

OVERVIEW ON ACCEPTANCE OF DEPOSITS UNDER COMPANIES ACT, 2013



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Under the old regime of Companies Act, 1956 the provisions were not as stringent as now under new regime of Companies Act, 2013 for acceptance of deposits by a company. This major change in the provision was mainly brought after the scam of “*Sahara Group*” where Sahara had collected deposits from public without complying with the requirements of applicable provisions of law.

Section 73 of Companies Act, 2013 (“**said Section**”) was introduced in and around 2014, in order to regulate the acceptance of deposits collected by companies from the public. As per the said Section, a company may accept deposits from its shareholders by passing a resolution in general meeting and shall be subjected to rules prescribed by Reserve Bank of India.

In order to accept deposits from shareholders, the company is required to fulfil some conditions which are as follows:

- a) Company has to **issue a circular in Form DPT-1** to its shareholders which shall *inter alia* illustrate the financial position of the company, credit rating obtained, total number of depositors, amount due towards previous deposits accepted by the company, etc.;
- b) Company has to file the circular with the Registrar of Companies within **30 days before** the date of issuance of circular;
- c) Company has to open a separate bank account known as “*Deposit Repayment Reserve Account*” in a schedule bank in which a sum of **not less than 20% of maturing amount** during the financial year has to be deposited on or before 30th April of each year. The funds deposited in this account cannot be used for any other purpose than to disburse the repayment amounts;
- d) Company has to provide a certificate that they have not committed any default in the payment of deposits accepted or payment of interest, and if any default has been committed, then five years have lapsed since the default has been made good. This **certification has to be given by the statutory auditor of the company**;
- e) Company has to **provide security for the repayment of deposit** amounts which is due or the interest thereon including creations of charges on the assets of the company;
- f) In case the company does not secure the deposits, then the deposits have to be termed as “**unsecured deposits**” which shall be quoted in every circular, advertisement or any document related to invitation or acceptance of deposits;
- g) Terms of repayment with interest should be agreed between the depositor/shareholder and the company, as **every deposit has to be repaid with interest**.

It is pertinent to note that these provisions are not applicable to banking companies and non-banking financial companies as defined by the Reserve Bank of India.

Further, the clause (a) to (d) mentioned hereinabove shall **not be applicable to private companies:**

- i. which accepts from its members monies not exceeding 100% of aggregate of the paid-up share capital, free reserves and securities premium account; or
- ii. which is a start-up, for five years from the date of its incorporation; or
- iii. which is not an associate or a subsidiary company of any other company; or
- iv. if 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. 50,00,00,000 (Rupees Fifty Crores only), whichever is lower; and
- v. if such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section.

Any company which is in contravention of the provisions of said Section shall be liable to **punishment of fine amounting to minimum Rs. 1,00,00,000 (Rupees One Crore only) or twice the amount of deposit accepted by the company, whichever is lower but maximum upto Rs. 10,00,00,000 (Rupees Ten Crores only) in addition to the repayment of deposit amount along with interest.**

Further, even every **officer of the company** who is in default shall be punishable with imprisonment which may extend to **7 years and with minimum fine of Rs. 25,00,000 (Rupees Twenty-Five Lakhs only) and maximum upto Rs. 2,00,00,000 (Rupees Two Crore only).**

Recently, the National Company Law Appellate Tribunal in the matter of *Satish Chand Gupta vs Serval India Private Limited* held that deposits made under the said Section can be treated as financial debt under the Insolvency and Bankruptcy Code, 2016. Therefore, if a company makes any defaults in repayment of deposits, then the depositor / shareholder has a right to file an application before the National Company Law Tribunal for initiating of Corporate Insolvency Resolution Process (**CIRP**) against the defaulting company.

Thus, to conclude, any company who wishes to invite or accept or renew deposits from its shareholders have to follow the procedure and provisions laid down under Section 73 of Companies Act, 2013.

