

Deposits, Loans & Advances and Related Party Transactions

Deposits



(31) "deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India:

Rule 2 of Companies Acceptance of Deposits Rules, 2014 gives Negative Definition of Deposits

NO COMPANY CAN ACCEPT DEPOSITS, except as provided under Chapter V of Companies Act, 2013 and Rules:

Except:

1. Banking Company
2. RBI registered NBFC
3. Housing Finance Company

NOT DEPOSITS:

- ❖ Amount received from/ guaranteed by **Central/state Govt./ local authorities**
- ❖ Amount recd. from **Foreign** Govts, Institutions, Banks or Persons residing outside India subject to FEMA, 1992
- ❖ Loan/ facility recd. from **Banking** Co/ SBI including its subsidiary/ Banks notified by Central Govt./ co-operative Banks, etc
- ❖ Loan/ Financial Assistance from CG notified **PFI/ Regional Financial institutions/ Insurance Companies/ Scheduled Banks** notified by RBI
- ❖ Amount received against **CP/** any other instruments
- ❖ Amount received by **one company to another company**

- ❖ Amount received towards **subscription** to any securities, so long as appropriated ONLY against amount due on allotment
- ❖ *Amount received from person who is director of the company at the time of receipt*
- ❖ Amount raised by issue of **Bonds and Debentures**
- ❖ Non-interest bearing security deposit received from employee
≤ annual salary
- ❖ Non-interest bearing **amount received/ held in trust**
- ❖ Amount Recd in the **course of business**:
 - Advance for goods/ services appropriated for the purpose within 365 days of acceptance
 - consideration of property under any agreement / arrangement
 - as security deposit for performance of contract for supply of goods/ services
 - advance under long term projects for supply of capital goods

Additional Leeway

- ❖ Amount brought in by promoters by way of unsecured loan:
 - ✓ in pursuance of stipulation by lending institution;
 - ✓ loan is provided by promoters or their relatives or both;
 - ✓ exemption available only till loan of financial institution is repaid and not thereafter.

Acceptance: Eligibility & Procedure

- ✓ passing of a resolution in general meeting
- ✓ issuance of a circular along with explanatory statement to its members
- ✓ filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;
- ✓ Depositing Not Less than 15% in Deposit Repayment Reserve Account
- ✓ **Deposit Insurance:** Not mandatory till March 31, 2015 or availability of product, whichever is earlier
- ✓ Certifying no Default in Past Repayments
- ✓ Providing Security; else treat as Unsecured Deposits



— Members
— General Public

- ✓ Only if Public Ltd. Company;
- ✓ With Net worth \geq ₹100Cr / Turnover \geq ₹500Cr
- ✓ Special Resolution in GM and Filed with ROC when exceeding limits under S.180(c)
- ✓ Credit Rating for Recognized CRA

**** T&C**



NO RIGHT TO ALTER TO THE PREJUDICE OF DEPOSITOR AFTER ISSUE OF ADVERTISEMENT & ACCEPTANCE OF DEPOSIT

- ❖ Acceptance in joint names → Max 3
- ❖ Nomination facility available

No acceptance/ renewal:

- Repayable on demand/upon receipt of notice within 6 months / more than 36 months from acceptance/renewal
- Rate of Interest / Brokerage > max RoI / Brokerage prescribed by RBI to NBFCs
- Exceeding 25% of Paid up cap and Free Reserves → Co. u/s 73(2)
- Exceeding 10% of Paid up cap and Free Reserves → Co. u/s 76 from its Members
- Exceeding 25% of Paid up cap and Free Reserves → Co. u/s 76 from others
- Exceeding 35% of Paid up cap and Free Reserves → Govt. Co. eligible under Sec 76
- Unless, Application submitted by intending Depositor containing statement that deposit is not made out of borrowed funds

Deposit Insurance

- Deposit Insurance for Principal + Interest
- Specific clause of repayment by insurer in case of default by company upto aggregate ceiling mentioned in the contract:

Amount < ₹20,000 entire amount

Amount > ₹20,000 minimum ₹20,000

Premium borne by Company Only i.e. not recoverable from depositors

Default by Co that renders contract Ineffective:

Rectify immediately / fresh contract within 30 days

Repay Amount covered + Interest within 15 days

+ Interest of 15% p.



Non-Compliance

Non-Compliance

Deposit on / before 30th April each year, min. 15% of deposits including interest maturing during the FY and the Following FY in a scheduled bank a/c called as

Deposit Repayment Reserve Account



Miscellaneous

- ❖ Issue of Receipt upon realization of cheque/ renewal
- ❖ Maintenance of **Register of Deposits**
 - ❖ Entries to be made within 7 days from date of issuance of receipt
 - ❖ Preserved in good order for 8 years
- ❖ Return of Deposits with ROC in Form DPT-3

Premature Repayment:

After 6 months but before expiry RoI to be reduced by 1%,
except

1. where Deposit accepted for:
 - short-term requirements; OR
 - War Risk / related benefits during emergency;
2. Renewal permitted for higher RoI


!Penal interest of 18% p.a. for overdue period where deposit claimed but not repaid

Penal Provisions

Accepted Prior to CA 2013:

File with ROC within 3 months

- ✓ Amount and Interest due
- ✓ Arrangements for repayment
- ✓ Conditions of acceptance
- ✓ Repayment within 1 yr. or due date, whichever is earlier

Non-

Compliance

Company: Amount due including Interest thereon+ Fine between ₹1cr and ₹10crs

Officer: Imprisonment upto 7yrs &/or Fine Between ₹25L and ₹2crs



If **FRAUD Proved**,

every officer who was responsible, be personally and w/o limitation be liable without prejudice to S.74(3) and 447

2013

Accepted Later:

Non-

Compliance

For contraventions for which no punishment provided elsewhere in the ACT,

Company & every officer involved,
Fine upto ₹5000

Fine upto ₹500 for every day during which default continues

Prohibition to give loan/ guarantee – Sec 185

- ✓ any Director
- ✓ or person in whom **Director is interested**
 - (a) any director of the lending company/ its holding company / partner or relative of any such director;
 - (b) any firm in which any such director or relative is a partner;
 - (c) any private company of which any such director is a director or member;
 - (d) any body corporate which holds not less than 25% of the total voting power exercised or controlled by any such director, or by two or more such directors, together; or
 - (e) any body corporate/ BoD/ MD/ manager, whereof is accustomed to act in accordance with the directions or instructions of the BoD/ Directors, of the lending company.



Loans / Guarantees Not Covered...

- ❖ **Loans to MD / Whole Time Director provided**
 - ✓ **It is pursuant to scheme approved by Members; OR**
 - ✓ **It is a part of conditions of service extended to all employees.**
- ❖ **Loan / Guarantee provided in the Ordinary Course of Business**
- ❖ **Loan by Holding Co to its Wholly Owned Subsidiary***
- ❖ **Guarantee / Security by Holding Co in respect to any loan to its WOS***
- ❖ **Guarantee / Security by Holding Co in respect to any loan to its Subsidiary***

*** Such loans are utilized for Principal Business Activities.**

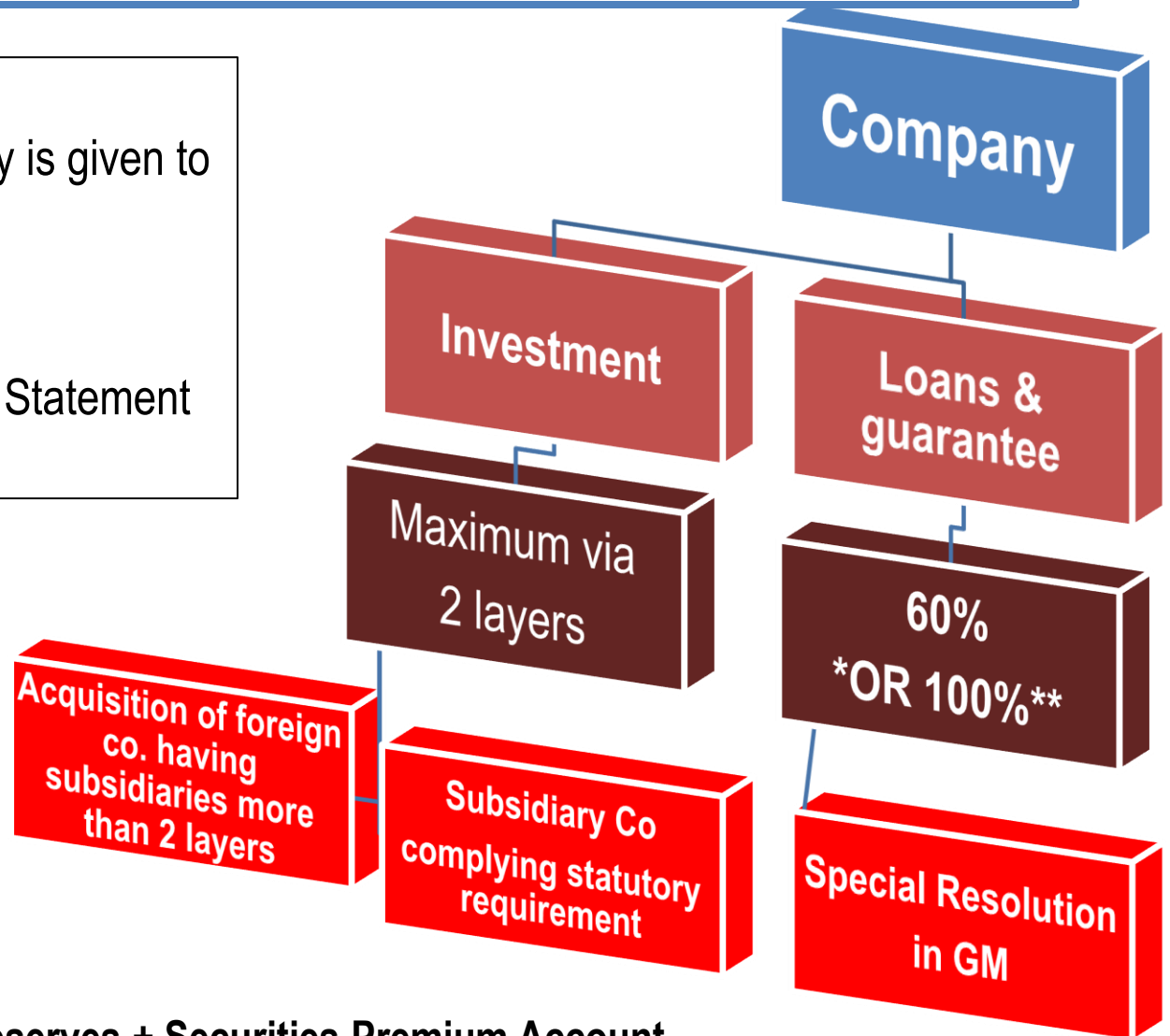
Loans and Investments – Sec 186

Inapplicable when,

1. loan/ guarantee/ Security is given to WoS/ JV Co.
2. Acquisition by holding

Disclose details in financial Statement

! NO Company registered u/s 12 of SEBI Act shall take Inter Corporate Loans/ Deposit in excess of limits specified in its respective regulations



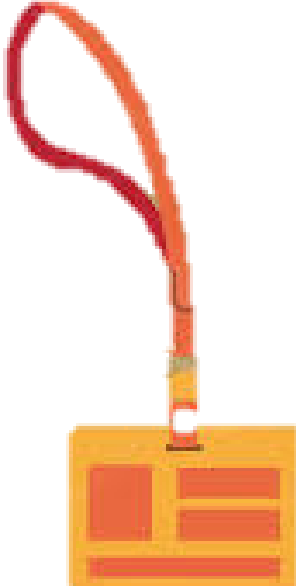
* Of Paid Up Capital+ Free Reserves + Securities Premium Account

** of Free Reserves + Securities Premium Account

Exceptions

Company to hold Investment in OWN name

– Sec 187



Except:

1. In the name of Nominee in its Subsidiary company
2. Depositing with banker any shares or securities for the collection of any dividend or interest payable thereon
3. Depositing / transferring/ holding in the name of, the State Bank of India or a scheduled bank, being the bankers of the company, shares / securities

! Re-transferred in own name if none of the above purpose effected within 6 months

4. Depositing/ transferring shares/securities against loan/ obligation
5. In the name of Depository where securities held as Beneficial Owner

RPT Board Landscape – Sec 188

Provisions in 2013 Act

1. Prior approval of AC, if applicable u/s 177
2. Board approval required for :
 - Transactions for Goods / Services
 - Purchase / Sale / Lease of Property (**Newly added**)
 - Appointment of any agent for purchase/sale of goods/materials/property/services
 - Appointment of related party to hold place/office of profit in Company/ Subsidiary/ Associate company
2. Threshold limits specified in Rules beyond which Special Resolution of members approval required.
3. Member who is a related party cannot vote in special resolution.
4. RPT with justification to be **part of Board Report (AOC 2)**
4. Any specified transaction (not restricted only to those of urgent necessity) entered without Board approval or special resolution, needs to be ratified within 3 months of such transaction
5. Exemption Shelter - Transactions undertaken in ordinary course of business at arms length price – **EXEMPTED FROM BOARD & MEMBERS APPROVAL**

Reforms from 1956 Act

1. **No CG approval** required for any RPT or appointment of director/any other person to hold place of profit in Company/ Subsidiary / Associate
2. **“Related Party” defined**
3. **Disclose of certain RPTs in Board Report**
4. **Office / place of profit in Associate Cos**

Grey Box

- Ordinary Course of Business?
- How will RPT be passed incase of closely held Pvt Co if all shareholders are related parties?

Related Party & Relatives

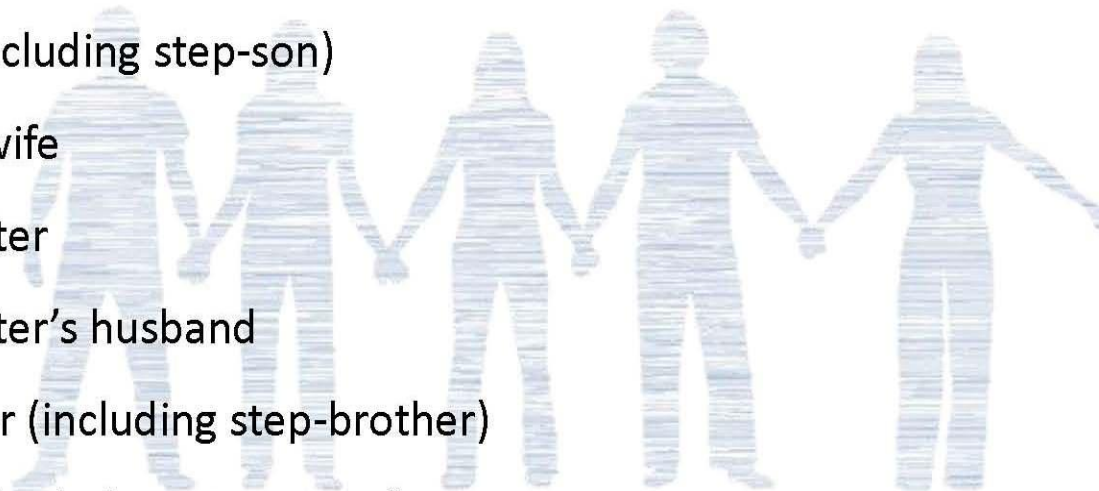
Section 2 (76) of companies act,2013 and Rule 3 of the companies (Specification of definitions details) Rule 2014

- a **director** or his relative
- a **key managerial personnel** or his relative;
- a **firm**, in which a director, manager or his relative is a partner;
- a **private company** in which a director or manager *or his relative* is a member or director;
- a **public company** in which a director or manager is a director *and holds* along with his relatives, more than **two percent** of its paid up share capital;
- a **body corporate** whose Board of Directors, Managing Director or manager is accustomed to act in accordance with the advice, directions or instructions of a Director or Manager (*Not applicable to the advice, directions or instructions given in a professional capacity*);
- any **person whose** advice, directions or instructions a director or manager is accustomed to act (*Not applicable to the advice, directions or instructions given in a professional capacity*);
- a company which is holding, subsidiary or associate company of such company or;
- fellow subsidiaries
- a Director (*other than an independent director*) or KMP of holding company or his relative with reference to a company, shall be a **deemed to be a related party**

“Relative”

Section 2 (77) of companies act,2013 and Rule 4 of the companies (Specification of definitions details) Rule 2014

- ❖ they are **member of HUF**
- ❖ they are **husband and wife**
- ❖ they are **related to each other** in any of the following manner:-
 - Father (including step-father)
 - Mother (including step-mother)
 - Son (including step-son)
 - Son's wife
 - Daughter
 - Daughter's husband
 - Brother (including step-brother)
 - Sister (including step-sister)



Approval Mechanism

Ordinary Resolution BM: **Paid up Share Cap < ₹10crs** **&**

- a. sale, purchase or supply of any **goods** or materials;
- b. selling or otherwise disposing of, or buying, **property** of any kind
- c. leasing** of property of any kind
- d. availing or rendering of any **services**
- e. appointment of any agent** for purchase or sale of goods, materials, services or property
- f. such related party's appointment to **any office or place of profit** in the company, its subsidiary company or associate company
- g. underwriting the subscription** of any securities or derivatives thereof, of the company

***Special Resolution GM :** **Paid up Share Cap > ₹10crs** **OR**

For a. and e., If more than 10% of turnover or ₹100cr, whichever is less

For b. and e., If more than 10% of Net-Worth or ₹100cr, whichever is less

For c., If more than 10% of net-Worth, 10% of turnover or ₹100cr, whichever is less

For d., and e If more than 10% of turnover or ₹50cr, whichever is less

For f., If monthly remuneration exceeds ₹ 2.5L

For g., If Remuneration for underwriting exceeds 1% of Net-Worth

Approval of Audit Committee wherever applicable as per S.177

!!!Applicable to transactions not in Ordinary Course of Business and/or at Arm's length basis

Comparison CA 2013 & AS 18

Particulars	Whether related party under Act, 2013	Whether related party under AS-18
Director or relative	Yes	If only common then no. If the director can affect policies, then yes.
KMP or relative	Yes. KMP defined to include persons with authority and responsibility for planning, controlling activities	Yes. KMP defined to mean MD/CEO/MANAGER, WTD, CS, CFO.
Firm in which director, manager or his relative is a Partner	Yes	No
Private company in which director or manager is member or director	Yes	No
Public company with common director or director and relatives hold 2%	Yes	No
BoD accustomed to act in accordance with directions of director or manager	Yes	Yes
Holding company, subsidiary or associate	Yes	Yes

Particulars	Whether related party under Act, 2013	Whether related party under AS-18
Fellow subsidiary	Yes	Yes
Joint venture	Yes	Yes
A person on whose advice a director or manager accustomed to act	Yes	Yes. In case of individual , there must be an interest in the voting power that gives them control or significant influence. Relatives of such individuals shall also be related party.



Vs.

**Accounting
Standards**

Rising Shareholder Activism

Sl. No.	Name	Business	Result	Reason
1	United Spirits Limited*	Distribution agreement for selling brands owned by its majority shareholder Diageo Plc.	Disapproved	Inadequate disclosures
2	Siemens Limited*	Sale of its Metals Technology business	Disapproved	Inadequate disclosures
3	Eros International Media Ltd	Blanket Approval for any kind of RPTs	Disapproved	Blanket approval sought with disclosing the nature and terms of RPTs



*Approved subsequently after adequate disclosures were made

RPT Governance Framework

Role of Audit Committee

- To formulate RPT Policy (if listed)
- Approve RPTs
- Monitor RPTs

- Details of RPTs to be disclosed in Annual Report
- Board Report to provide justification for entering into RPTs
- RPT Policy to be disclosed on Company Website (if listed)

Disclosures

Companies Amendment Bill (Proposed)

- Audit Committee to be empowered to give omnibus approval on fulfilment of certain conditions for related party transactions.
- Requirement for approval by special resolution for certain RPTs to be dispensed.

Disclosures in agenda of Board meeting pertaining to RPTs

- ❖ Name of related party & Nature of relation ship
- ❖ Nature and duration of contract
- ❖ Material terms pertaining to contract
- ❖ Advance paid or received for the contract
- ❖ Manner of determining of price of contract (all factor consider there to) (Any other)

Disclosures to be made in the explanatory statement: -

- ❖ name of the related party ;
- ❖ name of the director or key managerial personnel who is related, if any;
- ❖ nature of relationship;
- ❖ nature, material terms, monetary value and particulars of the contract or arrangement;
- ❖ any other information relevant or important for the members to take a decision on the proposed resolution

Register of contracts or arrangement in which Directors are interested to include (MBP 4) :

- ❖ Part A – Details of actual RPT transacted :
 - ❖ Transaction with such entities disclosed under MBP 1 under S. 184
 - ❖ Details of such contracts or arrangements with related parties where 188 is applicable
- ❖ Part B - List of entities mentioned under S. 184 (1) by Directors and KMPs
- ❖ Entry in register to be made AT ONCE
- ❖ Entry to be authenticated by CS / any other authorized person by Board
- ❖ Register to be placed before next BM
- ❖ Signed By – All Directors present at BM
- ❖ Register to be kept permanently at Registered Office
- ❖ Disclose the nature of concern or interest at the meeting of the Board by the Directors in which the contract or arrangement is discussed.

Penal Provision

Listed Company

Imprisonment
extending to 1 year or

Fine Rs. 25,000 – Rs. 5
lakhs or with both

Any other
company

Fine Rs. 25,000 – Rs. 5
lakhs



Penalty on any director or employee who enters into or authorizes the contract in contravention of provisions of the section

Punishment levied even if no loss has been incurred by Company from such RPT.

Rack Your BRAINS!!!

Case No. 1

Are there any parameters prescribed by Act for determining which RPT have been entered into on an arms' length basis?

- **No.** The Act, 2013 does not prescribe any criteria for determining whether the RPT was entered into on an arms' length basis. It would, therefore, be a subjective decision to be decided upon by the Board of Directors of every company.

Case No. 2

Lending by holding company to its subsidiary shall be regarded as related party transaction under Act ?

- A subsidiary is certainly a related party as per section 2(76). However section 188 does not cover either loans or guarantees.
- But section 177(4)(iv) will certainly cover such contracts which requires Audit Committee approval.

Case No. 3

If is on Board of 2 private companies, will such private companies be considered as "related parties"?

- **Yes.** A director or manager of any company (private or public) is a director or member in private company, then the private company would be a related party to the other company.

Case No. 4

Member who is a related party but is not interested in the resolution put to vote, can vote on such special resolution or not?

- **Yes.** Member who is a related party but is not interested in the resolution put to vote, can vote on such special resolution, to approve any contract or arrangement which may be entered into by the company.
 - Clarification vide circular No. 30/2014 on July 17, 2014
 - But the position is otherwise specified under Cl. 49 disallowing all Related Parties to vote on RPT

Case No. 5

How will a RPT resolution be carried over wherein transaction between Holding and its wholly owned subsidiary is involved ?

- Holding company by passing of special resolution can enter into the RPT between a wholly owned subsidiary, i.e. the wholly owned subsidiary will not need to separately pass a special resolution
- Sec.188 , R. 15(3)(Explanation no 2) Companies Act , 2013

Case No. 6

Whether RPTs on arms' length basis but not in the ordinary course of business be covered under Section 188(1) ?

- **Yes.** A RPT to be exempted from the provisions of Section 188 (1) of the Act, 2013 must necessarily be in the ordinary course of business. It is prerequisite for availing the exemption.
- Accordingly, RPTs on an arms' length basis but not in the ordinary course of business will be covered by the provisions of Section 188 (1) of the Act, 2013.

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