

# Companies (Acceptance of Deposits) Amendment Rules, 2019

Latest Amendment *w.e.f., 22.01.2019*

Rule 16	Explanation to Rule 16.	New Rule 16A(3)
<b>Existing Provisions</b>	<b>Every year</b>	<b>One Time Return</b>
<p>Every company to which <b>deposit rules apply</b> (means loan considered as deposit), shall on or before the <b>30th day of June</b>, of every year, file with the Registrar, a return in Form DPT-3 mentioning the details of deposit</p>	<p>It is hereby clarified that Form DPT-3 shall be used for filing <b><u>return of deposit or particulars not considered as deposit or both</u></b> by every company other than Government Company. <b><u>By 30.06.19</u></b></p>	<p>Every Company other than Government Company shall file a <b>onetime return of <u>outstanding receipt</u> of money or loan</b> by a company but no considered as deposits <b><u>Within 90 days from 31.03.19</u></b></p>

## LITTLE MORE EXCLUSIONS TO PRIVATE LIMITED COMPANIES

Companies Act,2013 permits Private Limited companies to borrow from:-

- Directors from their OWN Funds.
- Relative of Directors from their own Funds
- Shareholders upto 100% of Paid up Share Capital + Free Reserves + Security Premium Account or Any No. of Amount if fulfill 3 conditions.

S.N O	Loans from	Conditions, if any
1	Shareholder	Member: Yes, can accept, but subject to the condition specified in deposit Rules
2	Director/Relatives of Director	Yes, can accept, but the director/relative subject to a declaration from them and company will disclose it in the Board's report.
3	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.
4	Any other Individual	Can't accept because it is prohibited by the definition of Private Company.
5	Proprietorship Firm ,HUF	Can't accept because it can't be director, Member or relative of Director.
6	Any Company	Yes, can accept, but also comply with 3 Sec 179(3) wherein the conditions are specified for the lender
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S.No	Loans from	Conditions, if any
8	Banks	Yes, can accept
9	Trust	Yes, can accept, but loan received should be non- interest bearing.
10	From Outside India	Yes, can accept, but subject to the provisions of the <b><u>Foreign Exchange Management Act, 1999</u></b> and rules and regulations made there under.

## RULE 2(1)(C)

"deposit" includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include -

- (i) any amount received from the Central Government or a State Government, or any amount received from any other source whose repayment is guaranteed by the Central Government or a State Government, or any amount received from a local authority, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature ;
  
- (ii) any amount received from foreign Governments, foreign or international banks, multilateral financial institutions (including, but not limited to, International Finance Corporation, Asian Development Bank, Commonwealth Development Corporation and International Bank for Industrial and Financial Reconstruction), foreign Governments owned development financial institutions, foreign export credit agencies, foreign collaborators, foreign bodies corporate and foreign citizens, foreign authorities or persons resident outside India subject to the provisions of Foreign Exchange Management Act, 1999 (42 of 1999) and rules and regulations made there under;

**(iii)** any amount received as a loan or facility from any banking company or from the State Bank of India or any of its subsidiary banks or from a banking institution notified by the Central Government under section 51 of the Banking Regulation Act, 1949 (10 of 1949), or a corresponding new bank as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or in clause (b) of section (2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980) , or from a co-operative bank as defined in clause (b-ii) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934) ;

**(iv)** any amount received as a loan or financial assistance from Public Financial Institutions notified by the Central Government in this behalf in consultation with the Reserve Bank of India or any regional financial institutions or Insurance Companies or Scheduled Banks as defined in the Reserve Bank of India Act, 1934 (2 of 1934);

**v)** any amount received against issue of commercial paper or any other instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India;

**(vi)** any amount received by a company from any other company;

(vii) any amount received and held pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities, including share application money or advance towards allotment of securities pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for;

**Explanation.-** For the purposes of this sub-clause, it is hereby clarified that -

- (a) Without prejudice to any other liability or action, if the securities for which application money or advance for such securities was received cannot be allotted within sixty days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within fifteen days from the date of completion of sixty days, such amount shall be treated as a deposit under these rules.
- <sup>1</sup>[Provided that unless otherwise required under the Companies Act, 1956 (1 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules or regulations made thereunder to allot any share, stock, bond, or debenture within a specified period, if a company receives any amount by way of subscriptions to any shares, stock, bonds or debentures before the 1st April, 2014 and disclosed in the balance sheet for the financial year ending on or before the 31st March, 2014 against which the allotment is pending on the 31st March, 2015, the company shall, by the 1st June 2015, either return such amounts to the persons from whom these were received or allot shares, stock, bonds or debentures or comply with these rules]
- (b) any adjustment of the amount for any other purpose shall not be treated as refund.

**(viii)** 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;".]

**(ix)** any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets referred to in Schedule III of the Act excluding intangible assets of the company or bonds or debentures compulsorily convertible into shares of the company within <sup>6</sup>[Ten years]:

Provided that if such bonds or debentures are secured by the charge of any assets referred to in Schedule III of the Act, excluding intangible assets, the amount of such bonds or debentures shall not exceed the market value of such assets, as assessed by a registered valuer;



- (ixa) any amount raised by issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India." ;]
- (x) 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;
- (xi) any non-interest bearing amount received and held in trust;]

xii) any amount received in the course of, or for the purposes of, the business of the company,-

- (a) as an advance for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of three hundred and sixty five days from the date of acceptance of such advance:
- Provided that in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of three hundred and sixty five days shall not apply:
- (b) as advance, accounted for in any manner whatsoever, received in connection with [consideration for an immovable property] under an agreement or arrangement , provided that such advance is adjusted <sup>3</sup>[against such property] in accordance with the terms of agreement or arrangement;
- (c) as security deposit for the performance of the contract for supply of goods or provision of services;
- (d) as advance received under long term projects for supply of capital goods except those covered under item (b) above:
- <sup>9</sup>(e) as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less;
- (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;“]
- Provided that if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules:
- *Explanation.* - For the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund.

- (xiii) any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to fulfillment of the following conditions, namely:-
  - (a) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance;
  - (b) the loan is provided by the promoters themselves or by their relatives or by both; and
  - (c) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter;
- (xiv) any amount accepted by a Nidhi company in accordance with the rules made under [section 406](#) of the Act.
- *Explanation.*- For the purposes of this clause, any amount.-
  - (a) received by the company, whether in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, or
  - (b) any additional contributions, over and above the amount under item (a) above, made by the company as part of such promise or offer,

## INFORMATION TO BE FILED UNDER RULE 16(A)(3) – ONE TIME RETURN

As per New Rule 16A, Every Company has to file e-form DPT-3 with ROC containing following Information:

Every **Outstanding Loan (Not Considered as Deposit)** in Company as on 31<sup>st</sup> March, 2019.(from **1<sup>st</sup> April, 2014 to 31<sup>st</sup> March, 2019.**)

Every **outstanding receipt of money** in Company as on 31<sup>st</sup> March, 2019. (from **1<sup>st</sup> April, 2014 to 31<sup>st</sup> March, 2019.**)

*Any loan received which falls under definition of deposit not required to mention while filing e-form DPT-3 under Rule 16A.*

- By 29.06.2019

### **1) Whether auditor certificate is required to attach in e-form DPT-3 filed for one time return?**

Rule 16A(3) doesn't 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.

### **2) Whether entry wise/ transaction wise reporting is mandatory in DPT-3 one time?**

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.

### **3) Which figures shall be considered for calculation “Net Worth” in point No. 8?**

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

### **4) Which are the companies exempted from filing e-form DPT 3?**

Banking Companies

Non Banking Financial Companies

Housing Finance Company

Government Company

## FAQs

- 4) **If a company not having any outstanding loan or outstanding receipt of money as on 31.03.2019. Whether company need to file e-form DPT-3 .**

As per rule 16A DPT-3 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.

Therefore, one can opine that in the above mentioned situation there is no need to file e-form DPT-3.

- 5) **If some outstanding receipt of money or loan had become due before 01<sup>st</sup>April, 2014, still continuing and outstanding in record of Company. Whether such outstanding loan or receipt required to report in DPT-3.**

As per rule 16A DPT-3 required to file for each and every loan received by Company outstanding as on date of publication of these rules (22.01.2019).

Therefore, one can opine that such outstanding loan is required to report to ROC in e-form DPT-3

## FAQs

**5) If Company received loan after 01st April, 2014 but such loan is not outstanding as on 31.03.2019 . Whether company need to report such loan in DPT-3.**

As per language of Rule 16A, company has to report outstanding Loan and outstanding receipt of money to Roc in DPT-3. If Company has already paid Loan and such loan is not outstanding in record of Company. There is no need to inform such loan to ROC.

**6) If company doesn't accept loan or doesn't having any outstanding Loan. Whether need to file DPT-3,**

If there is no outstanding Loan or company doesn't accept any loan there is no need to file e-form DPT-3 with ROC

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For any further queries/suggestions, you may contact:-

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