

Chapter V - Acceptance of deposits

'डीएसके'ला घरघर

घरगाहक, ठेवीदार हैराण; दीड वर्षात मुद्दल आणि ठेवींवरील व्याज थकविले

प्रतिनिधी, पुणे

मृतमधुकदमसंची फरफट

या कंपनीत सुमारे आठ हजार जणांनी ठेव म्हणून साठेघारचे कोटीच्या ठेवी ठेवल्या आहेत. त्यांमधील एकूण मिलागरी बंद झाले आहे. ठेव परत मिळवण्यासाठी जे ठेवीदार प्रयत्न करत आहेत किंवा मुदत पूर्ण झालेल्या ठेवीची रक्कम कंपनीकडे मागत आहेत त्यांना रक्कम दिली जात नसल्याचा अनुभव आहे. काही ठेवीदारांना दिलेले घनावेडा न बदलल्यामुळे परत गेले आहेत. शासिक बटुगळ्या ठेवीदार पुण्यातील अनुभूत घ्यात ज्येष्ठ सार्वकाराची संस्था मोठी आहे.

कार म्हणतात डीएसके ?

शेकडो मृतमधुकदम ठेवीदार ठेवी परत मिळवण्यात, ठेवींवरील व्याज मिळवणे म्हणून डीएसकेकडे पाठवून आले आहेत. या भेटीत त्यांनी त्यांची मालमत्ता हजारी कोटीची असल्याचे दाखविले आहे. तसेच ते बाजारवातील आणि बांधकाम साधनसाधनील गॅरीचे कारण सांगत असून ते परिस्थितीची सुधारण्यासाठी आणखी काही घातकवाची मागत असल्याचे सांगते.

सोमव्या यांचा आरोप

डीएसके युएन १२०० कोटी रुपयांचा घोटाळा केल्याचा आरोप भाजपचे खासदार मिर्जा उमिदव्या यांनी केला आहे. याबाबतची तक्रार स्थानीय नगरपाली, अर्थमंत्रीसय आणि अखिल मिर्जाहमिची आयुक्तकडे केली आहे. डीएसकेची २०१५चासुल कंपनीतील ७५० जानेवारीचा अखिल मिर्जाहमिचीची जमा केला नसल्याचा आरोप सोमव्या यांनी दिवांडरघरान केला आहे.

असो घर, पैस नंतर या सोमनेत घर घेणाऱ्यांनीही तदा टक्के रक्कम आधी भरूनकारे कराव्याचे आणि घराबा बांध देण्याचे हजे डीएसकेनी घराबादे असे प्रकृता होती. या सोमनेही कारनेत घर घेणाऱ्यांचे हजे बाबेले करीत आणि घ्यायुजे विविध संस्थांनी घर खरीद केलेल्यांचा घारे नोंदिसा फटघुन वसुलीघारी तगावा साधला आहे, त्यामुळे घरे नोंदवलेले झाडाही सांगत आहेत. संघर्षकेचे ठेवीदार असे घरे नोंदवलेले साहज कंपनीच्या काळील्या, तसेच संस्था, संघटकेकडे वेळपटे घारत आहेत. ठेवीदारांनी संघटनेची स्थापन केली असून वेगवेगळ्या मदाच्या बैठका घुन आहेत. मुताबेले मुद्दल घरात मिळवण्याचे प्रयत्न संघटनेच्या माध्यमातून केले जात आहेत. दरम्यान, या ठेवीच्या परतवण्याबाबत कंपनीचे संरण काय आहे याबाबत डीएसकेनी तपके साधण्याचा प्रयत्न केला असता त्यांचा मोबदल बंद असल्याचा संदेश दिसा जात होता.

‘घराबा घराबा देवारी घ्यायचे’, ‘आवी पर, पैस नंतर’ असे आकर्षक जाहिराती प्रकृत घरे, विकण्याचा पुण्यातील ‘डीएसके’कडे मुताबतक केलेले आठ हजार ठेवीदार आणि घरांची नोंदणी केलेले ठेवीदारी हाहाक हेराण झाले आहेत. त्यांनी हो, एम. कुलाकर्णी यांच्याकडे गुंतवणुक केली त्यांची वेध घरात मिळवणे दुर्लभ, त्यांचा साधण ठेवीबाबते ज्येष्ठानी वेळक दीड वर्षीन मिळविले नाही, तसेच ज्यांनी घराबादे पैस भरून नोंदणी केले आहे त्यांचा परतही मिळवत नाही आणि वेळक्या कार्याचे हजे घेत घुन, असा काहीन घराबाबाक साधवले आहेत.

‘मुताबतक’ असलेल्या मुताबुचे वेधे ‘डीएसके’ हीम मिनी’ या संघर वेकडेबाबत अतिशय महत्त्वाकांक्षी प्रकृता देवाराबाबती जाहिर केला आहे. या प्रकृता अतिशय वेदारी झाली आहे. वेकडेबाबत हो, एम. कुलाकर्णी हेराबाबात मिर्जाहमिची हो त्यांची कंपनी अडवलीत आली असून एवढी अनेक मुताबतगरी घरी बाबाही आहेत.

LIST OF LIABILITIES

Secured Loans: ₹120.8 billion

- Secured Debentures: ₹97.3 bn
- Secured Term Loans: ₹23.46 bn

Unsecured loan: ₹38.5 billion

- Inter corporate deposits: ₹14 bn
- Commercial Paper: ₹20 bn
- Other Unsecured: ₹2 bn

Equity: Shareholders Fund: ₹69.5 billion

DHFL

MINT GRAPHITI

SMALL SAVERS, BIG WORRIES

DHFL's fixed deposit holders, who do not have recourse to the debt resolution tribunals like bondholders, are among the worst affected.

Fiscal Year	Total outstanding deposits (in ₹ crore)
FY13	1,923.70
FY14	2,595.50
FY15	3,728.30
FY16	5,042.67
FY17	6,768.65
FY18	10,166.72
FY19	6,915.55

- RESOLUTION PLAN** proposed a 10-year payout to depositors with zero interest.
- FD HOLDERS**, many of them retirees, were among the first in line to be paid back.
- ON 21 May**, DHFL stopped accepting public deposits and premature withdrawals.

Retrospection

Section 73	Prohibition on acceptance of deposits from public
Section 74	Repayment of deposits accepted before commencement of the Act
Section 75	Damages for fraud
Section 76	Acceptance of deposit from public by certain companies
Section 76A	Punishment for contravention of Sections 73 to 76

Companies (Acceptance of Deposits) Rule, 2014

Rule 2(1)(C)	Definition of Deposit
Rule 3	Terms and conditions of acceptance of deposits
Rule 4	Form & particulars of advertisements or circulars
Rule 14	Register of deposits
Rule 16	Return of deposit
Rule 16A	Disclosure in the financial statement

Section 73 (S 58A) Prohibition on acceptance

- Companies are prohibited to invite, accept or renew deposit except observing provisions.
- Banks, NBFCs, HFCs are excluded.
- Company may accept deposits from members, after passing resolution in general meeting, subject to following conditions:
 - Issuance of circular including statement showing financial position, credit rating, no. of depositors, amount due on previous deposits
 - Filing DPT-1 with ROC, within 30 days before issue of circular
 - Keeping DRRA ready 20% of maturing deposits during the following F.Y. in a separate a/c of scheduled bank, on or before 30th April
 - Certifying no default in repayment of deposit or interest
 - Providing security and create charge

Section 73 (...continued)

- Every accepted deposit shall be repaid with interest, as per the terms and conditions of the agreement.
- Aggrieved depositor may apply to NCLT for payment of sum due or loss/ damages incurred.
- DRRA shall be only used for repayment of deposits.

Section 74 Repayment of earlier deposits

- Where deposits are accepted before commencement of the act and which become due thereafter, the company shall –
 - File DPT-4 with ROC within 3 months from 01/04/2014 stating clearly unpaid amount, arrangements for repayment and terms & conditions.
 - Repay within 3 years from 01/04/2014 or the maturity period of accepted deposit, whichever is earlier.
- Renewal of such deposit shall be strictly as per the new law.
- NCLT may extend a reasonable time for repayment of deposit, if applied by the company.
- Penal consequences: Fine to Company – Rs. 1 crore to Rs. 10 crores, Officer in default – Rs. 25 lacs to Rs. 2 crores or imprisonment up to 7 years

Section 75 Damages for fraud

- Referring section 74, if it is proved that the deposits were accepted with malicious intent to defraud depositors or fraudulent purpose every officer in default shall be personally liable without limitation for all the losses or damages of depositors.
- Action may be also initiated u/s 447.
- Such a suit, legal proceeding or class action suit may be initiated by the aggrieved person, group/ association of persons.

Section 76 Acceptance of deposits from public

- In spite of prohibitions contained in Section 73, public company having net worth of at least Rs. 100 crores or turnover of at least Rs. 500 crores may accept deposits from public, subject to –
 - Prior consent by special resolution (ordinary resolution if company is following Section 180(1)(c) in GM and
 - File with the ROC such invitation
- Such company has to follow provisions of Section 73(2)
- Company shall obtain rating ensuring adequate safety at the time of invitation and every year.
- Charge for the total amount of deposit in favour of trustee shall be created on specific movable/ immovable property.

Section 76A Punishment for contravention

- Penal consequences for
 - Contravention of manner or conditions u/s 73 or 76 or deposit rules
 - Fails to repay deposit or interest due within time or such further time allowed by NCLT
- Company – Rs. 1 crore or twice the amount of deposit whichever is lower, up to Rs. 10 crores
- Officer in default – Rs. 25 lacs to Rs. 2 crores AND imprisonment up to 7 years. Action may be also initiated u/s 447 if it is proved that OI has knowingly and willfully acted to deceive the company, shareholders, depositors, creditors or tax authorities.

Rule 2(1)(d) – Definition of Depositor

- Depositor means –
 - Any *member who has made a deposit u/s 73(2)
 - Any person who has made a deposit with a public company u/s 76

*Section 2(55) states member means –

- Subscriber to the memorandum who agrees to become member
- Every other person who agrees in writing to become member and whose name is entered in ROM
- Shareholder of company whose name is entered as beneficial owner in the records of depository.

Section 2(31) Definition of deposit

- Deposit includes any receipt of money
 - by way of deposit or
 - Loan or
 - **In any other form**

By the company,

But does not include such categories of amount as may be prescribed in consultation with the RBI.

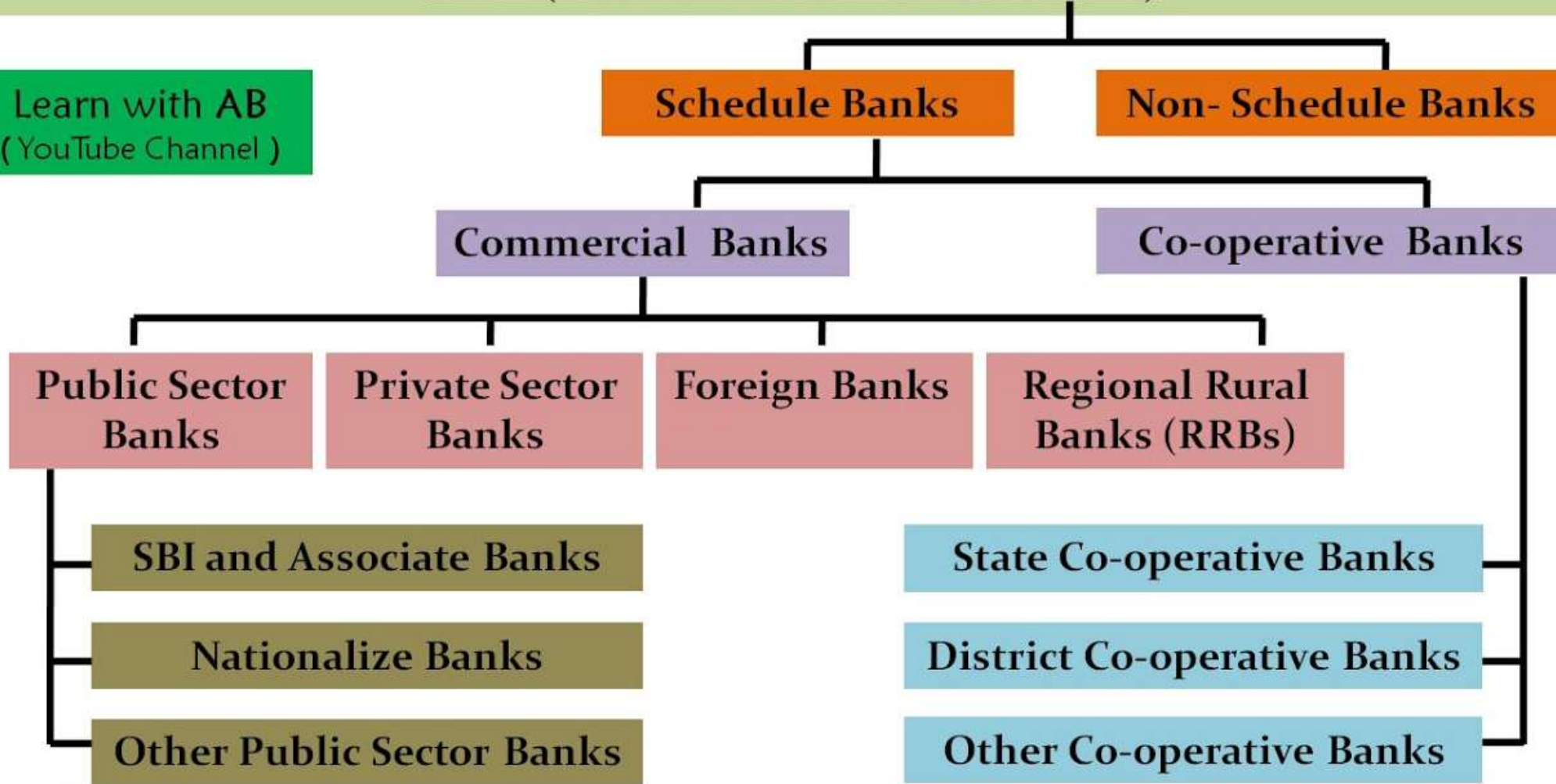
Rule 2(1)(c) – Deposit excludes

- Amount received from CG, SG, statutory authority
- Amount received from foreign govt., international banks, multilateral financial institutions (ADB, IFC, CDC), foreign export credit agencies, foreign collaborators, foreign bodies corporate, foreign citizens, NRIs, foreign authorities subject to FEMA regulations
- Amount received as loan/ financial assistance from PFC, RFI, insurance companies, [scheduled banks](#)
- Amount received against issue of [commercial paper](#) or instruments
- Amount received by a company from any other company



RBI (Reserve Bank Of India)

Learn with AB
(YouTube Channel)



COMMERCIAL PAPER

- ✓ Unsecured money market instrument
- ✓ Introduced in India in 1990
- ✓ Governed by guidelines of FIMMDA in consultation with RBI
- ✓ Can be issued by Corporates, Primary Dealers and All-India FIs
- ✓ Minimum Amount: Rs 5 lakh or multiples thereof
Maximum Amount: No specific limit (Governed by guidelines)
- ✓ Maturity Period: Minimum - 7 days, Maximum - 1 year
- ✓ Can be issued in dematerialised form

commercial papers

A short term unsecured negotiable instrument consisting of promissory notes

With a fixed maturity

Generally issued by companies as a means of raising short term debt.

Issued at a discounted face value

The issuer promises a fixed amount at a future date but pledges no assets



Deposit excludes

- Subscription money pending allotment beyond (60 + 15) days. Amount adjusted for any other purpose shall not be treated as refund.
- Amount received from director or relative of director of private company. Declaration about owned funds and disclosure in Board's report are mandatory.
- Amount raised by secured debentures/ bonds, security being 1st or pari passu charge on assets in Schedule III. Intangible assets are excluded. Amount raised shall not be more than MV assessed by RV.
- Amount raised by listed NCDs without security
- Amount raised from employee up to his annual salary as per contract of employment and as non-interest bearing security deposit.

Deposit excludes

- Non interest bearing amount received and held in trust
- Amount received in the course of business as –
 - *Advance for supply of goods or provision of service up to 365 days
 - *Advance received in connection with consideration of immovable property under agreement/ arrangement
 - Security deposit for the performance of contract for SOG or POS
 - *Advance received under long term projects for supply of capital goods
 - Advance as consideration for providing future services under the warranty/ maintenance contract with tenure of common business practice period or 5 years, whichever is lower
 - Advance received/ allowed by sectoral regulator
 - Advance for subscription towards print/ electronic publication

Deposit excludes

*If the receiving company could not seek the requisite permission/ approval and hence amount becomes refundable (with or without interest); then such receipt becomes deposit on expiry of 15 days of the due date of refund.

- Amount brought in by promoters or their relatives as unsecured loan complying stipulation of lending financial institution/ bank.
Exemption subsists till the loan is repaid.
- Amount accepted by a Nidhi Company
- Subscription amount of Chit received by a Chit Fund Company
- Amount received under collective investment scheme complying SEBI regulations



Section 2(77) – Definition of Relative

Anyone is related to another if they are

- Members of HUF
- Husband & Wife
- Father (including step-father)
- Mother (including step-mother)
- Son (including step-son)
- Son's wife
- Daughter
- Daughter's husband
- Brother (including step-brother)
- Sister (including step-sister)

Deemed relation as per Rule 2(4) of Companies
(Specification of Definition Details) Rules 2014



Deposit excludes

- Amount of Rs. 25 lacs or more received by a [start up](#) company, in a single tranche from a person. It should be for a convertible note into equity shares or repayable within 10 years from the date of issue.

An entity shall be considered as a Startup:

1. If it is incorporated as a private limited company or registered as a partnership firm or a limited liability partnership in India
2. Up to ten years from the date of its incorporation/registration
3. If its turnover for any of the financial years since incorporation/registration has not exceeded INR 100 Crores
4. If it is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation

Note: An entity formed by splitting up or reconstruction of a business already in existence shall not be considered a 'Startup'.

Startup India

Start Up India for a Prosperous India



New Incentives for StartUps

- Self certification compliance
- No inspection for first 3 years
- No income tax on profits for first 3 years
- Mobile app for start-up registration in one day
- Startup India hub as single point contact
- Exemption from capital gains tax on personal property sold to invest in startup
- 80% rebate on patent filing fee
- Bankruptcy Bill 2015 - 90 days to exit business
- 500 tinkering labs
- 35 public-private incubators
- 31 innovation centres at national institute
- Dedicated fund of Rs. 10,000 Cr to promote startups
- Credit guarantee scheme for loans
- 5 new bio clusters and 7 new research parks
- Patent regime and IPR to be simplified

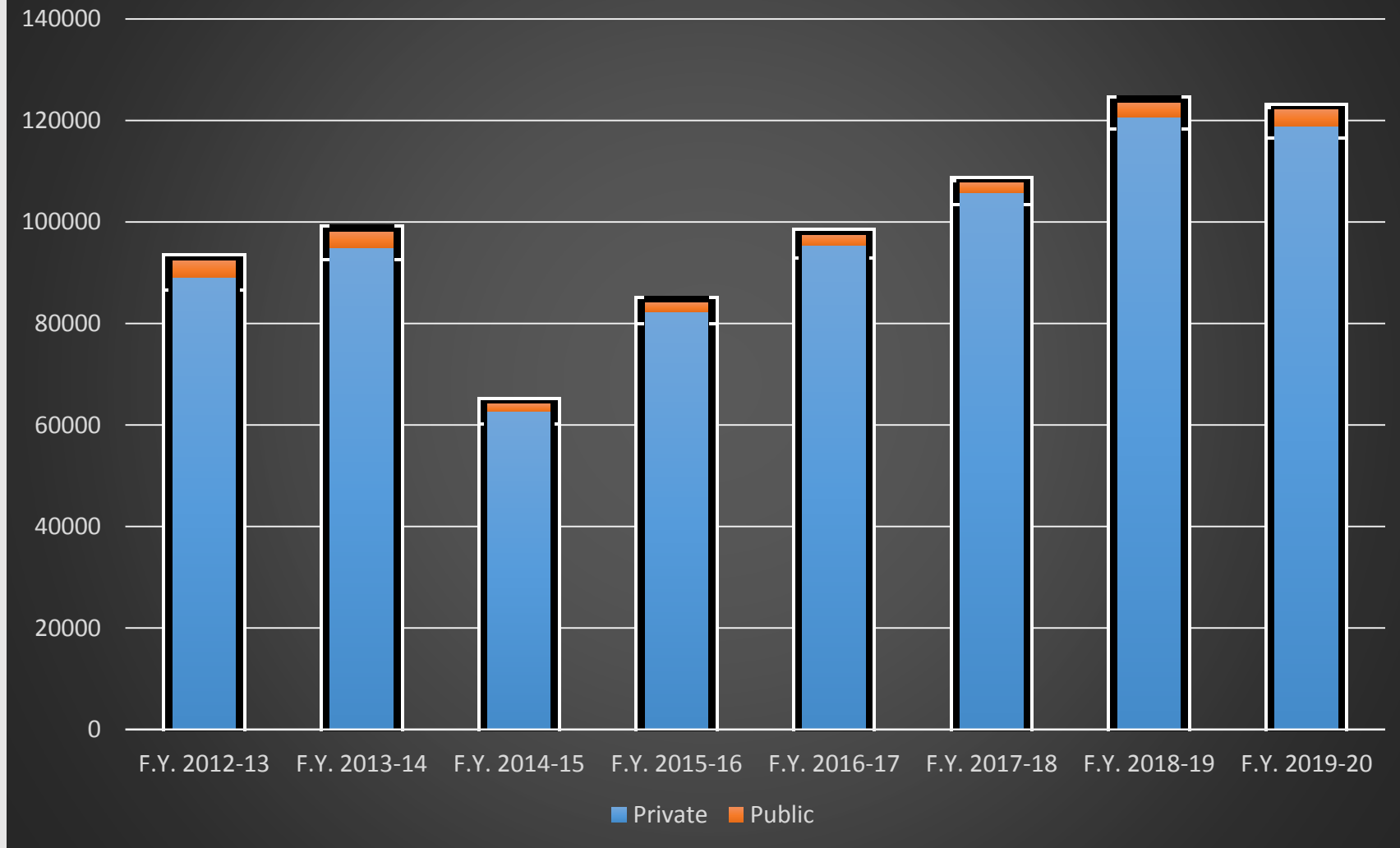
#StartupIndia



Deposit excludes

- Amount received from Alternate Investment Fund, Domestic Venture Capital Fund, Infrastructure Investment Trust, Real Estate Investment Trust and SEBI registered Mutual Funds

Statistics of private & public companies



Source: Ministry of corporate affairs

Rule 3 – Terms & Conditions of acceptance

- Company shall not accept or renew deposit, repayable on demand or for period less than 6 months or more than 36 months from acceptance/ renewal
- Such short term deposits for period less than 6 months may be maximum 10% of the total of paid up capital + FR + SP
- Deposits repayable for a period less than 3 months from the date of deposit or renewal are prohibited
- Deposits could be jointly, EOS. 3 joint names are allowed.
- U/s 73(2) company shall not accept or renew deposits exceeding 35% of the total of paid up capital + FR + SP. IFSC public company and private company may accept up to 100% of paid up capital + FR + SP.

Rule 3 ...continued (1)

- Maximum limit of deposits from members does not apply to following private company, viz –
 - A start up for 10 years of incorporation
 - Which is not an associate/ subsidiary company of other company &
 - Borrowings < 2(paid up capital) or Rs. 50 crores, whichever is less &
 - No default in repayment of borrowing while acceptance of deposit
- All companies accepting deposits shall file form DPT-3 with ROC.

Rule 3 ...continued (2)

- Eligible company u/s 76(1) shall not accept/ renew –
 - Deposit from members if the amount of proposed deposit + o/s deposit exceeds 10% of total of paid up capital + FR + SP
 - Other deposit if the amount of such proposed deposit + o/s deposit exceeds 25% of total of paid up capital + FR + SP
- Government company may accept/ renew deposit up to 35% total of paid up capital + FR + SP
- Interest rate or brokerage shall not exceed the maximum prescribed by RBI for deposits' acceptance for NBFCs.
- Company shall not reserve a right to alter the terms prejudicial to depositors.

Rule 3 ...continued (3)

- Eligible company shall obtain credit rating, once in a year, for deposits accepted and it shall be filed along with the Form DPT-3
- Above credit rating shall not be below the minimum investment grade rating for fixed deposits of NBFCs

CRISIL Rating

Symbol	Safety Level
AAA	Highest Safety
AA	High Safety
A	Adequate Safety
BBB	Moderate Safety
BB	Inadequate Safety
B	High Risk
C	Substantial Risk
D	Default

Rule 4 – Form & particulars of circular

- U/s 73(2) every company shall issue a circular to all members by registered post AD or speed post or electronic mode in DPT-1
- Additionally such circular may be published in English language in an English Newspaper and in vernacular language in vernacular newspaper.
- Certificate of statutory auditor stating no default in repayment of deposit or interest shall be attached to Form DPT-1. If default was made certificate shall contain the fact that 5 years have elapsed from such default.
- For eligible company publication of circular is compulsory.
- Every company inviting public deposit shall upload circular on its website.

Rule 4 ...continued (1)

- Such circular shall be issued in the name of board of directors.
- Circular shall be signed by majority of directors and shall be delivered to ROC at least 30 days before its issue.
- Circular in the form of advertisement shall be valid up to 6 months of the closure of F.Y. or AGM or 30th September, whichever earlier. Fresh circular shall be issued for each succeeding F.Y. for inviting deposit during that F.Y.

Rule 6 – Creation of security

- In case of secured deposit, every company u/s 73(2) and eligible company shall create a charge on assets as per schedule III.
- Such a security shall not be less than market value of assets (excluding intangible assets).
- Valuation of stocks, shares, debentures, securities shall done by SEBI registered valuer, being member of IBBI.
- Security shall be created in favour of trustee for depositors

Rule 7 – Appointment of trustee

- Company inviting deposits u/s 73(2) or eligible company shall appoint a trustee before issuing circular.
- With reasonable prominence the circular shall state that trustee has given his written consent.
- Deposit trust deed in DPT-2 shall be executed at least 7 days before issuing circular.
- For removal of trustee, before expiry of his term, unanimous consent of all the directors present at the BM is necessary. If the company required to have independent directors, at least one such director shall be present in such BM.

Rule 7 ...continued

- Proposed trustee shall have following disqualifications, viz.
 - Director, KMP, officer, employee of company, its holding, subsidiary or associate company or depositor of company
 - Relative of any of the above
 - Indebted to company, its holding, subsidiary or associate company and subsidiary of holding company
 - Has material pecuniary relationship
 - Has entered into guarantee arrangement in respect of principal debts

Rule 8 – Duties of trustee

- Trustees shall have following duties towards depositors.
 - Assets charged are sufficient to cover repayment of o/s deposits and interest.
 - Circular/ advertisement does not contain inconsistency as to terms of deposit scheme
 - Ensure no breach of provisions of trust deed
 - Take reasonable steps to procure remedy for breach of covenants
 - Call meeting of deposit-holders, on requisition by 1/10th in value of o/s deposit or in the event of default
 - Supervise the implementation of charge registration
 - Take steps when the security becomes enforceable
 - Protect the interest of depositors and to resolve the grievances

Rule 10-12 Other aspects

- The company shall accept deposit only on submission of [application form](#) by the intending depositor.
- Depositor shall give a declaration that the deposit is not being made out of borrowed funds.
- Every depositor may nominate any person his deposit shall vest in the event of his death
- On acceptance/ renewal of deposit, every company shall furnish deposit receipt to depositor/ his agent within 21 days of receipt of money/ realization of cheque/ date of renewal.
- Deposit receipt shall contain date of deposit, name & address of depositor, amount, rate of interest and repayment date

Rule 15 – Premature repayment of deposit

- On request of depositor, regarding prepayment of deposit after 6 months but before the maturity of deposit, committed interest rate shall be reduced by 1%.
- Above rule shall not apply in following exceptions:
 - Comply provisions of Rule 3 or
 - Provide war risk related benefits to military personnel, during the period of emergency
- If the company permits the depositor to renew the deposit to avail higher interest rate, it shall pay so for the unexpired period.

Rule 17 – Penal rate of interest

- For the unpaid period of deposit, every defaulting company shall pay penal interest @ 18% p.a. It is immaterial in such cases whether such deposits were secured, unsecured, matured or claimed.

BUDs Act 2019 - Snippets

- Banning of unregulated deposit schemes act 2019 came into force from 21st February, 2019.
- The purpose of the act is to protect the gullible investors from ponzy schemes, money circulation schemes and unregulated chit funds.
- **Loan for business purpose** is excluded from the definition of deposit. Deposit accepted by money-lending business is unregulated deposit.
 - Penalty for non-repayment of regulated deposit - 3 years to 10 years jail term and 5 lacs or twice the amount of deposit whichever is higher.
 - Penalty for acceptance of unregulated deposit – 2 to 7 years imprisonment & 3 to 10 lacs fine.
 - Penalty for solicitation of unregulated deposit – 1 to 5 years imprisonment & 2 to 10 lacs fine.



Thank you!