

**S 73 , 76 , 185 AND 186 OF
THE COMPANIES ACT 2013**

Presented & Compiled by
CA Yagnesh Mohanlal Desai

This presentation is from the
perspective of Private Companies
only.

Abbreviations

Description	Acronym
The Companies Act 2013	The Act
The Companies (Acceptance of Deposits) Rules 2014	The Rules

Chapter V of the Companies Act, 2013 (the Act)

Sections:

Sec. 73: Prohibition on Acceptance of Deposits from Public (**Company**)

Sec. 74: Repayment of Deposits etc. accepted before the commencement of Act,2013

Sec. 75: Damages for Fraud;

Sec. 76: Acceptance of Deposits from Public by certain **public** companies – (Eligible Public Company)

Chapter V The Companies (Acceptance of Deposits) Rules 2014.

Types of companies which can accept – renew deposits.

- Eligible company – from public subject to conditions
- Private limited company only from :
 - Members
 - Directors and/or their family members
 - Promoters and / or their family members
- Government company - from public.
- Any company may borrow short term deposits for the purpose of meeting any of its short term requirements.

Exclusions – S. 73

- Applicable to all Companies with effect from April 01, 2014
- **Except;**
 - Banking company
 - NBFC
- - Housing Finance Company,
- -- Such companies specified by Central Government
- Commentary : *Exemptions to private companies ! It can however subject to certain conditions invited , accept deposits.*

S. 73 (2)

“A company may, subject to the passing of a resolution in general meeting.....” Emphasis

73(2)(a) to (f) *

Issue circular to members, file the copy of circular with ROC, depositing in a separate scheduled bank, certificate re faults, providing securities.

* Shall not apply to a private company which accepts from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in DPT 3 by 30th June.

Limits of amounts Companies can accept as deposits

Particulars	Private Co.	Public Co.	Eligible Co.
Members	25% of Paid up capital & Free Reserves. Compliance of Section 73(2) ****	25% of Paid up capital & Free Reserves. Compliance of Section 73(2)	10% of Paid up Capital & Free Reserves. Compliance of Section 73(2) & 76
	***Later changed to 100 % of the PUC and Free Reserves		
Public	Not allowed	Not allowed	25% of Paid up Capital & Free Reserves. Compliance of Section 73(2) Govt. Companies 35%

Analysis of Rule 3 of the Rules. Rules – Proviso 1 , Explanation and Proviso 2

Rule 3 – sets limit of thirty five per cent of the aggregate of the Paid-up share capital, free reserves and securities premium account of the company.

Proviso 1 – enhances the above referred limit of 35% to 100 % “*Provided that a **Specified IFSC Public company** and a private company* may accept from its members monies not exceeding one hundred per cent. of aggregate*”

- *Simply mentions private company – no strings attached – we will term such private companies as **Type A Private Companies.***

Explanation – defines IFSC – International Finance Service Centre.

Proviso 2 - Further enhances the maximum limit.

“Provided further that 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 ten years from the date of its incorporation;

(ii) a private company which fulfills 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 any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is less ; and **[Not more than 200% of its paid up share capital]***

(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:”

We will term above referred private companies as Type B Private Companies.

Private Companies – Limits
for acceptance of deposits
from members

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graph TD; A[Private Companies – Limits for acceptance of deposits from members] --> B[Type A Private Companies]; A --> C[Type B Private Companies]; B --> D[100% of aggregate of the paid up share capital, free reserves and securities premium account]; C --> E[Maximum limit shall not apply.]
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Type A Private Companies

100% of aggregate of the paid up share capital, free reserves and securities premium account

Type B Private Companies

Maximum limit shall not apply.

Case Study 1

ABC Pvt Ltd has taken a loan of Rs. 5,00,000 from Mr. XYZ, who is non-related party. It is within the limits specified U/s 73 of the Act. Now it wants to convert the loan into equity shares at the fair value as determined by RVO.

Can the Company do this ?

S 62 Further Issue of Share Capital

S 62 (3) Nothing in this section shall apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company:

Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.

DEPOSITS- FUNDAMENTALS



Scoped Out of Section 2(31)

- **‘Deposit’** includes any receipt of money by way of Deposit or loan in any other form by a company, but does not include:
 1. Any amount received from Central Govt./ State Govt. or from other source where a guarantee is made by Government.
 2. Any Amount received from Foreign government , FII or MFI and others
 3. Amount received as a loan facility from a Banking company or SBI or any of its subsidiary or from Banking Institution;
 4. Loan or Financial assistance received from a PFI or Insurance co. or Scheduled bank.
 5. Amount recd. against issue of Commercial paper, or any other instruments issued as per the guidelines of the RBI;

* As per the definition u/s.2(31) and Rule 2



Deposit- Exclusion ..contd

6. Amount received from any other company – ICD * Caveat
7. Amount received in pursuant to the subscription of Securities, including Share application money or advance towards allotment pending allotment:
 - **If the securities for which the Advance or application money is received is not allotted < 60 days from date of receipt of money, it shall refund such amount within 15 days from date of completion of 60 days, otherwise, the same shall be considered as Deposit.**
 - **Such advance should only be adjusted against the Pending allotment on securities.**

Deposit- Exclusion ..contd

8. Any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the Private company:

What if such person ceases to be director?

Provided they furnish to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company **shall disclose the details of money so accepted in the Board's report;**

Deposit- Exclusion ..contd

9. Amount raised from issue of Bonds /Secured Debentures (with First Charge on assets referred in Sch.III)

- 10. Any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit

11. Non- interest bearing amount and held in trust ;

Deposit- Exclusion.. * Anecdote of MCA inquiry.

12. Any amount received in the course of or for the purpose of Business:

a) *As an advance for supply of goods or provision of services, provided the supply is made or services are performed within 365 days of such advance;*

(Limit of 365 days shall not apply in case the advance is a subject matter before any court of law.)

b) *As advance received in connection with the consideration for property under an agreement or arrangement, provided such advance is adjusted against the property in accordance with the Terms of agreement or arrangement;*

c) As a Security Deposit for performance of Contract for supply of goods or provision of services

Deposit- Exclusion ..contd

12. Any amount received in the course of or for the purpose of Business:

d) As advance received under Long term project for supply of Capital Goods other than covered under (b).

e) as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement

f) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government

g) as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications

Deposit- Exclusion ..contd.

- *What if the amount received under items (a), (b) and (d) becomes refundable.*
- The advances shall be treated as “Deposits” if they become refundable due to the reason that the company does not have the permission or approvals (If required) to deal in goods or properties or services for which the advance is taken.

However, the advance received under (a) shall be deposit after 15 days from the date it becomes refundable.

Deposit- Exclusion - Unsecured loan by Promoters.*

13. The amount/loan is brought in by **promoters or their relatives or both** in pursuance of stipulation imposed by the lending institution on the promoters to contribute such finance.

Exemption shall be available only upto
banks are re-paid.

the time till the loans of FI or

Promoter

- S 2 (69) “promoter” means a person—
- (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
- (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:
- Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

Deposit- Exclusion ..contd



14. Any amount accepted by a Nidhi Company in accordance with the rules made under Sec.406.

Deposit- Exclusion ..contd



- Any amount received by a Nidhi Company:
 - i. Whether by installment or other wise, from a person **with promise or offer to give returns (in cash or kind)** on completion of period specified in the promise / offer or earlier.
 - ii. Any additional contribution over and above the amount under (i) above made by the company as a part of such promise or offer;

-Shall be treated as Deposit.

Deposit- Exclusion ..contd

15. any amount received by way of subscription in respect of a chit under the Chit Fund Act, 1982
16. any amount received by the company under any collective investment scheme in compliance with regulations framed by the Securities and Exchange Board of India;
17. an amount of twenty five lakh rupees or more received by a start-up company, by way of a convertible note

Certain Deposits Can Not Be Accepted

- The company cannot accept or renew any deposit (**Whether Secured or Unsecured**) which is Repayable:
 - I. On Demand;
 - II. Within 6 months; or
 - III. More than 36 months;
From the date of acceptance or renewal.

Short Term Deposits Can Be Accepted

- Short-Term requirements (repayable Within 6 months) can be **accepted only** if Such deposits :
- do NOT exceed 10% of (Aggregate paid up share capital + free reserves of company), **AND**
- Are NOT repayable earlier than **3 months** from date of acceptance or renewal

Table LIST OF PERSONS FROM WHOM COMPANY CAN ACCEPT OR CAN'T

- **Shareholder: Member:** Yes, can accept, but subject to the condition specified in deposit Rules
- **Director/Relatives of Director :** Yes, can accept, but the director/relative will give a Declaration in writing that money is not being given out of funds acquired by **him by borrowing or accepting loans or deposits from others**
- **Employee:** Yes, can accept up to the employee's annual salary (there should be a contract of employment with the company) in the nature of non-interest bearing security deposit.
- **Any other Individual :** Can't accept because it is prohibited by the definition of Private Company.
- **Proprietorship Firm :** Can't accept because it can't be director, Member or relative of Director.

Table LIST OF PERSONS FROM WHOM COMPANY CAN ACCEPT OR CAN'T (Contd)

- **HUF** : Can't accept because it can't be director, Member or relative of Director.
- **Partnership Firm**: Can't accept because it can't be director, Member or relative of Director.
- **Any Company**: Yes, can accept, but also comply with Sec 179(3) S 185 wherein the conditions are specified for the lender
- **Banks** : Yes, can accept
- **Under Trust** : Yes, can accept, but loan received should be non- interest bearing.
- **Outside India**: Yes, can accept, but subject to the provisions of the Foreign Exchange Management Act, 1999 and rules and regulations made there under.
- Govt. organization (e.g. SIDBI) : Yes, can accept

Conditions of Acceptance...Contd

- Table for the Cap for the acceptance or renew of Deposits outstanding

Company	Deposit from Members	Other Deposits (excluding the deposit from members)	All Deposits
	Percentage of Aggregate of Paid up Share Capital and Free Reserves		
<i>Any Company -</i>	25%	-	
Eligible companies- Public Co.	10%	25%	
Government Companies		-	35%

Caveat for ICD

Visit S. 185 before accepting amount from private company – pass special resolution . S 185(2)Explanation.

- A director or member of the private company accepting deposit ,is a director in the lending company;
- At least 25% of the company's voting rights are controlled or exercised by the director of the lending company either individually or along with other director or directors of a lending company;
- The Manager, Managing Director or the Board of directors of the company is accustomed to act as per directions of director or directors or Board of the Lending Company.

Caveat for ICD – Back

The aforesaid limitations shall not apply to a loan from private company provided following conditions are fulfilled- as S 185 is not applicable certain Pvt Companies :

- Any body corporate is not a shareholder of the lending company;
- Borrowing of the lending company from a bank or any body corporate or financial institution is less than twice of its paid-up capital or Rs. 50 crores, whichever is less;
- At the time of giving the loan, the lending company has not defaulted in repayment of such borrowings.

Notifications

- 5th June, 2015 : Exemption to Private Limited Company
- 15th September, 2015 : Loan from Directors or Relatives of Directors out of owned funds
- 29th June, 2016: Definition of Deposit Exclusion (Three point added).
- 13th June 2017 Chapter V Clauses (a) to (e) of Sub-section (2) of Section 73.
- 15th August, 2018: Auditor Certificate required, Amount of deposit shall not exceed 25 Percent
- 12th April, 2019 : One Time Return and Annual Return

S 185 and S 186 of the Act

S 185

(1) No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—

(a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or

(b) any firm in which any such director or relative is a partner

Garvi Gujarat Private Limited

Director Ganguly

Holding

Mumbai Eleven Private Limited

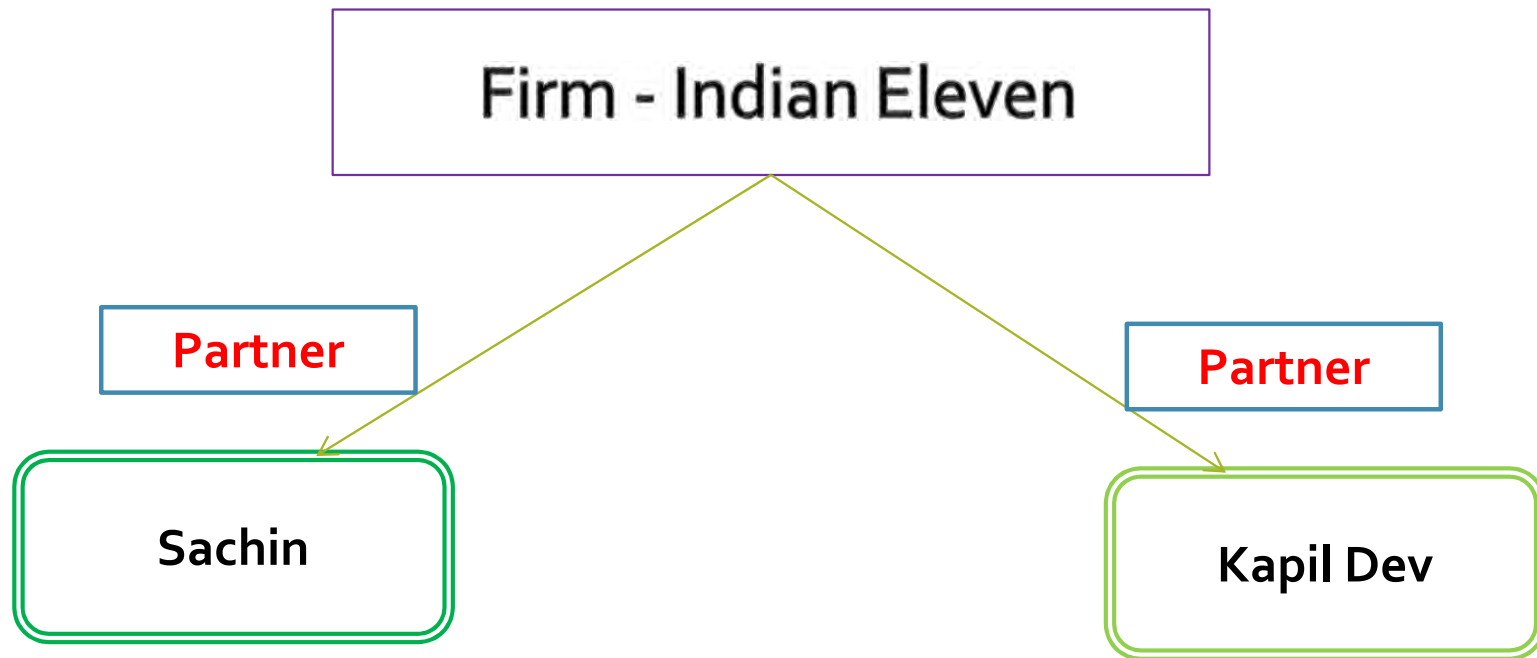
Director Sachin

Relative

Relative

Ganguly, Sachin and Kapil Dev are Relative of Mumbai Eleven Private Limited.

Kapil Dev



Thus, Mumbai Eleven Private Limited Can't Give Loan To

(A) Sachin - Director

(B) Ganguly – Director of Holding Company

(C) Kapildev – Relative of Director

(D) Firm Indian Eleven – Firm in which the Director or Relative of Director are Partners

(2) A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any **person in whom any of the director of the company is interested, subject to the condition that—**

(a) a special resolution is passed by the company in general meeting:

Explanatory statement shall disclose the full particulars of the loans given, or guarantee given or security provided ***and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security*** and any other relevant fact; and

(b) the loans are utilised by the borrowing company for its principal business activities.

Explanation.—For the purposes of this sub-section, the expression “any person in whom any of the director of the company is interested” means—

(a) any private company of which any **such director** is a director or member;

(b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or

(c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

S 185 Permissible Loans

- Loan to MD/WTD.
 - (i) as a part of the conditions of service extended by the company to all its employees; or
 - (ii) pursuant to any scheme approved by the members by a special resolution; or
- Loan given in the ordinary course of its business and interest not less than the bank rate declared by the RBI.
- Subject to the conditions that the loan is used by the subsidiary for its principal business activities :
 - Loan made by holding company to **wholly owned subsidiary company** *
 - Guarantee or security provided by holding Co. for loan taken by WOS Co. *
 - Guarantee or security provided by holding Co. for loan taken from banks or FIs subsidiary Co. (other than WOS)*

*Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities

S 186 of the Companies Act 2013: Loan and investment by company

The section also prohibits a company from making investments through more than two layers of *investment* companies

Check the Limit :

Whether, **at any point of time during the year** in case of aforesaid transactions, the Company has exceeded, the higher of :-

60 % of its paid-up share capital, free reserves and securities premium account
or

100 % of its free reserves (as defined in section 2(43)) of the Act and securities premium account.

If it exceeds the limits specified above, ***whether prior approval by means of a special resolution passed at a general meeting has been obtained.***

Also check whether :-

- **the company has passed the board resolution as prescribed and obtained the prior approval, wherever required, from the public financial institution concerned where any term loan is subsisting.**
- rate of interest is not lower than the prevailing yield of one year, three year, five year or ten year government security closest to the tenor of the loan granted
- If the company is in default in the repayment of any deposits accepted or in payment of interest thereon, then the company is not allowed to give any loan or guarantee or any security or an acquisition till such default is subsisting.
- the company has maintained a register (as per Form MBP-2) in the manner as prescribed and also check the compliances of other provisions and relevant rules

Draw attention to S 186(4) Re disclosures – full particulars plus the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security

S 186 (4) The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and

the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security. (The word Investment is missing)

Any Questions ?



Contact :

[Email : Yagnesh@ymdnco.com](mailto:Yagnesh@ymdnco.com)

Mobile: +91 9820133227