

Important provisions of the Companies Act, 2013 Regarding Deposits

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When we look at the various provisions of deposits in the Companies Act, 2013 (CA 2013 or the Act), there is no much difference in the basic features of the same as compared to the Companies Act, 1956 (CA 1956). Hence in this article instead of giving details of the provisions, an attempt has been made to highlight the changes or departure from the earlier provisions for the general understanding of readers. Except where it is specifically stated, the provisions in relation to the Act are given. Further, some of rules are published by the Government but have not yet become effective for want of their publication in the Official Gazette. However, the same are considered in this article.

One of the most important changes is the change in the definition of a private limited company. In private company's definition, the clause of prohibition of invitation or acceptance of deposits from persons other than members, directors or their relatives is gone. Earlier, deposits from members and directors were under exempted category, however, now only deposits from Directors are exempted and that too only if the Directors have not placed the same from borrowed funds. The term deposit includes any receipt of money by way of deposit or loan or in any other form by the company but excludes such categories as may be prescribed.

Limit on acceptance of deposits:

Now all companies both private and public other than specified public companies, i.e. companies covered under section 76 of the Act (eligible companies), can accept deposits from members to the extent of 25% of the aggregate of the paid up capital and free reserves. The relevant rule of the Companies (Acceptance of Deposits) Rules, 2014 (the rules) states that no company referred to in sub-section (2) of section 73 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 twenty five per cent of the aggregate of the paid-up share capital and free reserves of the company. The minimum period of deposit for acceptance or renewal should be six months and maximum three years. However, to meet short requirements of funds, such companies can accept or renew deposits for a period of less than six months but not less than three months and such deposits should not exceed ten per cent of aggregate of paid up capital and free reserves of the company. Only public companies having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees (eligible companies) can accept deposits from public. They should obtain the prior consent of the company in

general meeting by means of a special resolution and also file the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits. However, where the money to be borrowed, together with the money already borrowed by the Company does not exceed the aggregate of its paid up capital and free reserves, apart from the temporary loans obtained from the Company's bankers in the ordinary course of business, such company may accept deposits from public by passing an ordinary resolution.

In case of eligible company, the limit on deposits from members is 10% of the aggregate of the paid up capital and free reserves of the Company and 25% of such aggregate in case of other deposits. In case the eligible company is a government company the limit on deposits is 35% of such aggregate. The maximum rate of interest on such deposits and brokerage cannot exceed the maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by non-banking financial companies.

Procedure for acceptance of deposits:

Every company intending to invite deposit from its members shall issue a circular to all its members by registered post with acknowledgement due or speed post or by electronic mode in Form **DPT-1** and in addition to such issue of circular, may also publish the same in English language in an English newspaper and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated. The circular inter alia includes 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. Another important feature of the format of circular is that in case of any adverse change in credit rating the depositors will be given a chance to withdraw their deposit without any penalty. The eligible company has to comply with the conditions of publishing the advertisement in newspapers as aforesaid, filing a copy of the text of the same signed by a majority of directors with the Registrar of Companies before thirty days of its publication, uploading it on its website, if any etc.

Deposit insurance:

Every company including eligible company inviting deposits shall enter into a contract for providing deposit insurance at least thirty days before the issue of circular or advertisement or at least thirty days before the date of renewal, as the case may be. The amount specified in the contract shall be deemed to include principal amount and interest due thereon.

The deposit insurance contract shall specifically provide that in case the company defaults in repayment of principal amount and interest thereon, the depositor shall be entitled to the repayment of principal amount of deposits and the interest thereon by the insurer up to the aggregate monetary ceiling as specified in the contract:

Provided that in the case of any deposit and interest not exceeding twenty thousand rupees, the deposit insurance contract shall provide for payment of the full amount of the deposit and interest and in the case of any deposit and the interest thereon in excess of twenty thousand rupees, for payment of an amount not less than twenty thousand rupees for each depositor. The amount of insurance premium shall be borne by the company and it cannot recover the same from the depositor. If any default is made by the company in complying with the terms and conditions of the deposit insurance contract which makes the insurance cover ineffective, the company shall either rectify the default immediately or enter into a fresh contract within thirty days and in case of non-compliance, the amount of deposits covered under the deposit insurance contract and interest payable thereon shall be repaid within the next fifteen days and if such a company does not repay the amount of deposits within said fifteen days it shall pay fifteen per cent interest per annum for the period of delay and shall be treated as having defaulted and shall be liable to be punished in accordance with the provisions of the Act.

Creation of Security for deposits:

Every company accepting deposit from members and every eligible company inviting secured deposits shall provide for security by way of a charge on its assets as referred to in Schedule III of the Act excluding intangible assets of the company for the due 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. This means that the company shall ensure that the total value of the security either by way of deposit insurance or by way of charge or by both on company's assets shall not be less than the amount of deposits accepted and the interest payable thereon. In case of eligible company, the provisions of creation of security will apply only in case of secured deposits. However, in case of other companies accepting deposits from members, although the Act makes it optional to create security, the rules make it compulsory to provide security if the insurance cover is inadequate.

Provided that in the case of deposits which are secured by the charge on the assets referred to in Schedule III of the Act excluding intangible assets, the amount of such deposits and the interest payable thereon shall not exceed the market value of such assets as assessed by a registered valuer.

The security (not being in the nature of a pledge) for deposits as mentioned above shall be created in favour of a trustee for the depositors on specific movable property of the company, or specific immovable property of the company wherever situated, or any interest therein. The provisions in respect of appointment of depositor trustee, their duties etc are more or less similar to those of debenture trustees. Provisions relating to meetings of depositors have also been made in the rules.

Maintenance of liquid assets:

Every company shall on or before the 30th day of April of each year deposit the sum which shall not be less than 15% of the amount of its deposits maturing during a financial year and the financial year next following with any scheduled bank and the amount so deposited shall not be utilised for any purpose other than for the repayment of deposits:

Provided that the amount remaining deposited shall not at any time fall below fifteen per cent of the amount of deposits maturing, until the end of the current financial year and the next financial year. Such account shall be called Deposit Repayment Reserve Account. The condition of maintenance of liquid assets was not mandatory for private companies in respect of deposits from members earlier. Now they also have file return of deposits as well.

Repayment of existing deposits:

In case of deposits held by the existing companies, they have to be repaid within the due date or one year from the commencement of the new Act, whichever is earlier. However, National Company Law Tribunal (Tribunal) has power to extend time for repayment of deposit on an application filed by the company. However, although the Act makes this provision, the rules give respite to these companies. Under explanation to rule 19, it is provided that in case of a company which had accepted or invited public deposits under the relevant provisions of the Companies Act, 1956 and rules made under that Act (hereinafter known as "Earlier Deposits") and has been repaying such deposits and interest thereon in accordance with such provisions, the provisions of compulsory repayment as aforesaid shall be deemed to have been complied with if the company complies with requirements under the Act and these rules and continues to repay such deposits and interest due thereon on due dates for the remaining period of such deposit in accordance with the terms and conditions and period of such Earlier Deposits and in compliance with the requirements under the Act and these rules; Provided further that the fresh deposits by every eligible company shall have to be in accordance with the provisions of Chapter V of the Act and these rules.

In order to comply with this condition of repayment, the Act has provided for filing within a period of three months from the date of commencement of the Act or from the date on which such payments are due, with RoC, a statement of all the deposits accepted by the Company and sums remaining unpaid on such amount with interest payable thereon along with the arrangements made for such repayment etc. Now since the commencement of Act has taken place long back but the prescribed form was not in place, probably the Government may come out with a notification for condonation of this default. Another important feature is that even private companies now have to file this statement in respect of deposit from members and the same needs to be certified by Auditor as per the form prescribed. This will create serious problems for such companies. I feel this one condition, will lead to numerous problems of cash flow as well dispute among the shareholders and what not.

The most important part is the penal provision made for failure to repay deposit within the due date or one year or within the extended time allowed by the Tribunal. The penalty for the Company is minimum Rs. 1 cr which may extend upto Rs. 10 cr and every officer who is in default may get imprisonment upto seven years or fine of minimum of Rs. 25 lakhs and maximum of Rs. 2 cr or both.

Exempted deposits:

As per rules, there are certain exemptions. That means amounts received by the company towards these items will not be treated as deposits. These amounts, inter alia, include government grants, loans from bank/financial institution, inter corporate deposits, amount received through commercial paper etc. certain exemptions are given subject to certain conditions. E.g. Advance for supply of goods/services would be exempt if it is appropriated within 365 days. Advance for sale of property is exempt if it is followed by adjustment against property as per the terms of agreement. Advance received for supply of capital goods is exempt but if in any of the above cases, if the company has to refund money as the Company did not have necessary permissions/approvals to deal in the goods etc, then the amount will be treated as deposit. Security deposit for performance of contract is exempt. Another exemption is in respect of unsecured loan in the form of quasi equity. Any amount brought in by the promoters as their contribution pursuant to the stipulation by lending institution/bank is exempt if: A) the loan is brought in due to such stipulation and B) the loan is brought in by the promoters themselves and/ or their relatives. However, this exemption will be available till the repayment of loan only and not thereafter. Bonds/debentures secured by first charge or pari passu first charge on the assets of the Company and convertible debentures, which are compulsorily convertible into equity shares within five years would also be exempt. However, if these bonds/debentures are secured by charge on the assets of the Company as per schedule III of the Act, the value of such secured bond/debentures shall not exceed the market value of assets excluding intangible assets of the Company on which the charge is proposed to be created as assessed by registered valuer.

Overall, the new provisions regarding deposits are going to create numerous problems for the corporate sector but unfortunately they have not realized the same.