Deposits under the Companies Act, 2013: Interpretational Boundaries, Practical Challenges and Compliance Responsibilities

Regulatory Context and Contemporary Relevance

In a recent knowledge-sharing webinar organised by Mehta & Mehta, eminent professionals deliberated on the evolving interpretation of "deposit" under the Companies Act, 2013 and the increasing practical complexities faced by companies and professionals while structuring borrowings. The discussion centred around Sections 73 to 76 of the Companies Act, 2013 read with the Companies (Acceptance of Deposits) Rules, 2014, with particular emphasis on the exclusions under Rule 2(1)(c), reporting obligations in Form DPT-3, and the interplay with FEMA and other statutory provisions.

The session highlighted that deposit compliance continues to be one of the most technical and frequently misunderstood areas of corporate law. Many compliance failures arise not from deliberate violations but from interpretational errors, inadequate documentation, or failure to appreciate conditional exclusions.

Legislative Evolution and Policy Objective

The regulation of deposits has its roots in the Companies Act, 1956, where companies were permitted to raise fixed deposits from the public subject to regulatory safeguards. However, concerns relating to depositor protection and misuse of funds necessitated a stricter regulatory framework.

The Companies Act, 2013 introduced a more restrictive regime, limiting acceptance of public deposits and prescribing detailed conditions even for private borrowings. The legislative intent is clear — companies should not mobilise funds from the public without stringent compliance safeguards, while legitimate business borrowings are permitted only through clearly defined exclusions.

Understanding the Definition: The Centrality of Section 2(31)

Section 2(31) defines "deposit" in an inclusive and expansive manner as:

"Any receipt of money by way of deposit or loan or in any other form by a company…"

The discussion emphasised that the trigger point is the **receipt of money**. The nomenclature of the transaction is irrelevant; the substance of receipt determines applicability.

However, the definition is followed by an important qualification — it excludes such categories of amounts as may be prescribed. Therefore, deposit analysis requires careful reading of Rule 2(1)(c), which enumerates various exclusions.

The character of a transaction must be examined at the **time of receipt**, and compliance conditions must be satisfied contemporaneously.

Exclusions under Rule 2(1)(c): Conditional and Unconditional Categories

The webinar clarified that exclusions may broadly be classified as unconditional and conditional.

Government and Government-Guaranteed Amounts

Amounts received from the Central or State Government, local authorities, or amounts whose repayment is guaranteed by Government are excluded without additional conditions. These are treated as sovereign-backed receipts.

Borrowings from Banks and Financial Institutions

Loans from banking companies, scheduled banks, public financial institutions, and insurance companies are excluded.

A common practical query relates to NBFC borrowings. While NBFCs are not automatically covered under the "public financial institution" clause unless specifically notified, loans from NBFCs qualify under the separate exclusion of "amount received from another company," since NBFCs are companies incorporated under the Act.

Inter-Corporate Loans and Corporate Distinctions

Any amount received by a company from another company qualifies for exclusion.

However, a significant clarification discussed was that an LLP, though a body corporate, is not a "company" within the meaning of Section 2(20). Therefore, loans from LLPs do not automatically fall within this exclusion.

Similarly, amounts from foreign companies must be examined in conjunction with FEMA compliance before claiming exclusion.

Foreign Sources and FEMA Interplay

Amounts received from foreign governments, foreign citizens, foreign body corporates, or international institutions are excluded subject to compliance with FEMA regulations.

The session emphasised that FEMA compliance is integral. Failure to comply with reporting, pricing, or ECB norms may expose the transaction to reclassification risks.

Deposit compliance, therefore, cannot be evaluated in isolation from foreign exchange regulations.

Director and Relative Loans: A Frequently Misunderstood Exclusion

One of the most discussed exclusions relates to amounts received from:

A director of the company; or

A relative of a director (in case of private companies).

This exclusion is conditional and requires:

1. A declaration from the director or relative stating that the amount is not sourced from borrowed funds.
2. Disclosure of details in the Board's Report.

The discussion highlighted that many companies overlook the requirement of obtaining proper declarations or fail to disclose details in the Board's Report, thereby jeopardising the exclusion.

Importantly, the eligibility is tested at the time of receipt. Conversion of a private company into a public company does not retrospectively alter the nature of the transaction if it was compliant when accepted.

Share Application Money and Time-Sensitive Compliance

Share application money is excluded only if:

⇒ Securities are allotted within 60 days; and

⇒ Refund is made within 15 days if not allotted.

Failure to comply with these timelines results in the amount being deemed a deposit.

This provision prevents indefinite retention of funds under the guise of capital raising.

Debentures and Structured Instruments

The Rules exclude:

⇒ Secured debentures backed by a first charge on tangible assets,

⇒ Compulsorily convertible debentures within ten years,

⇒ Listed unsecured non-convertible debentures.

However, unsecured unlisted optionally convertible debentures may fall within the ambit of deposits.

The session clarified that security must be on tangible assets of the company and supported by valuation. Classification depends on compliance with structural conditions rather than nomenclature alone.

Trade Advances and the 365-Day Rule

Amounts received in the ordinary course of business as advance for supply of goods or services are excluded, provided they are adjusted within 365 days.

Practical complexities arise where customers delay orders or design changes are pending. In such cases, documentation evidencing genuine commercial intent becomes critical.

If unadjusted beyond the prescribed period without valid justification, the amount may be treated as a deposit.

Reporting Obligations: Form DPT-3

Even where amounts qualify as exempt deposits, companies must file annual return in Form DPT-3 reporting:

- ⇒ Outstanding deposits; and
- ⇒ Outstanding exempt deposits.

Failure to file DPT-3 attracts penalties irrespective of substantive classification. Reporting compliance operates independently and must be monitored carefully.

Interplay with Other Provisions of the Act

Deposit exclusions do not dispense with compliance under:

- ⇒ Board borrowing powers under Section 179,
- ⇒ Borrowing limits under Section 180,
- ⇒ Loans and investments under Section 186,
- ⇒ Debenture provisions under Section 71,
- ⇒ Disclosure requirements in Board's Report.

The session reinforced that deposit exemption is not equivalent to overall statutory exemption. A holistic compliance review is essential.

Recurring Compliance Gaps Observed in Practice

Common risk areas discussed include:

- ⇒ Acceptance of funds from LLPs without evaluating deposit implications,
- ⇒ Failure to obtain director declarations,
- ⇒ Misclassification of unsecured debentures,
- ⇒ FEMA non-compliance in foreign borrowings,
- ⇒ Trade advances remaining unadjusted beyond 365 days,
- ⇒ Non-filing or incorrect filing of Form DPT-3.

Most of these lapses arise from documentation deficiencies rather than deliberate non-compliance.

Governance Responsibility and Professional Vigilance

The evolving regulatory landscape demands that deposit compliance be treated as a structured governance function rather than a mere accounting classification.

The Company Secretary plays a pivotal role in:

- ⇒ Examining the legal character of every receipt of money,

⇒ Ensuring contemporaneous documentation,

⇒ Advising the Board on structural implications,

⇒ Monitoring timelines and reporting obligations,

⇒ Coordinating with finance and legal teams.

Interpretational clarity, structured internal controls, and proactive monitoring are essential safeguards.

Conclusion

The deposit framework under the Companies Act, 2013 reflects a carefully calibrated regulatory mechanism balancing depositor protection with legitimate corporate financing flexibility.

The breadth of the definition under Section 2(31), coupled with narrowly framed and often conditional exclusions under Rule 2(1)(c), requires meticulous interpretation and documentation.

As highlighted in the webinar, the key to compliance lies in:

- Understanding the definition thoroughly,
- Applying exclusions cautiously,
- Ensuring complete documentation and disclosure,
- Filing Form DPT-3 accurately and timely.

Deposit compliance is ultimately a test of statutory discipline, interpretational precision, and governance diligence in the contemporary corporate regulatory environment.

To access the webinar recording and other resources, visit the YouTube channel:

"Decoding Corporate Laws with Mehta & Mehta"