



**Corporate  
Professionals**

# **ARRANGING FUNDS WITHIN GROUP DURING COVID-19**

# OVERVIEW



**RAISING OF FUNDS**



**LENDING OF FUNDS**



**OTHER MODES**

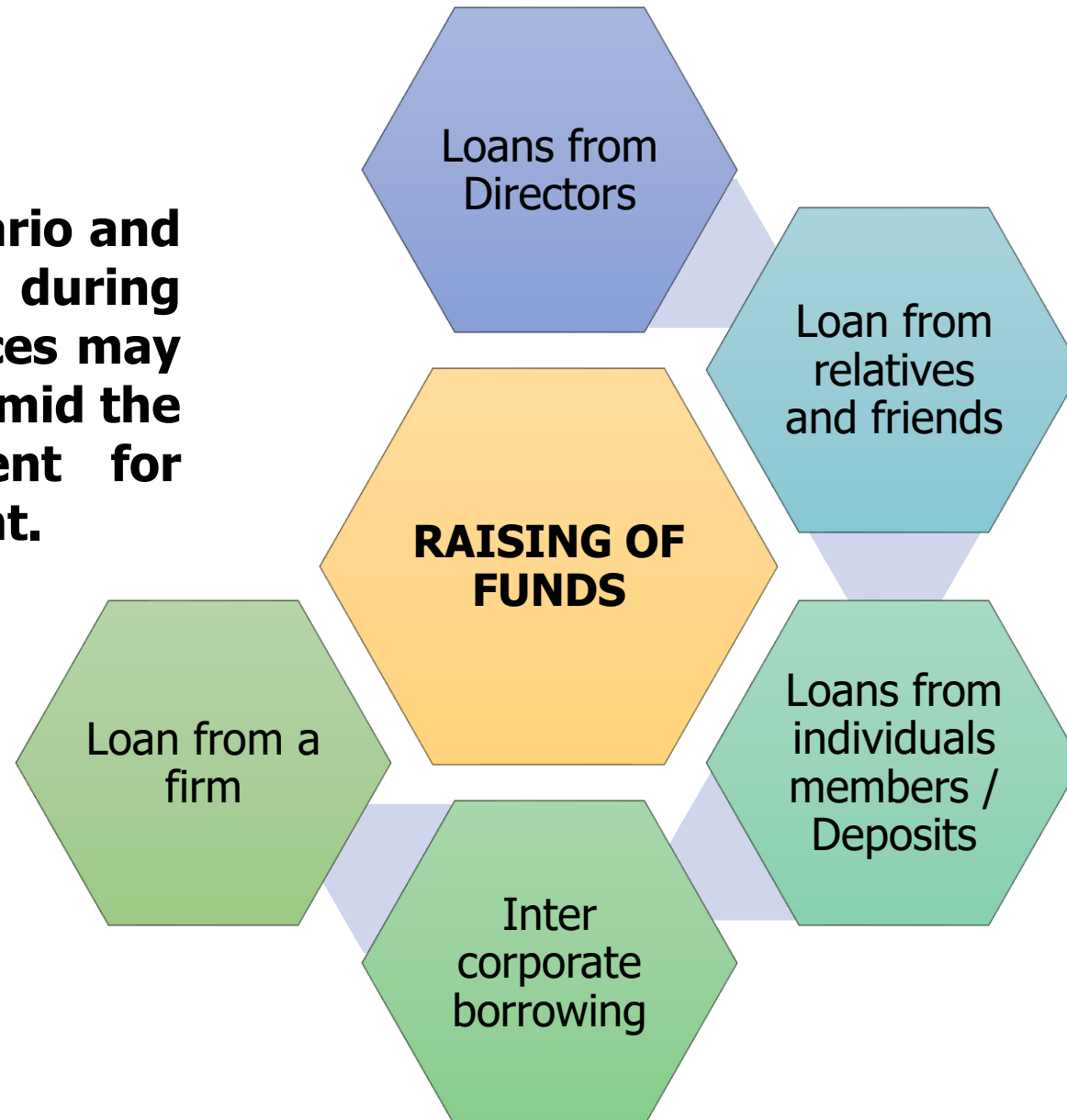
# OVERVIEW

COVID-19 Pandemic and lockdown have severely impacted the business operations, resulting in reduced cash flows and liquidity issues.

This presentation primarily focusses on options available for accessing funds within the group.

# RAISING OF FUNDS

**Considering the scenario and conditions prevailing during COVID, internal sources may be given preference amid the restricted environment for funding at the moment.**



# BORROWING POWERS

Limits for borrowing from other sources (Directors, ICDs)	Public Company	Private Company
<p>Money to be borrowed, together with the money already borrowed by the company up to aggregate of its paid- up capital, free reserves &amp; securities premium apart from temporary loans obtained from the company's bankers in the ordinary course of business.</p> <p><i>"temporary loans" means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature</i></p>	Approval of board of directors	Approval of board of directors
Borrowings including existing borrowings are in excess of above limit	Such higher limits to be approved by members via special resolution	There are no limits

- Any proposal to borrow by a public company shall be evaluated in terms of available limits.
- Obtain approval of shareholders, where limits are breached



# LOAN FROM DIRECTOR

Company can accept loan from a director

## **Conditions:**

- ✓ Loan can be with or without interest.
- ✓ Generally an unsecured debt in nature
- ✓ It can be borrowed for a fixed tenure or can be repayable on demand

## **Compliance:**

- ✓ Director must give a declaration that loan is given out of own funds and not borrowed funds
- ✓ Disclosure of the details of money so accepted in the Company's Board's report



# LOAN FROM RELATIVE OF A DIRECTOR

- ✓ A Private Co. can borrow any amount from relative of Director.
- ✓ Loan can be with or without interest.
- ✓ Generally an unsecured debt in nature
- ✓ It can be borrowed for a fixed tenure or can be repayable on demand

A Public Co. with only net-worth Rs 100 crores or turnover of Rs 500 crores (**Eligible Public Company**) can only borrow from relative of Director and subject to various compliance like fixed period of redemption, defined rate of interest etc. The same are discussed ahead.



# LOANS FROM INDIVIDUAL MEMBERS / DEPOSITS

Loan from individual members other than corporate members is treated deposits with following limits:

Type of Company	Eligible Public Company	Public Company	Private Company*
<b>Limit(s) % of aggregate of its paid up share capital, free reserves and securities premium</b>	Shall not exceed 10%	Shall not exceed 35%	Shall not exceed 100%

\*Following Private Companies can borrow from members without any limit:

- A start up for 5 years from the date of its incorporation
- Company satisfying all below conditions:
  - o Not a subsidiary or associate of any company
  - o the borrowings from banks or financial institutions or any body corporate is less than twice of its paid-up capital or INR 50 crore, whichever is less; and
  - o not defaulted in the repayment of borrowings subsisting at the time of accepting loans.





# LOANS FROM INDIVIDUAL MEMBERS / DEPOSITS

## Tenure of deposits:

- ✓ Generally : 6 to 36 months from the date of acceptance of such loan
- ✓ In case of short-term requirements, period can be of 3 to 6 months; limit to borrow reduced to 10% from 35%

*A start-up company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding five years from the date of issue) may accept an amount INR 25 lakh or more from a person which shall not be considered as "deposit".*



# LOANS FROM INDIVIDUAL MEMBERS / DEPOSITS

## Approvals:

- ✓ Obtain members approval via special resolution;
- ✓ Specific compliance for eligible companies:
  - In case within limits of borrowing powers, then ordinary resolution required
  - Credit rating to be obtained

## Other conditions:

- ✓ Deposits can be both secured and unsecured
- ✓ Secured deposits to be secured by charge on assets
- ✓ Trustees to be appointed for creating of security
- ✓ Rate of interest and brokerage shall not exceed the maximum rate of interest and brokerage prescribed by the RBI for acceptance of deposits by NBFC's
- ✓ File the details of monies so accepted with the ROC in Form DPT-3
- ✓ Register of deposits to be maintained
- ✓ Creation of deposit repayment reserve account (in a scheduled bank in a separate bank account) - To deposit, on or before the April 30 (extended to June 30 for stub period) each year, minimum 20% of the amount of deposits maturing during the following financial year



# INTER-CORPORATE LOANS

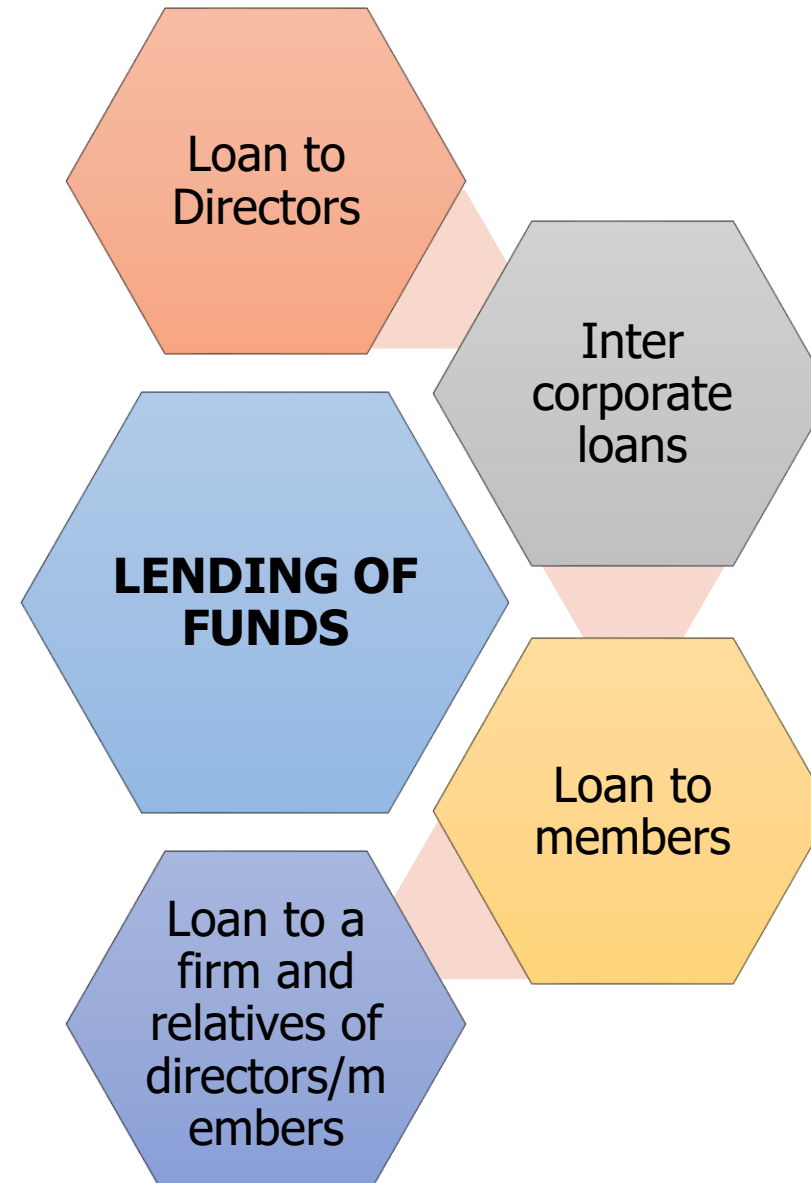
## Considerations:

- ✓ A company can borrow loan from another company
- ✓ The rate of interest should not be less than the prevailing yield of government security closest to the period of the loan
- ✓ Approval by board of directors in a board meeting will be required
- ✓ Disclosure is required in financial statement about the loan obtained and the purpose for which the loan is proposed to be utilized by the borrower
- ✓ In case of loan from related party, approval of audit committee (if any) will be required



# LENDING OF FUNDS

**Considering the scenario and conditions prevailing during COVID, internal sources may be given preference amid the restricted environment for funding at the moment.**



# INTER-CORPORATE LOANS

A company can lend money to body corporates and any other person. Following are required to be kept in check:

- ✓ Prescribed limit for making investments / lending of funds
  - 60% of its paid-up share capital, free reserves and securities premium; or
  - 100% of its free reserves and securities premium, whichever is higher
- ✓ In case proposed lending including existing lending, investments, guarantee , security breach above limits, prior approval by members via special resolution will be required
- ✓ Prior unanimous approval of the board of directors will be required
- ✓ Loan given to employees, not to be considered for calculating the limits
- ✓ The rate of interest should not be less than the prevailing yield of government security closest to the period of the loan
- ✓ Disclosure is required in financial statement about the loan given and the purpose for which the loan is proposed to be utilized by the borrower.
- ✓ Prior approval of public financial institutions will be required , if there is default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan.



# INTER-CORPORATE LOANS

## **Restricted class of borrowers**

A company can however not lend monies to any director or relative of any director; or any firm in which any such director or relative is a partner.

## **Special class of Borrowers**

In case of following class of borrowers, additional compliances as mentioned below , shall be undertaken :

- any private company of which any director of the lending company is a director or member
- any body corporate at a general meeting of which not less than 25% of the total voting power may be exercised or controlled by any director of the lending company, or by two or more such directors, together; or
- any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board , or of any director or directors, of the lending company.

## **Additional compliances required :**

- Prior approval of members via special resolution shall be obtained
- Loans to be utilised by the borrower company for its principal business activities



# INTER-CORPORATE LOANS

## Exemptions:

- ✓ A Private Company can lend to restricted categories and special class without aforesaid compliance in following cases
  - in whose share capital no other body corporate has invested any money
  - if the borrowings of such a company from banks / financial institutions / any body corporate is less than twice of its paid up share capital or Rs. 50 crores, whichever is lower; and
  - such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.
- ✓ any loan made by a holding company to its wholly owned subsidiary company



# OTHER MODES OF FLOW OF FUNDS

DECLARATION OF  
DIVIDEND

BUY-BACK OF  
SHARES





# DECLARATION OF DIVIDEND

## Interim Dividend

- ✓ Can be declared by Board
- ✓ Can be declared anytime between two AGMs
- ✓ Source
  - out of the surplus in the profit and loss account or
  - out of profits of the financial year for which such interim dividend is sought to be declared or
  - out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend

*In case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during immediately preceding three financial years*

## Final Dividend

- ✓ Final Dividend can be declared only at the AGM
- ✓ Source:
  - Out of the current year's profits after providing for depreciation or
  - out of profits of previous financial years after depreciation and remaining undistributed or
  - out of both



# DECLARATION OF DIVIDEND

In case of losses or inadequate profits in any FY, dividend can also be declared out of accumulated profits of previous years transferred to free reserves, subject to following conditions:

- ✓ The rate of dividend to not exceed the average of the rates at which Dividend was declared in the preceding three financial years\*;
- ✓ The total amount to be declared to not exceed one tenth of the sum of paid up share capital and free reserves as per the latest audited financial statement;
- ✓ The amount withdrawn from free reserves for declaration of dividend to be first utilized to set off losses incurred in the year in which Dividend is declared;
- ✓ The balance of reserves after withdrawal shall not fall below 15% of the paid up share capital as per its latest audited financial statements.

*\* This condition shall not apply where no Dividend was declared by the Company in each of the preceding three financial years.*



# DECLARATION OF DIVIDEND

## Other Conditions:

- ✓ No other reserves, except free reserves, can be utilized for the purpose of declaration of dividend
- ✓ Dividend on preference shares to be given priority over equity shares
- ✓ Not to declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit for the current year
- ✓ No dividend can be declared, if a company fails to comply with the requirements related to prohibition and repayment of deposits accepted from the public
- ✓ Payment of dividend shall be subject to levy of tax in the hands of the Company by way of Dividend Distribution Tax (DDT)



# BUY – BACK OF SHARES

A company can induce flow of funds also by way of purchasing its own shares or other specified securities, which is referred to as “buy-back” of securities. Following to be considered while undertaking buy-back:

✓ **Sources of buy back:**

- free reserves;
- the securities premium account; or
- the proceeds of the issue of any shares or other specified securities  
*proceeds of an earlier issue of the same kind of shares or same kind of other specified securities not to be utilized for the purpose*

✓ **Approvals:**

Buyback up to 10% can be done with the approval of Board only and beyond which approval of members will be required



# BUY – BACK OF SHARES

## Other conditions:

- ✓ The shares to be bought back should be fully paid up
- ✓ The ratio of the aggregate of secured and unsecured debts after buy- back is not more than twice the paid- up capital and its free reserves
- ✓ Limit to be adhered to in one financial year: Up to maximum 25% or less of aggregate paid up capital and free reserves. Buy-back to be completed within 1 year of passing resolution
- ✓ No buy back shall be made within a period of 1 year reckoned from the date of the closure of preceding offer of buy back, if any.
- ✓ Company to not make a further issue of the same kind of shares or other securities including allotment of new shares under section 62(1)(a) or other specified securities up to a period of 6 months
- ✓ The transaction shall be subject to levy of tax in the hands of the shareholder under capital gains



# THANK YOU

**Ankit Singhi**

Partner

Corporate Professionals

ankit@indiacp.com

+91 9910888952

**Follow Us**

