of directors.

Conclusion

In today's globalised and competitive market businesses are striving for growth, which requires new and cheap finance alternatives. Keeping an eye

government has given a way to businesses to meet their requirements through deposits and also has taken measures for organised way of finance through its stakeholders. With a view of giving opportunity to start-ups and for facilitating expansion of established Companies, the government has come up with the

concepts of deposits with due care of investors security for favorable business environment. Though there are a lot of restrictions and procedures involved, deposits are gaining popularity amongst businesses.

Special Measures under Companies Act, 2013 (CA-2013) and Limited Liability Partnership Act, 2008 in view of COVID-19 outbreak

- Requirement under section 73(2)(c) of CA-13 to create the deposit repayment reserve of 20% of deposits maturing during the financial year 2020-21 before 30th April 2020 shall be allowed to be complied with till 30th June 2020.
- Requirement under rule 18 of the Companies (Share Capital & Debentures) Rules, 2014 to invest or deposit at least 15% of amount of debentures maturing in specified methods of investments or deposits before 30th April 2020, may be complied with till 30th June 2020.



Our Offices

Mumbai, Maharashtra

Jabalpur, Madhya Pradesh (M.P)

Contact Details

Mob: +91 8454 989 789

Email: info@lawgicalstartup.com

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