



Ministry of Corporate Affairs  
Government of India  
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## ACCEPTANCE OF DEPOSITS



LEAD PARTNER INSTITUTES



# ACCEPTANCE OF DEPOSITS

## Introduction

Companies aim to secure finance by different cost-effective methods to suit their financial requirements. Companies have always been attracted towards financing through deposits and, at times, problems have arisen in the context of such deposits. In order to control the malpractices, the Companies Act, 2013 has introduced strict provisions under the deposit regime.

Sections 73 to 76 of the Companies Act, 2013 read with the Companies (Acceptance of Deposits) Rules, 2014 regulate the invitation, acceptance and repayment of deposits by Companies.

## Applicability

The provisions under Sections 73 to 76 of the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014 shall apply to all companies except -

- a banking company and
- a non-banking financial company as defined in the Reserve Bank of India Act, 1934 and
- a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 2013; and
- such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

[Section 73(1) read with Rule 1(3)]



## What is Deposit?

According to the Section 2(31) of the Act read with Rule 2(c) of Companies (Acceptance of Deposits) Rules, 2014 “deposit” includes any receipt of money by way of deposit or loan or in any other form by a company, but **does not include-**

- any amount received from the Central Government or a State Government, or any amount received from any other source whose repayment is guaranteed by the Central Government or a State Government or any amount received from a local authority, or any amount received from a statutory authority.
- any amount received from foreign Governments, foreign/international banks, multilateral financial institutions, foreign government owned development financial institutions, foreign export credit agencies, foreign collaborators, foreign bodies corporate and foreign citizens, foreign authorities or persons resident outside India subject to the provisions of Foreign Exchange Management Act.
- any amount received as a loan or facility from any banking company or from the State Bank of India or any of its subsidiary banks or from a banking institution notified by the Central Government.
- any amount received as a loan or financial assistance from Public Financial Institutions, regional financial institutions, Insurance Companies or Scheduled Banks.
- any amount received against issue of commercial paper or any other instrument issued in accordance with the guidelines or notification issued by the Reserve Bank of India.
- any amount received by a company from any other company.
- 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.

- (viii) any amount received from a director of the company who furnishes a declaration in writing at the time of giving the money 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.
- (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 excluding intangible assets of the company or bonds/ debentures compulsorily convertible into shares of the company within five years. 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.
- (x) Interest free security deposit from an employee not exceeding his annual salary.
- (xi) Interest free 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 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 acceptance of such advance.  
  
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 or for supply of capital goods except those covered under item (b) above.

If the amount received under (a) (b) and (d) above becomes refundable (with or without interest) because the company accepting the money does not have necessary permission or approval to deal in the goods or properties or services for which the money is taken, the amount received shall be deemed to be a Deposit.

- (xiii) any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to fulfillment of the following conditions:-
  - (a) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance; and
  - (b) the loan is provided by the promoters themselves or by their relatives or by both; and
  - (c) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter.
- (xiv) any amount accepted by a Nidhi Company.

**For this purposes, any amount.-**

- (a) received by the company, whether in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, or
- (b) any additional contributions, over and above the amount under item (a) above, made by the company as part of such promise or offer, shall be treated as a deposit.

**Now, let us see following examples to understand deposits -**

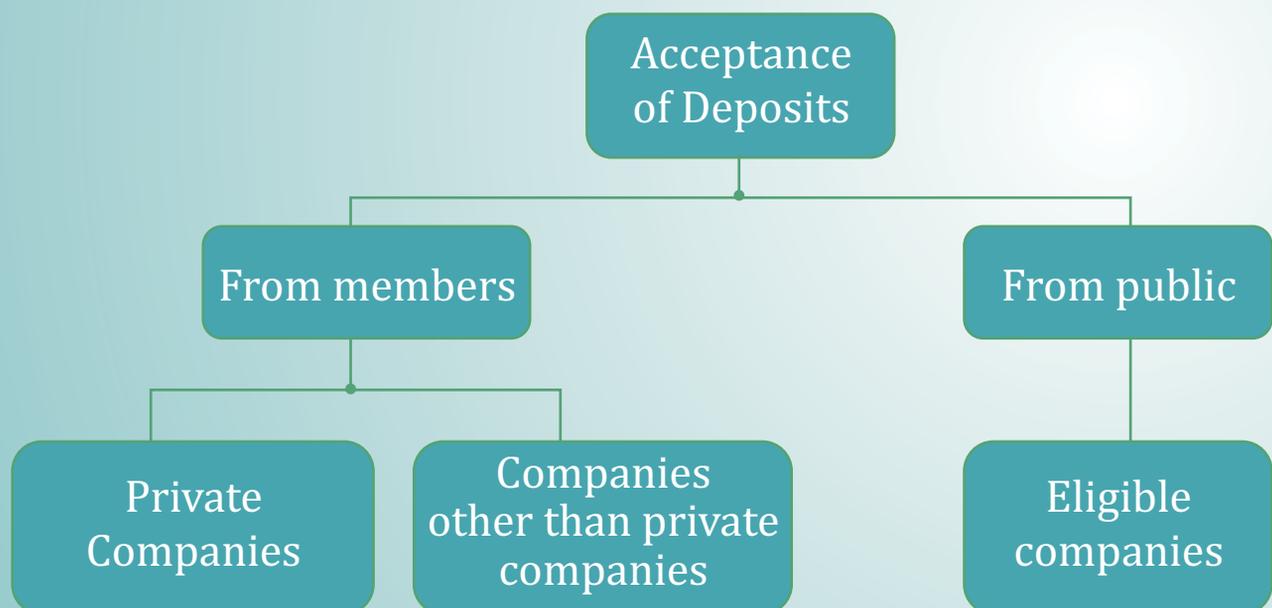
- (a) **Rs. 5 Crore from Government Agency, Financial institutions, Banks or by way of Commercial Paper:** The said amount is to be received or borrowed from any government agency or Financial Institution or Bank or by way of Commercial paper is not covered under deposits.
- (b) **Rs. 50 Lakhs by way of Share Application money:** Company must allot share within 60

days of receipt of share application money or it must refund the share application money to the subscribers within 15 days from the date of completion of sixty days, otherwise, such amount shall be treated as a deposit.

- (c) **Rs. 50 Lakhs from one of its director by way of loan:** Company can receive loan from its director provided director gives an undertaking to the company that the loan given is from own funds and not from borrowed money.
- (d) **Rs. 50 Lakhs from issue of bonds and debentures:** Company can raise money by way of bonds and debentures provided amount is secured by a first charge against property; or such bonds or debentures should be compulsorily convertible into shares within 5 years; otherwise it would come under the definition of deposits.
- (e) **Rs. 50 Lakhs by means of inter corporate deposit:** Inter corporate deposits are not covered in the definition of deposits.
- (f) **Rs. 25 Lakhs from its employees:** If amount received from employee doesn't exceed their total annual salary; it would not come under the definition of deposit.
- (g) **Rs. 50 Lakhs as business advance from customers:** Advance can be raised from customers however; such advance should be

adjusted within 365 days from the date of receipt of advance. Otherwise it would be termed as deposits.

- (h) **Rs. 50 Lakhs as advance against sale of its property:** Such amount should be adjusted against the property only; otherwise it would be termed as deposits.
- (I) **Rs. 25 Lakhs as security deposit:** Security deposits are out of the ambit of definition of deposits. It is suggested to accept security deposits under specific agreement.
- (j) **Rs. 50 Lakhs from its promoter or their relative:** 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 is not deposits subject to fulfilment of the following conditions, namely:
  - the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance;
  - the loan is provided by the promoters themselves or by their relatives or by both; and
  - the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter.





### Acceptance of deposit from members

Section 73(2) states that a company may 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.

### Exemption for Private companies

The MCA vide notification no. G.S.R. 464 dated 5th June, 2015 has allowed private companies to accept deposits 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 to the Registrar in such manner as may be specified without complying with Section 73(2) (a) to (e). Thus a private company will have to follow only the condition mentioned in Section 73(2) (f).

### Who can accept Deposit from Public?

Eligible companies, may accept deposits from persons other than its members

- subject to the fulfillment of all requirements provided in Section 73(2);
- subject to such rules as may be prescribed in consultation with the Reserve Bank of India; and

such a 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 for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits. [First Proviso to Section 76(1)]

Every company accepting secured deposits from the

public shall within 30 days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favor of the deposit holders in accordance with such rules as may be prescribed. [Second Proviso to Section 76(1)]

Section 76(2) states that all the provisions for acceptance of deposits shall, *mutatis mutandis*, apply to the acceptance of deposits from public under this section.

### Who is an Eligible Company?

As per Rule 2(1)(e) of Companies (Acceptance of Deposits) Rules, 2014, "Eligible company" means a public company having a net worth of not less than 100 crore rupees or a turnover of not less than 500 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 and where applicable, with the Reserve Bank of India before making any invitation to the Public for acceptance of Deposits.

### Terms and conditions for acceptance of deposits [Rule 3]

**1) Time period:** No company under section 73(2) and no eligible company shall accept or renew any deposit, whether secured or unsecured, which is repayable on demand or upon receiving a notice, within a period of less than six months or more than thirty-six months from the date of acceptance or renewal of such deposit.

**2) Joint names:** Deposits may be accepted in joint names not exceeding three, with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor", if the depositors desire so. [Rule 3(2)]

### 3) Acceptance Limit for Deposits:

(i) No company (except private company) referred to in section 73(2) shall accept or renew any deposits from its Members, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds 25% of the aggregate of the paid-up share capital and free reserves of the company. [Rule 3(3)]

(ii) No Eligible company shall accept or renew

- a) 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 exceeds 10% of the aggregate of the paid-up share capital and free reserves of the company;
- b) Any other deposit, if the amount of such deposit together with the amount of such other deposits, other than the deposit referred to in (a), outstanding on the date of acceptance or renewal exceeds 25% aggregate of the paid-up share capital and free reserve of the company. [Rule 3(4)]

(iii) No Government company eligible to accept deposits under section 76 shall accept or renew any deposit, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds 35% of the aggregate of its paid up share capital and free reserves of the company. [Rule 3(5)]

**4) Rate of interest and brokerage:** No company under section 73(2) or any Eligible company shall invite or accept or renew any deposits in any form, carrying a rate of interest or pay brokerage thereon at a rate exceeding the maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by non-banking financial companies. [Rule 3(6)]

**5) Alteration of terms and conditions:** The Company shall not reserve to itself either directly or

indirectly a right to alter, to the prejudice or disadvantage of the depositor, any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract after circular or circular in the form of advertisement is issued and deposits are accepted. [Rule 3(7)]

**6) Credit Rating:** Every Eligible Company shall obtain, at least once in a year, credit rating for deposits accepted by it and a copy of the rating shall be sent to the Registrar of Companies along with the return of deposits in Form DPT-3. [Rule 3(8)]

### Creation of Security [Rule 6]

- 1) Every company referred to in section 73(2) including Private Company and every eligible company inviting secured deposits shall provide for security by way of a charge on its assets as referred to in Schedule III of the Act excluding intangible assets of the company for the due repayment of the amount of deposit and interest thereon for an amount which shall not be less than the amount remaining unsecured by the deposit insurance.
- 2) The amount of deposits and the interest payable secured by way of a charge on its assets referred in Schedule III of the Act excluding intangible assets shall not exceed the market value of such assets as assessed by a registered valuer.
- 3) The total value of the security either by way of deposit insurance or by way of charge or by both shall not be less than the amount of deposits accepted and the interest payable thereon.
- 4) Valuation of stocks, shares, debentures, securities etc., shall be conducted by an independent merchant banker who is registered with the SEBI or an independent chartered accountant in practice having a minimum experience of ten years.
- 5) The security (not being in the nature of a pledge) for deposits shall be created in favour of a trustee for depositors on:





- (a) specific movable property of the company, or
- (b) specific immovable property of the company wherever situated, or any interest therein. [Rule 6(2)]

#### Trustee for Depositors

- **Deposit trust deed:** The Company shall execute a deposit trust deed in Form No. DPT-2 at least 7 days before issuing the circular or circular in the form of advertisement. [Rule 7(2)]
- **Duties of deposit trustees:** It shall be the duty of every deposit trustee to-
  - a) ensure that the assets of the company on which charge is created together with the amount of deposit insurance are sufficient to cover the repayment of the principal amount of secured deposits outstanding and interest accrued thereon;
  - b) satisfy himself that the circular or advertisement inviting deposits does not contain any information which is inconsistent with the terms of the deposit scheme or with the trust deed and is in compliance with the rules and provisions of the Act;
  - c) ensure that the company does not commit any breach of covenants and provisions of the trust deed;
  - d) take such reasonable steps as may be necessary to procure a remedy for any breach of covenants of the trust deed or the terms of invitation of deposits;
  - e) take steps to call a meeting of the holders of depositors as and when such meeting is required to be held;

- f) supervise the implementation of the conditions regarding creation of security for deposits and the terms of deposit insurance;
- g) do such acts as are necessary in the event the security becomes enforceable;
- h) carry out such acts as are necessary for the protection of the interest of depositors and to resolve their grievances. [Rule 8]

#### Application for Deposits by Depositors

- Every company shall accept, or renew any deposit, whether secured or unsecured, only if an application containing a declaration 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, is submitted by the intending depositor for the acceptance of such deposit. [Rule 10]
- A depositor may, at any time, nominate any person to whom his deposits shall vest in the event of his death and the provisions of section 72 shall, as far as may be, apply to the nomination made under this Rule [Rule 11].

#### 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)]
- When a company fails to repay the deposit or part thereof or any interest thereon under sub-section (3), the depositor concerned may apply to the Tribunal/CLB 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/CLB may deem fit. [Section 73(4)]

### Deposit Repayment Reserve Account

- Every company referred in section 73(2) (except Private Company) or any Eligible Company inviting accepting deposits from members has to deposit before the 30th day of April of each year, a amount of not less than 15% of its deposits maturing during a financial year and the financial year next following, in a scheduled bank in a separate bank account to be called as deposit repayment reserve account. [Section 73(2)(c) and Rule 13]
- This deposit repayment reserve account shall not be used by the company for any purpose other than repayment of deposits. [Section 73(5)]
- The amount remaining deposited shall not at any time fall below 15% of the amount of deposits maturing, until the end of the current financial year and the next financial year. [Rule 13]

### Registers of Deposits [Rule 14]

- 1) Every company accepting deposits shall, from the date of such acceptance, keep at its registered office one or more separate registers for deposits accepted/renewed, in which there shall be entered separately in the case of each depositor the following particulars, namely:
  - (a) Name, address and PAN of the depositor/s;
  - (b) Particulars of guardian, in case of a minor;
  - (c) Particulars of the nominee;
  - (d) Deposit receipt number;
  - (e) Date and amount of each deposit;
  - (f) Duration of the deposit and the date on which each deposit is repayable;
  - (g) Rate of interest;
  - (h) Due date(s) 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 payment of interest will be made;

- (k) Details of deposit insurance including extent of deposit insurance;
  - (l) Particulars of other security/ charge created;
  - (m) Any other particulars relating to the deposit;
- 2) Entries in the register shall be made within 7 days from the date of issuance of the deposit receipt and such entries shall be authenticated by a director or secretary of the company or by any other officer authorized by the Board for this purpose.
  - 3) The registers shall be preserved in good order for a period of not less than 8 years from the financial year in which the latest entry is made in the register.

### Return of deposits to be filed with the Registrar [Rule 16]

Every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3 along with the fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company.

### Penal rate of interest [Rule 17]

Every company shall pay a penal rate of interest of 18% per annum for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.

### Forms to be filed

- 1) DPT 1 - Circular or circular in the form of advertisement inviting deposits
- 2) DPT 2 - Deposit Trust Deed
- 3) DPT 3 - Return of Deposits
- 4) DPT 4 - Statement regarding deposits existing on the commencement of the Act

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