

# ACCEPTANCE OF DEPOSITS BY COMPANIES

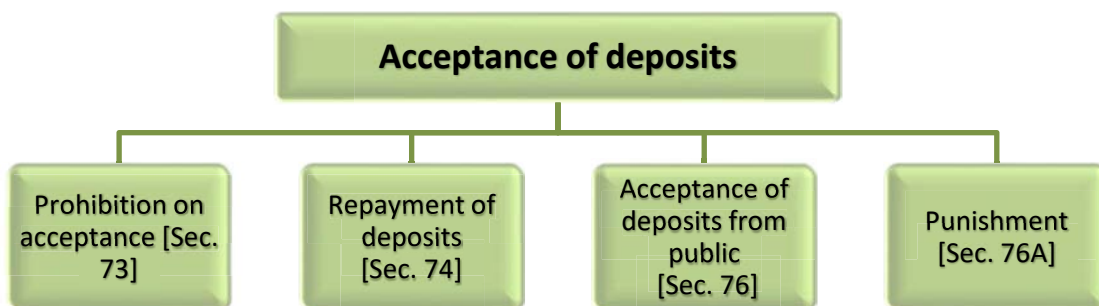


## LEARNING OUTCOMES

After studying this unit, you would be able to:

- ❑ Understand the meaning of the term 'Deposit'.
- ❑ Know the requirements for and restrictions on acceptance of deposits from members and public.
- ❑ Know about the 'eligible companies' which can accept deposits from public in addition to their members.
- ❑ Know the punishment for contravention of the provisions related to acceptance of deposits by companies.

## CHAPTER OVERVIEW



## 1. INTRODUCTION

Acceptance of deposits from the members as well as public at large is an important source of finance for the corporate sector. It is, therefore, necessary to control the companies which invite deposits in order to safeguard the general and wider interest of all those persons who offer deposits out of their precious savings. The statutory provisions as contained in sections 73 to 76A of the Companies Act, 2013 (hereinafter referred to as 'the Act') and the *Companies (Acceptance of Deposits) Rules, 2014* (hereinafter referred to as 'the Rules') govern the acceptance of deposits and also renewal thereof.

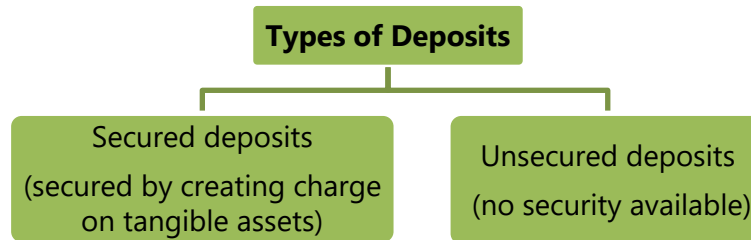
## 2. CERTAIN IMPORTANT TERMS EXPLAINED

### A. DEPOSIT

**Definition:** According to section 2 (31) of the Act, the term '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.



- (i) The above definition of 'deposit' is inclusive one.
- (ii) It includes any money received by way of:
  - deposit; or
  - loan; or
  - in any other form.
- (iii) Repayment of 'deposit' is time-bound.
- (iv) It can be secured or unsecured.
- (v) It does not include prescribed categories of amounts (given under the Rules).
- (vi) A private company can accept deposits from its members only.
- (vii) A public company can accept deposits from its members and also from the public if it fulfills certain parameters.



## B. AMOUNTS NOT CONSIDERED AS DEPOSIT

Following categories of amounts are not considered as deposit [Rule 2 (1) (c)]:

- (i) any amount received from the Central Government or a state Government, or 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 etc. subject to the provisions of Foreign Exchange Management Act, 1999 and rules and regulations made thereunder;
- (iii) any amount received as a loan or facility from any banking company or from State Bank of India or its subsidiary banks or from a notified banking institution or from any co-operative bank;
- (iv) any amount received as a loan or financial assistance from Public Financial Institutions;
- (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: (a) It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received cannot be allotted within 60 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 15 days from the date of completion of 60 days, such amount shall be treated as a deposit under these rules.

However, unless otherwise required under the Companies Act, 1956 or the Securities and Exchange Board of India Act, 1992 or rules or regulations made thereunder to allot any share, stock, bond, or debenture within a specified period, if a company had received 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) Further, *it is clarified that* 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;

However, the director of the company or relative of the director of the private company, as the case may be, from whom money is received, is required to furnish 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<sup>1</sup> of the Act excluding intangible assets of the company or bonds or debentures compulsorily convertible into shares of the company within 10 years;

However, 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.

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<sup>1</sup> Schedule III contains format of Balance Sheet.

- (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;

**Example 1:** Soorya Ltd. has raised ₹ 2,00,000 through 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. The said amount will not be considered as deposit in terms of the rule stated above [Sub-clause (ixa)]

- (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;

**Example 2:** ₹ 2,50,000 received from Mr. Raghu, an employee of the company who is drawing annual salary of ₹ 2,00,000 under a contract of employment with the company in the nature of non-interest bearing security deposit. This amount received by company from employee, Mr. Raghu will be considered as deposit in terms of sub-clause (x) of the said rule, as amount received is more than 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 or 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:

However, 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 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;
- (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;

However, *it is clarified 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.

Further, by way of Explanation it is clarified that 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 the fulfillment of following conditions:
  - (a) the loan is brought because 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) such exemption 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;

- (xv) any amount received by way of subscription in respect of a chit under the Chit Fund Act, 1982;
- (xvi) any amount received by the company under any collective investment scheme in compliance with regulations framed by the Securities and Exchange Board of India;
- (xvii) an amount of twenty-five lakh rupees or more received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person;

*By way of Explanation it is clarified that:*

1. *“Start-up company”* means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with Notification Number G.S.R. 127 (E), dated 19-02-2019 issued by the Department for Promotion of Industry and Internal Trade ;
  2. *“Convertible note”* means an instrument evidencing receipt of money initially as a debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of the start-up company upon occurrence of specified events and as per the other terms and conditions agreed to and indicated in the instrument.
- (xviii) any amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds, Infrastructure Investment Trusts, Real Estate Investment Trusts<sup>2</sup> and Mutual Funds registered with the Securities and Exchange Board of India in accordance with regulations made by it.

**Note:** Clarification regarding amounts received by private companies from their members, directors or their relatives before 1st April, 2014 – whether to be considered as deposits or not under the Companies Act, 2013 (*General Circular No. 5/2015, dated 30-03-2015*)

It is clarified that such amounts received by private companies prior to 1st April, 2014 shall not be treated as ‘deposits’ subject to the condition that relevant private company shall disclose in the notes to its financial statement the figure of such amounts and the accounting head in which such amounts have been shown.

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<sup>2</sup> The words ‘Real Estate Investment Trusts’ have been inserted vide the Companies (Acceptance of Deposits) Amendment Rules, 2019 w.e.f. 22-01-2019.

However, any renewal or acceptance of fresh deposits on or after 1st April, 2014 shall be in accordance with the Companies Act, 2013 and the rules made thereunder.

### C. DEPOSITOR

#### Definition:

As per Rule 2 (1) (d), the term 'Depositor' means:

- (i) any member of the company who has made a deposit with the company in accordance with the provisions of sub-section (2) of section 73 of the Act, or
- (ii) any person who has made a deposit with a public company in accordance with the provisions of section 76 of the Act.



In other words:

- any member of a private or public company who has deposited money with his company is a 'depositor'.
- any person (even if not a member of the company) who has deposited money with a public company is also a 'depositor'.

### D. ELIGIBLE COMPANY

#### Definition:

As per Rule 2 (1) (e) the term "eligible company" means a public company as referred to in section 76 (1), having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits:

*However*, an eligible company, which is accepting deposits within the limits specified under section 180 (1) (c), may accept deposits by means of an ordinary resolution.

A public company is 'eligible' to accept deposits from the public at large only if it meets the above-mentioned criteria. Accordingly,

- It should be a public company.
- It should have net worth of minimum ₹ 100 crores or a turnover of minimum ₹ 500 crores.



- It has obtained the prior consent by means of a special resolution passed in general meeting.
- The special resolution has been filed with the Registrar of Companies.
- An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under section 180 (1) (c).

### 3. PROHIBITIVE PROVISIONS AND EXEMPTED COMPANIES

#### A. Prohibitive Provisions

According to section 73 (1) of the Act, no company can accept or renew deposits from public unless it follows the manner provided under Chapter V (*contains provisions regarding acceptance of deposits by companies*) of the Act for acceptance or renewal of deposits from public. Manner of acceptance of deposits from public is explained later in the Chapter.

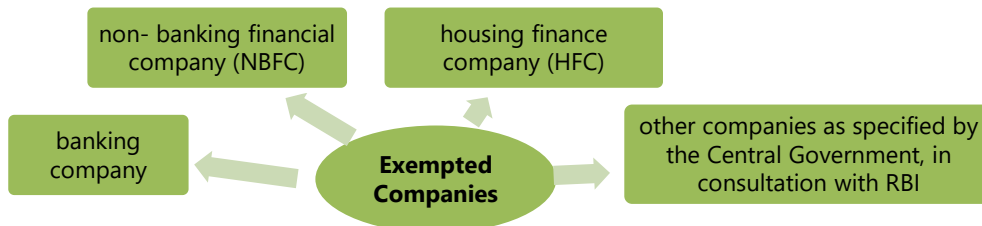
#### B. Exempted Companies

Extract of Act:

According to the Section 73 (1), on and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter:

Provided that nothing in this sub-section shall apply to a banking company and non-banking financial company as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

This brings out the fact that 'deposit provisions' as contained in the Companies Act, 2013 are meant to regulate acceptance of deposits by non-banking non-financial companies (*i.e. manufacturing, trading companies, etc.*) only.





## 4. PROVISIONS REGARDING ACCEPTANCE OF DEPOSITS FROM MEMBERS

Any company may accept or renew deposits from its members by following the provisions as set out below:

- (1) **Passing of a Resolution:** A company is required to pass a resolution in general meeting for acceptance of deposits from its members [Section 73 (2)].
- (2) **Issuance of a Circular containing Statement:** The company is required to issue a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in the prescribed form and manner. [Section 73 (2) (a)]

According to Rule 4, the company shall issue such circular to all its members by registered post with acknowledgement due or speed post or by electronic mode in Form DPT-1.

Further, the circular may be published in English language in an English newspaper and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.

In addition, a certificate of the statutory auditor of the company shall be attached in Form DPT-1, stating that the company has not committed default in the repayment of deposits or in the payment of interest on such deposits accepted either before or after payment of interest on such deposits accepted either before or after the commencement of the Act. In case a company had committed a default in the repayment of deposits accepted either before or after the commencement of the Act or in the payment of interest on such deposits, a certificate of the statutory auditor of the company shall be attached in Form DPT-1, stating that the company had made good the default and a period of five years has lapsed since the date of making good the default as the case may be.

Such Circular shall be issued on the authority and in the name of Board of Directors of the company.

The advertisement shall remain valid till the earliest of the following dates:

- (a) up to six months from the closure of the financial year in which it is issued; or

- (b) the date on which the financial statements are laid before the company at the Annual General Meeting (AGM), or in case no AGM has been held, the latest day on which the AGM should have been held as per the relevant statutory provisions.

A fresh circular shall be issued, in each succeeding financial year, for inviting deposits during that financial year.

- (3) Filing of Circular:** The company is required to file a copy of the circular containing the statement with the Registrar within 30 days before the date of issue of the circular. *[Section 73 (2) (b)]*
- (4) Requirement of Deposit Repayment Reserve Account:** The company is required to deposit, on or before 30<sup>th</sup> of April each year, at least 20% of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account. *[Section 73 (2) (c)]*

According to Rule 13 (Maintenance of Liquid Assets and Creation of Deposit Repayment Reserve Account), every company referred to in sub-section (2) of section 73 and every eligible company shall on or before the 30th day of April of each year deposit the sum as specified in clause (c) of the said sub-section with any scheduled bank and the amount so deposited shall not be utilised for any purpose other than for the repayment of deposits:

Provided that the amount remaining deposited shall not at any time fall below twenty per cent. of the amount of deposits maturing during the financial year.

- <sup>3</sup>**(5) Certification as to No default in Repayment:** The company needs to certify that it has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits.

In case a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default. *[Section 73 (2) (e)]*

- (6) Provision of Security:** The company may provide security, if any, for the due repayment of the amount of deposit or the interest thereon. Further, if security is provided, the company shall take steps for the creation of charge on the property or assets of the company.

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<sup>3</sup> Clause (d) relating to 'deposit insurance' has been omitted vide the Companies (Amendment) Act, 2017 w.e.f. 15<sup>th</sup> August, 2018.

It may be noted that in case a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as "unsecured deposits". Accordingly, it shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits. [Section 73 (2) (f)]

**Exemption to certain private companies<sup>4</sup>:**

Clauses (a) to (c) and (e) of sub-section (2) of section 73 with respect to issue of circular, filing the copy of such circular with the Registrar, depositing of certain amount and certification as to no default committed, shall not apply to a private company:

- (A) which accepts from its members monies not exceeding one hundred per cent. of aggregate of the paid-up share capital, free reserves and securities premium account; or
- (B) which is a start-up, for five years from the date of its incorporation; or
- (C) which fulfils all of the following conditions, namely:
  - (a) which is not an associate or a subsidiary company of any other company;
  - (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is lower; and
  - (c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section.

However, such a company [as referred to in clauses (A), (B) or (C)] shall file the details of monies accepted to the Registrar in the specified manner (*i.e. in Form DPT-3*).

- (7) Repayment of deposit:** Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement. [Section 73 (3)]

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<sup>4</sup> In terms of Notification No. GSR 464 (E), dated 05-06-2015 as amended from time to time. Further, in terms of Notification No. GSR 8(E), dated 04-01-2017, clauses (a) to (e) of section 73 (2) shall not apply to a Specified IFSC public company which accepts from its members, monies not exceeding 100% of aggregate of the paid-up share capital and free reserves, and such company shall file the details of monies so accepted with the Registrar in such manner as may be specified (*i.e. in Form DPT-3*).

**(8) Application to Tribunal if the Company fails to Repay:** In case a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit. [Section 73 (4)]

**(9) Using the Amount of Deposit Repayment Reserve Account:** The deposit repayment reserve account shall not be used by the company for any purpose other than repayment of deposits. [Section 73 (5)]

Rule 13 also states that the amount so deposited in the account shall not be used by the company for any purpose other than repayment of deposits.

**(10) Tenure for which Deposits can be Accepted<sup>5</sup>:** A company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty-six months.

**Example 3:** A, a member of the company has deposited ₹1,00,000 with his company on 1<sup>st</sup> April, 2019. The earliest repayment date in this case shall be 30<sup>th</sup> September, 2019 and the latest repayment date shall be 31<sup>st</sup> March, 2022. Thus, the tenure will range between six months and thirty-six months, as per the policy of the company.

**Exception to the rule of tenure of six months:** For the purpose of meeting any of its short-term requirements of funds, a company may accept or renew deposits for repayment earlier than six months subject to the condition that:

- (i) such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and
- (ii) such deposits are repayable only on or after three months from the date of such deposits or renewal.

**(11) Maximum Amount of Deposits from Members<sup>6</sup>:** A company is permitted to accept or renew any deposit from its members including other such deposits outstanding as on the date of acceptance or renewal maximum up to 35% of the aggregate of its paid-up share capital, free reserves and securities premium account.

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<sup>5</sup> As per Rule 3 (1).

<sup>6</sup> As per Rule 3 (3).

*However, as an exception, a Specified IFSC Public company<sup>7</sup> and a private company may accept from its members monies not exceeding 100% of aggregate of the paid-up share capital, free reserves and securities premium account. Further, such company shall file the details of monies so accepted with the Registrar in Form DPT-3.*

*In addition, the maximum limit in respect of deposits to be accepted from members shall not apply to the following classes of private companies:*

- (i) a private company which is a start-up, for ten years from the date of its incorporation;
- (ii) a private company which fulfils all of the following conditions, namely:
  - (a) which is not an associate or a subsidiary company of any other company;
  - (b) the borrowings of such a company from banks or financial institutions or any body-corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is less; and
  - (c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:

**Note:** It may be noted that all the companies accepting deposits shall file the details of monies so accepted with the Registrar in Form DPT-3.

**(12) Appointment of Trustee for Depositors:** As regards appointment of trustee, refer provisions given under 'Acceptance of Deposits from Public' because same provisions are applicable.

**(13) Ceiling on Rate of Interest and Brokerage Payable on Deposits<sup>8</sup>:** A company is permitted to invite or accept or renew any deposit at any rate of interest or pay any amount of brokerage but in no case, it shall exceed the maximum rate of interest or brokerage prescribed by the Reserve Bank of India in case of non-banking financial companies (NBFCs) for acceptance of deposits.

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<sup>7</sup> A Specified IFSC Public company means an unlisted public company which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act 2005 read with the Special Economic Zones Rules, 2006.

<sup>8</sup> As per Rule 3 (6).

Further, no brokerage shall be paid to any person except the person who is authorised in writing by the company to solicit deposits on its behalf and through whom deposits are actually procured.

**(14) Filling of Application Form for making Deposits<sup>9</sup>:** A company shall accept or renew any deposit, whether secured or unsecured, only when an application, as specified by the company, is submitted by the intending depositor for the acceptance of deposit.

The application shall contain a declaration made by the intending depositor to the effect that the deposit is not being made out of any money borrowed by him from any other person.

**(15) Deposits in Joint Names<sup>10</sup>:** In case the depositors so desire, deposits may be accepted in joint names not exceeding three. A joint deposit may be accepted with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor". These clauses operate on maturity.

**Example 4:** A, B and C have jointly deposited ₹ 1,00,000 in a company.

- In case of 'Jointly' clause the repayment of deposit on maturity shall be made to all the three together i.e. A, B and C or the survivors.
- In case of 'Either or Survivor' clause, the repayment of deposit on maturity shall be made to either of the three i.e. either A or B or C or the survivor.
- In case of 'First named or Survivor' clause, the repayment of deposit on maturity shall be made to the first named person i.e. A if he is the first named person or the survivor.
- In case of 'Anyone or Survivor' clause, the repayment of deposit on maturity shall be as in the case of 'Either or Survivor'.

**(16) Nomination<sup>11</sup>:** Every depositor may nominate any person at any time. The nominee shall be the person to whom his deposits shall vest in the event of his death.

**(17) Deposit Receipt<sup>12</sup>:** Within a period of twenty-one days from the date of receipt of money or realization of cheque or date of renewal, the company is

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<sup>9</sup> As per Rule 10.

<sup>10</sup> As per Rule 3 (2).

<sup>11</sup> As per Rule 11.

<sup>12</sup> As per Rule 12.

required to furnish a deposit receipt to the depositor or his agent. The receipt shall be signed by the duly authorised officer and state the date of deposit, the name and address of the depositor, the amount of deposit, the rate of interest and the maturity date.

- (18) Register of Deposits<sup>13</sup>:** As regards Register of Deposits, refer provisions given under 'Acceptance of Deposits from Public' because same provisions are applicable.
- (19) Premature Repayment of Deposits<sup>14</sup>:** As regards premature repayment of deposits, refer provisions given under 'Acceptance of Deposits from Public' because same provisions are applicable.
- (20) Filing of Return of Deposits with the Registrar<sup>15</sup>:** A duly audited return of deposits in DPT-3 (containing particulars as on 31<sup>st</sup> March of every year) shall be filed with the Registrar of Companies along with requisite fee on or before the 30<sup>th</sup> June of that year.

*It is clarified by way of Explanation that DPT-3 shall be used to include particulars of deposits or particulars of transactions not considered as deposits or both by every company (other than a Government company).*

- (21) No Right to Alter<sup>16</sup>:** The company has no right to alter any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract which may prove detrimental to the interest of the depositors after circular or circular in the form of advertisement is issued and deposits are accepted.
- (22) Disclosures in Financial Statements<sup>17</sup>:** A public company shall disclose in its financial statements by way of note about the money received from its directors. In case of a private company it shall disclose in its financial statements by way of note about the money received from the directors or the relatives of directors.

As a onetime measure, every company (other than a Government company) shall file a onetime return of outstanding receipt of money or loan by a company not considered as deposits from 1<sup>st</sup> April 2014 till 31<sup>st</sup> March, 2019

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<sup>13</sup> As per Rule 14.

<sup>14</sup> As per Rule 15.

<sup>15</sup> As per Rule 16.

<sup>16</sup> As per Rule 3 (7).

<sup>17</sup> As per Rule 16A.



in Form DPT-3 with the Registrar of Companies within ninety days from 31<sup>st</sup> March, 2019 along with requisite fee.

- (23) **Penal Rate of Interest**<sup>18</sup>: In case the company fails to repay deposits (both secured and unsecured) on maturity, after they are claimed, it shall pay penal rate of interest of eighteen per cent per annum for the overdue period.
- (24) **Punishment for Contravention**<sup>19</sup>: If any company inviting deposits or any other person contravenes any of the 'deposit rules' for which no punishment is provided in the Act, the company and every officer-in-default shall be punishable as under:
- with fine extendable to five thousand rupees; and
  - in case the contravention is a continuing one, with a further fine up to five hundred rupees for every day during which the contravention continues.



## 5. PROVISIONS REGARDING ACCEPTANCE OF DEPOSITS FROM PUBLIC BY ELIGIBLE COMPANIES

Only '**eligible companies**' are permitted to accept deposits from the public, in addition to their members.

It means not all the companies can access the public at large for raising deposits though they can accept deposits from their members.

Section 76 of the Act and the *Companies (Acceptance of Deposits) Rules, 2014* deal with acceptance of deposits from public by eligible companies.

The acceptance of deposits from public shall be subject to compliance with section 73 (2) and the prescribed rules.

These provisions are stated as under:

- (1) **Net Worth/Turnover Criterion**<sup>20</sup>: A public company, having net worth of not less than one hundred crore rupees or turnover of not less than five hundred crore rupees, may accept deposits from persons other than its members. Such type of public company is known as 'eligible company'.

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<sup>18</sup> As per Rule 17.

<sup>19</sup> As per Rule 21.

<sup>20</sup> As per Rule 2 (1) (e).

**(2) Passing of Special Resolution<sup>21</sup>:** The 'eligible company' is required to obtain the prior consent by means of a **special resolution** in general meeting and also file the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits.

*However*, an 'eligible company', which is accepting deposits within the limits specified under section 180 (1) (c), may accept deposits by means of an **ordinary resolution**.

**(3) Obtaining of Credit Rating<sup>22</sup>:** The 'eligible company' shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency. The given rating which ensures adequate safety shall be informed to the public at the time of invitation of deposits from the public. Further, the rating shall be obtained every year during the tenure of deposits.

*As per Rule 3 (8)*, copy of the credit rating which is being obtained at least once in a year shall be sent to the Registrar of Companies along with the Return of Deposits in Form DPT-3.

Further, the credit rating shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits. It shall be obtained from any one of the approved credit rating agencies as specified for Non-Banking Financial Companies in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, as amended from time to time.

**(4) Charge Creation on Assets Necessary if the Deposits are Secured<sup>23</sup>:** Every company which accepts secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets. The amount of charge shall not be less than the amount of deposits accepted. The charge shall be created in favour of the deposit holders in accordance with the prescribed rules.

In respect of creation of security, *Rule 6* states that the company accepting secured deposits shall create security by way of charge on its tangible assets only.

The other notable points are:

- The company cannot create charge on intangible assets (*i.e. goodwill, trademarks, etc.*).

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<sup>21</sup> As per Rule 2 (1) (e).

<sup>22</sup> As per first Proviso to section 76 (1).

<sup>23</sup> As per second Proviso to section 76 (1).

- Total value of security should not be less than the amount of deposits accepted and interest payable thereon.
- The market value of assets subject to charge shall be assessed by a registered valuer.
- The security shall be created in favour of a trustee for the depositors on specific movable and immovable property of the company.

**(5) Tenure for which Deposits can be Accepted<sup>24</sup>:** A company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty-six months.

*Exception to the rule of tenure of six months:* For the purpose of meeting any of its short-term requirements of funds, a company may accept or renew deposits for repayment earlier than six months subject to the condition that—

- (i) such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and
- (ii) such deposits are repayable only on or after three months from the date of such deposits or renewal.

**(6) Appointment of Trustee for Depositors<sup>25</sup>:** Following provisions are required to be observed in this respect:

- One or more trustees for depositors need to be appointed by the company for creating security for the deposits.
- A written consent shall be obtained from the trustees before their appointment.
- A statement shall appear in the circular or advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company for such appointment.
- The company shall execute a deposit trust deed in Form DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.

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<sup>24</sup> As per Rule 3 (1).

<sup>25</sup> As per Rule 7.

- No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee:
  - (a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;
  - (b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
  - (c) has any material pecuniary relationship with the company;
  - (d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;
  - (e) is related to any person specified in clause (a) above.
- No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board. In case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

**(7) Maximum Amount of Deposits<sup>26</sup>:** An eligible company is permitted to accept or renew deposits as under:

- **From its members:** The amount of such deposit together with outstanding deposits from the members as on the date of acceptance or renewal can be **maximum ten per cent.** of the aggregate of its paid-up share capital, free reserves and securities premium account;
- **From Persons other than its Members:** The amount of such deposit together with the amount of outstanding deposits (excluding deposits from members) on the date of acceptance or renewal can be **maximum twenty-five per cent.** of the aggregate of its paid-up share capital, free reserves and securities premium account.

**(8) Maximum Amount of Acceptable Deposit in case of an Eligible Government Company<sup>27</sup>:** Such a company is permitted to accept or renew any deposit together with the amount of other outstanding deposits as on the date of

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<sup>26</sup> As per Rule 3 (4).

<sup>27</sup> As per Rule 3 (5).

acceptance or renewal **maximum up to thirty-five per cent.** of the aggregate of its paid-up share capital, free reserves and securities premium account.

**(9) Issuance of Circular in the Form of Advertisement<sup>28</sup>:** An 'eligible company' intending to invite deposits is required to issue a circular in the form of an advertisement in DPT-1.

Such advertisement shall be published in English in an English newspaper and in vernacular language in a vernacular newspaper. Both newspapers should have wide circulation in the State in which the registered office of the company is situated.

If the company has its website, the circular shall also be placed on the website.

Such advertisement shall be issued on the authority and in the name of Board of Directors of the company.

- **Filing with the Registrar:** At least thirty days before the issue of the advertisement, its copy duly signed by a majority of the directors who approved the advertisement or otherwise signed by their duly authorised agents is required to be delivered to the Registrar of Companies for registration.
- **Validity of the Advertisement:** The advertisement shall remain valid till the earliest of the following dates:
  - (a) up to six months from the closure of the financial year in which it is issued; or
  - (b) the date on which the financial statements are laid before the company at the Annual General Meeting (AGM), or in case no AGM has been held, the latest day on which the AGM should have been held as per the relevant statutory provisions.
- **Fresh Advertisement:** A fresh advertisement shall be issued, in each succeeding financial year, for inviting deposits during that financial year.
- **Issue and Effective dates:** The date on which the advertisement appeared in the newspaper shall be taken as the date of the issue of advertisement. Further, the effective date of issue of circular shall be the date on which the circular was dispatched.

**(10) Maintenance and Using the Amount of Deposit Repayment Reserve Account:** The company is required to deposit, on or before 30<sup>th</sup> of April each year, **at least 20%** of the amount of its deposits maturing during the following financial

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<sup>28</sup> As per Rule 4.

year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account. [Section 73 (2) (c)]

Rule 13 states that the amount so deposited in the account shall not be used by the company for any purpose other than repayment of deposits. Further, it states that such amount shall not at any time fall below **twenty percent** of the amount of deposits maturing during the financial year.

**(11) Ceiling on Rate of Interest and Brokerage Payable on Deposits<sup>29</sup>:** An eligible company is permitted to invite or accept or renew any deposit at any rate of interest or pay any amount of brokerage but in no case, it shall exceed the maximum rate of interest or brokerage prescribed by the Reserve Bank of India in case of non-banking financial companies (NBFCs) for acceptance of deposits.

Further, no brokerage shall be paid to any person except the person who is authorised in writing by the company to solicit deposits on its behalf and through whom deposits are actually procured.

**(12) Filling of Application Form for making Deposits<sup>30</sup>:** A company shall accept or renew any deposit, whether secured or unsecured, only when an application, as specified by the company, is submitted by the intending depositor for the acceptance of deposit.

The application shall contain a declaration made by the intending depositor to the effect that the deposit is not being made out of any money borrowed by him from any other person.

**(13) Deposits in Joint Names<sup>31</sup>:** In case the depositors so desire, deposits may be accepted in joint names not exceeding three. A joint deposit may be accepted with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor". These clauses operate on maturity.

**(14) Nomination<sup>32</sup>:** Every depositor may nominate any person at any time. The nominee shall be the person to whom his deposits shall vest in the event of his death.

**(15) Deposit Receipt<sup>33</sup>:** Within a period of twenty-one days from the date of receipt of money or realization of cheque or date of renewal, the company is required to furnish a deposit receipt to the depositor or his agent. The receipt shall

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<sup>29</sup> As per Rule 3 (6).

<sup>30</sup> As per Rule 10.

<sup>31</sup> As per Rule 3 (2).

<sup>32</sup> As per Rule 11.

<sup>33</sup> As per Rule 12.

be signed by the duly authorised officer and state the date of deposit, the name and address of the depositor, the amount of deposit, the rate of interest and the maturity date.

**(16) Register of Deposits<sup>34</sup>:**

- Every company accepting deposits shall maintain one or more separate registers for deposits accepted or renewed at its registered office.

Following particulars shall be entered separately in the case of each depositor:

- (a) name, address and PAN of the depositor/s;
  - (b) particulars of the guardian, in case of a minor;
  - (c) particulars of the nominee;
  - (d) deposit receipt number;
  - (e) date and the amount of each deposit;
  - (f) duration of the deposit and the date on which each deposit is repayable;
  - (g) rate of interest on such deposits to be payable to the depositor;
  - (h) due date for payment of interest;
  - (i) mandate and instructions for payment of interest and for non-deduction of tax at source, if any;
  - (j) date or dates on which the payment of interest shall be made;
  - <sup>35</sup>(l) particulars of security or charge created for repayment of deposits;
  - (m) any other relevant particulars.
- The entries shall be made within seven days from the date of issuance of the receipt duly authenticated by a director or secretary of the company or by any other officer authorised by the Board for this purpose.
  - The said register shall be preserved in good order for a period of not less than eight years from the financial year in which the latest entry is made in the register.

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<sup>34</sup> As per Rule 14.

<sup>35</sup> Clause (k) relating to details of deposit insurance has been omitted. [Notification No. G.S.R. 612 (E), dated 5<sup>th</sup> July, 2018]

**(17) Premature Repayment of Deposits<sup>36</sup>:** After the expiry of six months but before the actual date of maturity, if a depositor requests for premature repayment, the rate of interest payable shall be one percent less than the rate which would be payable for the period for which the deposit has actually run.

In this respect it is to be noted that the period for which the deposit has run, if it contains any part of the year which is less than six months then it shall be excluded; otherwise if that part is six months or more it shall be taken as one year.

Reduction of rate of interest is not applicable in the following cases:

- Where the deposit is prematurely repaid to comply with *Rule 3* i.e. premature repayment made in order to reduce the total amount of deposits to bring it within the permissible limits; or
- Where the deposit is prematurely repaid to provide for war risk or other related benefits to the personnel of naval, military or air forces or to their families during the period of emergency declared under Article 352 of the constitution.

**(18) Premature Closure of Deposit to Earn Higher Rate of Interest<sup>37</sup>:** In case a depositor desires to avail higher rate of interest by renewing the deposit before its actual maturity date, the company shall pay him the higher rate of interest only if the deposit is renewed for a period longer than the unexpired period of deposit.

**(19) Filing of Return of Deposits with the Registrar<sup>38</sup>:** A duly audited return of deposits in DPT-3 (containing particulars as on 31<sup>st</sup> March of every year) shall be filed with the Registrar of Companies along with requisite fee on or before the 30<sup>th</sup> June of that year.

*It is clarified by way of Explanation* that DPT-3 shall be used to include particulars of deposits or particulars of transactions not considered as deposits or both by every company (other than a Government company).

**(20) Disclosures in Financial Statements<sup>39</sup>:** A public company shall disclose in its financial statement by way of note about the money received from its directors.

As a onetime measure, every company (other than a Government company) shall file a onetime return of outstanding receipt of money or loan by a company not considered as deposits from 1<sup>st</sup> April 2014 till 31<sup>st</sup> March, 2019 in Form DPT-3 with

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<sup>36</sup> As per Rule 15.

<sup>37</sup> As per Rule 15 (Second Proviso).

<sup>38</sup> As per Rule 16.

<sup>39</sup> As per Rule 16A.



the Registrar of Companies within ninety days from 31<sup>st</sup> March, 2019 along with requisite fee.

**(21) Penal Rate of Interest<sup>40</sup>:** In case the company fails to repay deposits (both secured and unsecured) on maturity, after they are claimed, it shall pay penal rate of interest of eighteen per cent per annum for the overdue period.

**(22) No Right to Alter<sup>41</sup>:** The company has no right to alter any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract which may prove detrimental to the interest of the depositors after circular or circular in the form of advertisement is issued and deposits are accepted.

**(23) Punishment for Contravention<sup>42</sup>:** If any eligible company inviting deposits or any other person contravenes any of the 'deposit rules' for which no punishment is provided in the Act, the company and every officer-in-default shall be punishable as under:

- with fine extendable to five thousand rupees; and
- in case the contravention is a continuing one, with a further fine up to five hundred rupees for every day during which the contravention continues.

**(24) Applicability of Section 73 and 74 to Eligible Companies:** As per Rule 19, pursuant to provisions of sub-section (2) of section 76 of the Act, the provisions of sections 73 and 74 shall, *mutatis mutandis*, apply to acceptance of deposits from public by eligible companies.

Provided further that the fresh deposits by every eligible company shall have to be in accordance with the provisions of Chapter V of the Act and these rules.

**Note:** Besides Rule 19, section 76 (2) of the Act states that the provisions of Chapter V shall, *mutatis mutandis*, apply to the acceptance of deposits from public under section 76.



## 6. PUNISHMENT FOR CONTRAVENTION OF SECTION 73 OR SECTION 76

According to section 76A of the Act, in case a company accepts or invites or allows any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules

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<sup>40</sup> As per Rule 17.

<sup>41</sup> As per Rule 3 (7).

<sup>42</sup> As per Rule 21.

made thereunder or if a company fails to repay the deposit or part thereof or any interest within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73, then the following consequences will follow:

- (a) **Punishment for the company:** The company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees or twice the amount of deposit accepted by the company, whichever is lower but which may extend to ten crore rupees; and
- (b) **Punishment for officer-in-default:** Every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years and with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees.

Further, if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447 (*Punishment for fraud*).

## 7. REPAYMENT OF DEPOSITS ACCEPTED BEFORE COMMENCEMENT OF THE COMPANIES ACT, 2013

The provisions regarding repayment of deposits accepted before commencement of the Companies Act, 2013, has been dealt with in section 74. These provisions are explained as under:

- (i) **Filing of Statement of Deposits with the Registrar of Companies and Repayment Thereafter:** As per section 74 (1), in case any deposit was accepted by a company before the commencement of this Act (*i.e. before 1.4.2014*), and the amount of such deposit or any interest remains unpaid as on 1.4.2014 or becomes due at any time thereafter, the company shall take the following steps:
  - (a) *file*, within a period of 3 months from such commencement or from the date on which such payments are due, with the Registrar:
    - a statement of all the deposits accepted by the company and sums remaining unpaid on such amount with the interest payable

thereon along with the arrangements made for such repayment. This is to be done notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law; and

- (b) *repay within three years* from such commencement or on or before expiry of the period for which the deposits were accepted, whichever is earlier.

**Note 1:** *As per Explanation to Rule 19* if the company has been repaying such deposits and interest thereon without any default on due dates for the remaining period of such deposit in accordance with the terms and conditions, point (b) above shall be deemed to have been complied with.

**Note 2:** It is to be noted that renewal of any such deposits shall be done in accordance with the provisions of Chapter V and the rules made thereunder.

- (ii) **Extension of Time for Repayment of Deposits by the Tribunal:** As per section 74 (2), the Tribunal may, on an application made by the company, after considering the financial condition of the company, the amount of deposit and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.
- (iii) **Punishment for Non-Repayment of Deposits:** As per section 74 (3), if a company fails to repay the deposit or part thereof or any interest thereon within the time specified in section 74 (1) or such further extended time allowed by the Tribunal under section 74 (2), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable as under:
- **company:** with fine minimum of one crore rupees and maximum of ten crore rupees; and
  - **every officer-in-default:** with imprisonment extendable to seven years or with fine minimum of twenty-five lakh rupees and maximum of two crore rupees, or with both.

## SUMMARY

- 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 prescribed in consultation with RBI.

- Depositor means any member of the company or any other person (not being a member of the company) who has made a deposit.
- 'Eligible company' is the one which can accept deposits both from the public and its members.
- Section 73 prohibits a company to invite, accept or renew deposits from public if they are not accepted or renewed in the prescribed manner. This prohibition however shall not apply in case of certain exempted companies *i.e.*:
  - banking company;
  - non- banking financial company;
  - a housing finance company registered with NHB;
  - such other company as the Central Government may specify.
- If a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.
- The deposit repayment reserve account shall not be used by the company for any purpose other than repayment of deposits.
- In case of secured deposits, the company is required to create security of equivalent amount by way of charge on its tangible assets.
- A company shall not issue any circular or advertisement for inviting secured deposits unless it appoints one or more trustees.
- Every company accepting deposits shall maintain at its registered office one or more separate registers for deposits accepted or renewed.
- A public company shall disclose in its financial statements by way of note about the money received from its directors.
- A private company shall disclose in its financial statements by way of notes, about the money received from the directors, or relatives of directors.
- Every company shall pay a penal rate of interest of 18% p.a. for the overdue period in case of default in repayment.
- The Return of Deposits shall be filed in Form DPT-3 with the Registrar.

- In case of default in repayment, a company is punishable with fine and every *officer-in-default* shall be punishable with imprisonment and also fine. In case of willful default committed with the intention to deceive various stakeholders, he shall be liable for action under section 447.

## TEST YOUR KNOWLEDGE

### Question 1

*Enumerate the amounts which when received by a company in the ordinary course of business are not to be considered as deposits.*

### Answer

According to Rule 2 (1) (c) (xii), following amounts if received by a company in the course of, or for the purposes of, the business of the company, shall not be considered as deposits:

- (a) any amount received as an advance for the supply of goods or provision of services accounted for in any manner whatsoever to be appropriated within a period of three hundred and sixty-five days from the date of acceptance of such advance:

However, in case any advance is subject matter of any legal proceedings before any court of law, the time limit of three hundred and sixty-five days shall not apply.

- (b) any amount received as advance in connection with consideration for an immovable property under an agreement or arrangement. However, such advance is required to be adjusted against such property in accordance with the terms of agreement or arrangement;
- (c) any amount received as security deposit for the performance of the contract for supply of goods or provision of services;
- (d) any amount received as advance under long term projects for supply of capital goods except those covered under item (b) above;
- (e) any amount received 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) any amount received as an advance and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;
- (g) any amount received as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;

However, 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.

Further, 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.

### Question 2

*State the procedure to be followed by companies for acceptance of deposits from its members according to the Companies Act, 2013. What are the exemptions available to a private limited company?*

### Answer

**Acceptance of deposits by a company from its members:** As per section 73 (2) of the Companies Act, 2013, a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely—

- (a) Issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;
- (b) Filing a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular;
- (c) Depositing, on or before the thirtieth day of April each year, such sum which shall not be less than twenty per cent of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;

- (d) *Omitted*
- (e) Certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default; and
- (f) Providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.

Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement. Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

**Exemption to certain private companies:**

Clauses (a) to (c) and (e) of sub-section (2) of section 73 with respect to issue of circular, filing the copy of such circular with the Registrar, depositing of certain amount and certification as to no default committed, shall not apply to a private company:

- (A) which accepts from its members monies not exceeding one hundred per cent of aggregate of the paid-up share capital, free reserves and securities premium account; or
- (B) which is a start-up, for five years from the date of its incorporation; or
- (C) which fulfils all of the following conditions, namely:
  - (a) which is not an associate or a subsidiary company of any other company;
  - (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is lower; and
  - (c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section.

However, such a company [as referred to in clauses (A), (B) or (C)] shall file the details of monies accepted to the Registrar in the specified manner (*i.e. in Form DPT-3*).

### Question 3

*Explain the provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013 read with the 'Acceptance of Deposits' Rules, 2014.*

### Answer

**Appointment of Trustee for Depositors:** In this respect following provisions are required to be observed as mentioned in Rule 7 of the *Companies (Acceptance of Deposits) Rules, 2014*:

- One or more trustees for depositors need to be appointed by the company for creating security for the deposits.
- A written consent shall be obtained from the trustees before their appointment.
- A statement shall appear in the circular or advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company for such appointment.
- The company shall execute a deposit trust deed in Form DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.
- No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee:
  - (a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;
  - (b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
  - (c) has any material pecuniary relationship with the company;
  - (d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;
  - (e) is related to any person specified in clause (a) above.
- No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board. In case the



company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

#### Question 4

*What are the provisions relating to 'Credit Rating' which an 'eligible company' must follow if it wants to raise public deposits?*

#### Answer

The provisions relating to obtaining of 'Credit Rating' to be followed by an 'eligible company' are contained in Section 76 (1) of the Companies Act, 2013 and Rule 3 (8) of the Companies (Acceptance of Deposits) Rules, 2014 as amended from time to time. Accordingly, an 'eligible company' which desires to raise public deposits shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency. The given rating which ensures adequate safety shall be informed to the public at the time of invitation of deposits from the public. Further, the rating shall be obtained every year during the tenure of deposits.

*As per Rule 3 (8), copy of the credit rating which is being obtained at least once in a year shall be sent to the Registrar of Companies along with the Return of Deposits in Form DPT-3.*

Further, the credit rating shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits. It shall be obtained from any one of the approved credit rating agencies as specified for Non-Banking Financial Companies in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, as amended from time to time.

#### Question 5

*Discuss the following situations in the light of 'deposit provisions' as contained in the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time.*

- (i) *Samit, one of the directors of Zarr Technology Private Limited, a start-up company, requested his close friend Ritesh to lend to the company ₹ 30.00 lacs in a single tranche by way of a convertible note repayable within a period six years from the date of its issue. Advise whether it is a deposit or not.*
- (ii) *Polestar Traders Limited received a loan of ₹ 30.00 lacs from Rachna who is one of its directors. Advise whether it is a deposit or not.*

- (iii) *City Bakers Limited failed to repay deposits of ₹ 50.00 crores and interest due thereon even after the extended time granted by the Tribunal. Is the company or Swati, its officer-in-default, liable to any penalty?*
- (iv) *Shringaar Readymade Garments Limited wants to accept deposits of ₹ 50.00 lacs from its members for a tenure which is less than six months. Is it a possibility?*
- (v) *Is it in order for the Diamond Housing Finance Limited to accept and renew deposits from the public from time to time?*

**Answer**

- (i) In terms of Rule 2 (1) (c) (xvii) if a start-up company receives rupees twenty-five lakh or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person, it shall not be treated as deposit.

In the given case, Zarr Technology Private Limited, a start-up company, received ₹ 30.00 lacs from Ritesh in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. In view of Rule 2 (1) (c) (xvii) which requires a convertible note to be repayable within a period of ten years from the date of its issue, the amount of ₹ 30.00 lacs shall not be considered as deposit.

- (ii) In terms of Rule 2 (1) (c) (viii), any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration 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 further, the company shall disclose the details of money so accepted in the Board's report.

In the given case, it is assumed that Rachna was one of the directors of Polestar Traders Limited when the company received a loan of ₹ 30.00 lacs from her. Further, it is assumed that she had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by her by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report.

If these conditions are satisfied ₹ 30.00 lacs shall not be treated as deposit.

(iii) By not repaying the deposit of ₹ 50.00 crores and the interest due thereon even after the extended time granted by the Tribunal, City Bakers Limited has contravened the conditions prescribed under Section 73 of the Act. Accordingly, following penalty is leviable:

- *Punishment for the company:* City Bakers Limited shall, in addition to the payment of the amount of deposit and the interest due thereon, be punishable with fine which shall not be less than rupees one crore or twice the amount of deposit accepted by the company, whichever is lower but which may extend to rupees ten crores.
- *Punishment for officer-in-default:* Swati, being the officer-in-default, shall be punishable with imprisonment which may extend to seven years and with fine which shall not be less than rupees twenty-five lakhs but which may extend to rupees two crores.

Further, if it is proved that Swati had contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, she will be liable for action under section 447 (*Punishment for fraud*).

(iv) According to Rule 3 (1), a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months.

*However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:*

- (i) such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and
- (ii) such deposits are repayable only on or after three months from the date of such deposits or renewal.

In the given case of Shringaar Readymade Garments Limited, it wants to accept deposits of ₹ 50.00 lacs from its members for a tenure which is less than six months. It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid-up share capital, free reserves and securities premium account and further,

such deposits shall be repayable only on or after three months from the date of such deposits.

- (v) According to section 73 (1) of the Act, no company can accept or renew deposits from public unless it follows the manner provided under Chapter V of the Act (*contains provisions regarding acceptance of deposits by companies*) for acceptance or renewal of deposits from public. However, Proviso to Section 73 (1) states that such prohibition with respect to the acceptance or renewal of deposit from public, *inter-alia*, shall not apply to a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987.

In the given case, it is assumed that Diamond Housing Finance Limited is registered with the National Housing Bank and therefore the prohibition contained in section 73 (1) of the Act with respect to the acceptance renewal of deposit from public shall not apply to it. In other words, it being an exempted company, can accept deposits from the public from time to time without following the prescribed manner.

### Question 6

*ABC Limited having a net worth of ₹ 120 crores wants to accept deposit from its members. The directors of the company have approached you to advise them as to what special care has to be taken while accepting such deposit from the members in case their company falls within the category of an 'eligible company'.*

### Answer

According to section 76 (1) of the Act, an "eligible company" means a public company, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits.

However, an 'eligible company', which is accepting deposits within the limits specified under section 180 (1) (c), may accept deposits by means of an ordinary resolution.

According to Rule 4 (a), an 'eligible company' shall accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members does not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

ABC Limited is having a net worth of 120 crore rupees. Hence, it falls in the category of 'eligible company'.

Thus, ABC Limited has to ensure that acceptance of deposits from its members together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from the members, in no case, exceeds 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

### Question 7

*Define the term 'deposit' under the provisions of the Companies Act, 2013 and comment quoting relevant provisions whether the following amounts received by a company will be considered as deposits or not:*

- (i) ₹ 5,00,000 raised by Rishi Confectionaries Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India.
- (ii) ₹ 2,00,000 received by Raja Yarns Limited from its employee Mr. T, who draws an annual salary of ₹ 1,50,000, as a non-interest bearing security deposit under a contract of employment.
- (iii) ₹ 3,00,000 received by a private company from one of the relatives of a Director. The said relative has furnished a declaration that the amount was received by him from his mother as a gift.

### Answer

**Deposit:** According to Section 2 (31) of the Companies Act, 2013, the term '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 (1) (c) of the *Companies (Acceptance of Deposit) Rules, 2014* states various amounts received by a company which will not be considered as deposits. In terms of this Rule the answers to the given situations shall be as under:

- (i) ₹ 5,00,000 raised by Rishi Confectionaries Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub-clause (ixa) of Rule 2 (1) (c).

- (ii) ₹2,00,000 received by Raja Yarns Limited from its employee Mr. T, who draws an annual salary of ₹1,50,000, as a non-interest bearing security deposit under a contract of employment will be considered as deposit in terms of sub-clause (x) of Rule 2 (1) (c), for the amount received is more than his annual salary of ₹1,50,000.
- (iii) ₹3,00,000 received by a private company from one of the relatives of a Director. When the relative furnishes a declaration that the said amount was received by him from his mother as a gift, then it will not be considered as deposit in terms of sub-clause (viii) of Rule 2 (1) (c). In fact, the preceding sub-clause requires that any amount given by a relative of a director of a private company shall not be considered as deposit if the relative furnishes 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. Thus, the amount given to the private company out of gifted money by one of the relatives of a director is not a 'deposit'.

As an additional requirement, the company shall disclose the details of money so accepted in the Board's report.

### Question 8

*State, with reasons, whether the following statements are 'True or False'?*

- (i) *ABC Private Limited may accept deposits from its members to the extent of ₹50.00 lakhs, if the aggregate of its paid-up capital, free reserves and security premium account is ₹50.00 lakhs.*
- (ii) *A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013, cannot accept deposits from public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account.*

### Answer

- (i) As per the provisions of Section 73 (2) of the Companies Act, 2013 read with Rule 3 (3) of the *Companies (Acceptance of Deposits) Rules, 2014*, as amended from time to time, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding thirty five per cent of the aggregate of the paid-up share capital, free reserves and securities premium account of the company. It is provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid-up share capital, free reserves and securities premium account

and such company shall file the details of monies so accepted to the Registrar in Form DPT-3.

Therefore, the given statement where ABC Private Limited is accepting deposits from its members to the extent of ₹ 50.00 lakh is 'true'.

- (ii)** As per Rule 3 (5) of the Companies (Acceptance of Deposits) Rules 2014, a Government Company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent of the aggregate of its paid-up share capital, free reserves and securities premium account.

Therefore, the given statement where the limit of 25% has been stated for acceptance of deposits is 'false'.