

## **BORROWINGS BY A COMPANY - From Whom and How A Company Can Borrow Funds**

### **A. General Provision for Borrowings by a Company**

*(Applicable for borrowings from Banks, Financial Institutions, Companies and Directors, including their relatives)*

#### **i. For Private Companies**

As per section 179, company can borrow funds **by passing a Board Resolution**.

#### **ii. For Public Companies**

As per section 179 read with Section 180(c), any company can borrow funds **up to 100%** of (Paid up share capital + **free reserves**<sup>#</sup> + securities premium account) **by passing a Board Resolution**.

Where the aggregate amount of proposed borrowing<sup>§</sup> and outstanding borrowing<sup>§</sup> **exceed 100%** of (Paid up share capital + **free reserves**<sup>#</sup> + securities premium account) then the company needs the approval of the members by **passing a Special Resolution** to such effect. *(MGT-14 must be filed within 30 days of passing S.R.)*

<sup>§</sup>Borrowings **DO NOT include** Temporary loans taken from company's Banker in ordinary course of business, such as-

- Cash Credit arrangement
- Loans repayable on demand or within 6 months of taking such loan
- Discounting of Bills
- Loans of Seasonal Character

### **B. Borrowings from Directors and their Relatives**

As per Companies (Acceptance of Deposits) Second Amendment Rules, 2015, Deposits DOES NOT include 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**.

*Provided that the director of the company or relative of the director of the private company, as the case may be, from whom money is received, furnishes 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;*

Thus, we can say-

**A private company can borrow funds from its Directors and their Relatives<sup>@</sup>; and,**

**A public company can borrow money from its Directors.**

@Relatives to a Director means any person who is -

- a member in the same HUF as the Director
- Spouse of the Director
- a Parent of the director (Including Step-Parents)
- a Sibling of the Director
- a Child of the director (Includes Spouse of the Child)

**C. Borrowings from Employees**

A company can receive any amount as Non-Interest Bearing Security Deposit from an Employee on the company, not exceeding the annual salary of the employee under the contract of employment.

**D. Borrowings from Members – CONSIDERED AS DEPOSITS AS PER COMPANY LAW**

Every Borrowing by the company from a member of the company *is considered as Deposits* and is governed by *Section 73 of the Companies Act, 2013 and the rules* therein.

As per Section 73, a Company can borrow money from its members by following the steps as explained below-

1. Convening a General Meeting of the Members of the company and Passing an **Ordinary Resolution** to accept deposits from members. (*Uploading MGT-14 for passing O.R. is NOT mandatory*)
2. Formalities to be followed by companies before inviting deposits- (*Exemption to these formalities available to some companies\**)
  - i. issuance of a circular to its members including therein 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 and such other particulars in such form and in such manner as may be prescribed
  - ii. filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular.
  - iii. depositing, on or before the thirtieth day of April each year, such sum which shall not be less than twenty per cent. of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account
  - iv. certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on 6[such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default
  - v. providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company
3. File particulars of Deposits with the ROC in form DPT-3 within 30<sup>th</sup> June following the end of financial year.

**\*Exemption for the formalities in point (2) is available to a PRIVATE company-**

- i. which accepts from its members monies  $\leq 100\%$  of (Paid up share capital + free reserves<sup>#</sup> + securities premium account); or
- ii. which is a start-up, for five years from the date of its incorporation; or
- iii. which fulfils ALL the following conditions, namely-
  - a. which is not an associate or a subsidiary company of any other company
  - b. 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 fifty crore rupees, whichever is lower
  - c. such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section

<sup>#</sup>**Free Reserves** means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend.

**It Does NOT include-**

- **Credit/Debit Balance of Profit & Loss Account/Surplus Account.**
- any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise
- any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value.

**E. Borrowings from Public – CONSIDERED AS DEPOSITS**

**Public** means any entity **other than** Banks, Financial Institutions, Companies Directors (including their relatives in case of private company) and Members of the company.

- For Private Companies  
Private companies **cannot accept deposits from the public.**

**Thus, a Private company cannot accept money from any Individual, Partnership Firm, Limited Liability Partnership, etc. if they are not the members/directors (or relatives of director) of such company.**

- For Public Companies  
Must follow Section 76 of the companies Act 2013, read with their rules thereof.