



The Companies Act 2013

Enlightening Nation

E-newsletter

APRIL, 2019

About the E-newsletter

Dear Users,

To keep you updated about the latest notifications, circulars & orders issued during the month, thecompaniesact2013.com present herewith its monthly e-newsletter. This is the issue of the April month comprising contemporary articles & monthly amendments.

The notion is to render all the updates in a compiled format and serve a better pavement for easy accessibility.

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ARTICLE

Deposit Compliance: DPT-3

Background: Ministry of Corporate Affairs (MCA) has issued the following notifications regarding Deposit Compliance to be done.

1. On 22 January 2019 : Ministry of Corporate Affairs (MCA) has issued Companies (Acceptance of Deposit) Amendment Rules, 2019
2. On 12.04.2019: General Circular 05/2019
3. On 30.04.2019: Companies (Acceptance of Deposit) Second Amendment Rules, 2019
4. On 04.05.2019: New version of e-form DPT-3 deployed on MCA portal.

Companies (Acceptance of Deposits) Amendment Rules, 2019

✚ **Companies covered:** All Companies (Whether, Small, Non Small, Private, Public, OPC etc.)

✚ Following Companies are **exempted** to file e-form DPT-3:

- Banking Companies
- Non Banking Financial Companies
- Housing Finance Company
- Government Company

- ✚ **Compliance:** File DPT-3 after publication of these rules i.e. 22nd January, 2019. Every Company has to file DPT-3 every year after end of financial year before 30th June.
- ✚ Therefore, after 22nd January, 2019 every loan shall be reported to ROC in e-form DPT-3 every year before 30th June.

General Circular 05/2019: Filing of one time return in DPT -3 Form

- MCA through its circular dated 12 April 2019 further amended Rule 16A relating to one-time return for outstanding receipts not considered as deposits.
- Every company would need to file with the ROC a one-time return in Form DPT-3 for receipt of money/loan by a company, not considered as deposits, outstanding from 1 April 2014 to 31 March 2019.
- Earlier the requirement was to file one-time return for the period 1 April 2014 till 22 January 2019.

Companies (Acceptance of Deposits) Second Amendment Rules, 2019

- Every company other than Government company shall file a onetime return of outstanding receipt of money or loan by a company but not considered as deposits, in terms of clause (c) of sub-rule 1 of rule 2 from the 01st April, 2014 to 31st March 2019, as specified in Form DPT-3 within 90 days from 31st March, 2019 along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.
- One time Compliance: File DPT-3 Within 90 days for the period from 01st April, 2014 to 31st March, 2019.
- The revised version of eform DPT – 3 available from 01.05.2019 on MCA Portal.

“Deposit or Particulars Not Considered as Deposit”

- ❖ **DEPOSIT:** Whatever includes in definition of Deposit as per Companies Act and rules eg.
 - Acceptance of loan from public,
 - Acceptance of loan from shareholders by Public Limited Company.
 - Acceptance of Loan from Body Corporate etc
- ❖ **PARTICULAR NOT- CONSIDERED AS DEPOSIT:** Whatever loan exempted under deposit rules and sections 73 shall be considered as particular of non-considered as deposit. Eg

- Loan from Director is exempted Deposit. However will be covered under this head.
- Loan from Bank, Financial Institutions Etc.
- Loan from Company not considered as deposit. However covered under above head etc.

Consequences for non- reporting

✚ **On the Company:-** A fine of minimum INR. 1 crore or twice the amount of deposit so accepted, whichever is lower, which may extend to INR.10 crore; and

✚ **On the officers of the Company:-** Who is in default: imprisonment up to seven years and with a fine of not less than INR. 25 lakh which may extend to INR.2 crore.

FAQs: Practical Difficulties

Q1. *If the company has outstanding Loan/Money before 01.04.2014 and continuing as on 31.03.2019, then also Information is Required to be Furnished?*

A. Yes, if the loan has been received before 01.04.2014 and still not repaid as on 31.03.2019, then the return in form DPT 3 has to be filed.

Q2. *If the company has received Loan/Money any time after 01.04.2014 and repaid before 31.03.2019, then also information is required to be Furnished?*

A. No, if the loan is repaid then return in form DPT 3 is not required to be filed.

Q3. *If the company has not accepted any loan or has no outstanding, whether a Nil return has to be still filed?*

A. No, where the company has not accepted any loan or has no outstanding as on 31.03.2019, form DPT-3 need not be filed.

Q4. Whether DPT-3 required filing for Secured or Unsecured Loan or Both?

A. Yes, DPT-3 required for filing for both secured and unsecured Loan.

Q5. Whether DPT-3 required for ECB received by Company?

A. As per rules, DPT-3 is required to file for each and every loan received by Company. Therefore, if Company has received ECB in such case Company have to mandatorily file e-form DPT-3.

Q6. If Company received loan from Holding Company or Subsidiary Company or Associate Company. Whether company need to file DPT-3.

A. As per rule, DPT-3 required to file for each and every loan received by Company. Therefore, Company required to file e-form DPT-3 even for loan received from Holding Company/Subsidiary Company and Associate Companies.

Q7. Whether auditor certificate is required to attach in e-form DPT-3 filed for one time return?

A. Rule 16A(3) does not state about auditor certificate in complete rule. Therefore, it seems that there is no need to attach auditor certificate in one time Return of DPT-3.

However, it is always advisable to take certificate from the auditor of Company.

Q8. Whether entity wise/ transaction wise reporting is mandatory in DPT-3 one time?

A. As per available e-form **CONSOLIDATED** amount of “Total amounts of outstanding money or loan received by a company but not considered as deposits in terms of rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules,2014 as specified in rule 16(A)(3)” required to mention in point no. 14 of e-form.

Q9. Which figures shall be considered for calculation “Net Worth” in point No. 8 of e-form?

As per language of e-form DPT -3 “**Net Worth as per the latest audited balance sheet preceding the date of the return**”

✚ Every Company has to file DPT-3 every year after end of financial year before 30th June mentioning details as on 31st March, 2019.

Particular of Transaction	Whether DPT-3 Filed or Not
Secured / Unsecured Loan Received (Bank, Other Entity)	YES
External Commercial Borrowing Received by Company	YES
Loan Received from Holding / Subsidiary/ Associate Company	YES
Loan Received from any other Company as (Inter Corporate Deposit)	YES



NOTIFICATIONS

A. G.S.R.(E) Companies (Incorporation) Fourth Amendment Rule 2019 dated 25.04.2019.

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 20f 3), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely: -

1. Short title and Commencement.- (1) These rules may be called the Companies (Incorporation) Fourth Amendment Rules, 2019.

(2) They shall come into force on the date of publication in the official gazette.

2. In the Companies (incorporation) Rules, 2014, in rule 25A, in sub-rule (1) of for the words and figures 'on or before 25.04.2019, the words and figures 'on or before 15.06.2019' shall be substituted.

3. In the Companies (Incorporation) Rules, 2014, in rule 25A, in sub-rule (1), in the third proviso, for the words and figures ,on or after 26th April,2019, the words and figures 'on or after 16th June, 2019 shall be substituted.

4. In the Companies (Incorporation) Rules, 2014, in sub-rule (2), for the words and figures "on or after 26tn April, 2019", the words and figures "on or after 16th June, 2019' shall be substituted.

B. G.S.R.(E) Companies (Registration offices and Fees) second Amendment Rules, 2019 dated 25.04.2019

C. G.S.R.(E) Companies (Appointment and Qualification of Directors) Amendment Rules, 2019 dated 30.04.2019

In exercise of the powers conferred by the second proviso to sub-section (1), sub-section (4), clause (f) of sub-section (6) of section 149, sub-sections (3) and (a) of section 150, section 151, sub-section (5) of section 152, section 153, section 154, section 157, section 160, sub-section (1) of section 158 and section 170 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely: -

1. (1) These rules may be called the Companies (Appointment and Qualification of Directors) Amendment Rules, 2019.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Appointment and Qualification of Directors) Rules, 2014, in rule 12A, for the words and figures "on or before 30th, April of immediate next financial year", the words and figures "on or before 30th June of immediate next financial year" shall be substituted.

D. G.S.R.(E) Companies (Registration of Charges) Amendment Rules, 2019. dated 30.04.2019

E. G.S.R.(E) Companies (Registration Offices and Fees) Third Amendment Rules, 2019. dated 30.04.2019

F. G.S.R.(E) Companies (Acceptance of Deposits) Second Amendment Rules, 2019 dated 30.04.2019

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