

# **ACCEPTANCE OF DEPOSITS**



**THE INSTITUTE OF  
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**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
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# ACCEPTANCE OF DEPOSITS

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## Introduction

Section 73 to 76 of the Companies Act, 2013 (herein after called the Act) read with Companies (Acceptance of Deposits) Rules, 2014 made under Chapter V of the Act (herein after called 'the Rules') regulate the invitation and acceptance of deposits. It prohibits acceptance of deposits except from the members through ordinary resolution or acceptance deposits by "eligible company" being a public company, subject to conditions specified in the rules. (Eligible company is defined under the rules based on net worth and turnover).

The Act read with the Rules also deals with various aspects including prohibition of acceptance of deposits except from the members, subject to conditions, inclusive definition of deposit, eligible company, depositor etc., conditions for acceptance of deposits such as approval of shareholders in a general meeting, credit rating, provision of deposit insurance, trustees of deposit holders etc., In addition the act protect the interest of depositor through Section 37 and 245(class action suit by requisite number of depositors)of the Act. In addition the act provides for stringent penalty for any violations in complying with the provisions of this Act, in this regard.

Proviso to Section 73(1) read with rule 1(3) of Companies (Acceptance of Deposits) Rules 2014 excludes banking Companies, non-banking financial companies as defined in the Reserve Bank of India Act, 1934 and registered with Reserve Bank of India, a housing finance company registered with National Housing Bank established under the National Housing Bank Act 1987 and any other company as may be specified by the government in this regard.

**Definition of certain terms used**

*What is a deposit ?*

Section 2(31) of the Companies Act (herein after called the act) defines deposit as under

“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;

*What is not a deposit ?*

*Inclusive Definition of the word “Deposit” under Rule 2(c) of Rules made under Chapter V is as under*

“Deposit” includes any receipt of money by way of deposit or loan or in any other form, by a company, *but does not include-*

- (i) 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 constituted under an Act of parliament or a state legislature;
- (ii) any amount received from foreign Governments, foreign/international banks, multilateral financial institutions (including, but not limited to, International Finance Corporation, Asian Development Bank, Commonwealth Development Corporation and International Bank for Industrial and Financial Reconstruction), 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, 1999 and rules and regulations made there under;
- (iii) 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 under section 51 of the Banking Regulation Act, 1949 (10 of 1949), or a corresponding new bank as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (5 of 1970), or from a co-operative bank as defined in clause (b-ii) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934);

- (iv) any amount received as a loan or financial assistance from Public Financial Institutions notified by the Central Government in this behalf in consultation with the Reserve Bank of India, regional financial institutions, Insurance Companies, Scheduled Banks as defined in the Reserve Bank of India Act, 1934;
- (v) 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;
- (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. 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 sixty days, such amount shall be treated as a deposit under these rules. For the purpose of this rule any adjustment of the amount for any other purpose will 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.

The director from whom money is received, furnishes 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;

- (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 of the Act 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) any amount received from an employee not exceeding 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 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 property under an agreement or arrangement, provided that such advance is adjusted against the 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 under these rules.

- (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 in accordance with the rules made under Section 406 of the Act.

For the purposes of this clause, 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.

*Who is depositor ?*

Rule 2(1)(d) under Chapter XV defines depositor as under

'Depositor' means-

- (i) any member of the company who has made a deposit with the company in accordance with 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 section 76 of the Act.

*Who is an Eligible Company ?*

*Rule 2(1)(e) of Rules made under Chapter V defines eligible company as under :*

"Eligible company" means a public company as referred to in sub-section (1) of section 76, 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 and where applicable, with the Reserve Bank of India before making any invitation to the Public for acceptance of Deposits;

Provided that an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of section 180, may accept deposits by means of an ordinary resolution;

"Trustee" means the Trustee as defined in section 3 of the Indian Trusts Act, 1882.

### **Prohibition on acceptance of deposits from public**

Section 73(1) states that, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under Chapter V.

*Exceptions*

Section 73(1) prohibition, does not 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.

**Conditions for acceptance of deposits from Members**

Section 73(2) states that a company may, subject to

- (i) the passing of a resolution in general meeting; and
- (ii) 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 thirty days before the date of issue of the circular;
- (c) depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;

- (d) providing such deposit insurance in such manner and to such extent as may be prescribed;
- (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
- (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. In case when a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as “unsecured deposits” and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

Section 73(3) states that every deposit accepted by a company under sub-section (2) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.

Section 73(4) states that 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 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.

### **Deposit Repayment reserve**

Section 73(5) states that the deposit repayment reserve account referred to in clause (c) of sub-section (2) shall not be used by the company for any purpose other than repayment of deposits.

### **Deposit accepted before the commencement of the Act**

Section 74(1) states that when, in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due

thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall—

- (a) file, within a period of three 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, 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 one year from such commencement or from the date on which such payments are due, whichever is earlier.

Section 74(2) states that the tribunal may on an application made by the company, after considering the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.

Section 74(3) states that if a company fails to repay the deposit or part thereof or any interest thereon within the time specified in sub-section (1) or such further time as may be allowed by the Tribunal under sub-section (2), 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 but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

### **Damages for fraud**

Section 75(1) states that when a company fails to repay the deposit or part thereof or any interest thereon referred to in section 74 within the time specified in sub-section (1) of that

section or such further time as may be allowed by the Tribunal under sub-section (2) of that section, and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the provisions contained in sub-section (3) of that section and liability under section 447, be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.

Section 75(2) states that any suit, proceedings or other action may be taken by any person, group of persons or any association of persons who had incurred any loss as a result of the failure of the company to repay the deposits or part thereof or any interest thereon.

### **Acceptance of deposit from public by certain companies**

Section 76(1) states that notwithstanding anything contained in section 73, a public company, having such net worth or turnover as may be prescribed, may accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe.

Such a company shall be required to obtain the rating (including its networth, 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.

Every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

Section 76(2) states that the provisions of this Chapter shall,

mutatis mutandis, apply to the acceptance of deposits from public under this section.

**Other remedies provided under Companies Act, 2013**

As per Section 245(1)(g) requisite number of depositor or depositors may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the depositors for seeking orders including claiming damages or compensation or demand any other suitable action from or against—

- the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;
- the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or
- any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;
- to seek any other remedy as the Tribunal may deem fit.

Section 245 (2) states that when the depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.

Section 245(3)(ii) states that the requisite number of depositors provided in sub-section (1) shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.

**Rules under Chapter V***Rule 3 - Terms and conditions as to acceptance of deposits*

Rule 3 under Chapter V states that on and from the commencement of these rules,—

- No company under sub-section (2) of section 73 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:

*Exceptions*

A company may, for the purpose of meeting any of its short-term requirements of funds, accept or renew such deposits for repayment earlier than six months from the date of deposit or renewal, as the case may be, subject to the condition that—

- (a) such deposits shall not exceed ten per cent of the aggregate of the paid up share capital and free reserves of the company, and
- (b) such deposits are repayable not earlier than three months from the date of such deposit or renewal thereof.

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 desires so.

Rule 3(3) states that no company referred to in sub-section (2) of section 73 shall accept or renew any deposits 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 per cent of the aggregate of the paid-up share capital and free reserves of the company.

*Rule 3(4) states that 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 ten per cent 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) above, together with the amount of deposits outstanding on the date of acceptance or renewal exceeds twenty-five per cent of aggregate of the paid-up share capital and free reserves of the company.

*Rule 3(5) - deposits by Government Companies*

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 thirty five per cent. of the aggregate of its paid up share capital and free reserves of the company.

*Rule 3(6) -Rate of interest of deposits/payment of brokerage*

Rule 3(6) states that no company under sub-section (2) of section 73 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.

*Who is eligible to receive brokerage ?*

Only the person who is authorized, in writing, by a company to solicit deposits on its behalf and through whom deposits are actually procured will be entitled to the brokerage and payment of brokerage to any other person for procuring deposits shall be deemed to be in violation of these Rules.

Rule 3(7) states that 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 4 - Form and particulars of advertisements/circulars*

- (1) Every company referred to in sub-section (2) of section 73 intending to invite deposit from its members shall issue a circular to all its members by registered post with acknowledgement due or speed post or by electronic mode in Form DPT-1. In addition to issue of such circular to all members in the manner specified above, 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.
- (2) Every eligible company intending to invite deposits shall issue a circular in the form of an advertisement in Form DPT-1 for the purpose in English language in an English newspaper and in vernacular language in one vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.
- (3) Every company inviting deposits from the public shall upload a copy of the circular on its website, if any.
- (4) No company shall issue or allow any other person to issue or cause to be issued on its behalf, any circular or a circular in the form of advertisement inviting deposits, unless such circular or circular in the form of advertisement is issued on the authority and in the name of the Board of directors of the company.
- (5) No circular or a circular in the form of advertisement shall be issued by or on behalf of a company unless, not less than thirty days before the date of such issue, there has been delivered to the Registrar for registration a copy thereof signed by a majority of the directors of the company as constituted at the time the Board approved the circular or circular in the form of advertisement, or their agents, duly authorised by them in writing.
- (6) A circular or circular in the form of advertisement issued shall be valid until the expiry of six months from the date of closure of the financial year in which it is issued or until the date on which the financial statement is laid

before the company in annual general meeting or, where the annual general meeting for any year has not been held, the latest day on which that meeting should have been held in accordance with the provisions of the Act, whichever is earlier, and a fresh circular or circular in the form of advertisement shall be issued, in each succeeding financial year, for inviting deposits during that financial year.

For the purpose of this rule, the date of the issue of the newspaper in which the advertisement appears shall be taken as the date of issue of the advertisement and the effective date of issue of circular shall be the date of dispatch of the circular.

*Rule 5 –Deposit Insurance*

- (1) Every company referred to in sub-section (2) of section 73 and every other eligible company inviting deposits shall enter into a contract for providing deposit insurance at least thirty days before the issue of circular or advertisement or at least thirty days before the date of renewal, as the case may be. For the purposes of this sub-rule, the amount as specified in the deposit insurance contract shall be deemed to be the amount in respect of both principal amount and interest due thereon.
- (2) The deposit insurance contract shall specifically provide that in case the company defaults in repayment of principal amount and interest thereon, the depositor shall be entitled to the repayment of principal amount of deposits and the interest thereon by the insurer up to the aggregate monetary ceiling as specified in the contract. In the case of any deposit and interest not exceeding twenty thousand rupees, the deposit insurance contract shall provide for payment of the full amount of the deposit and interest and in the case of any deposit and the interest thereon in excess of twenty thousand rupees, the deposit insurance contract shall provide for payment of an amount not less than twenty thousand rupees for each depositor.
- (3) The amount of insurance premium paid on the insurance

of such deposits shall be borne by the company itself and shall not be recovered from the depositors by deducting the same from the principal amount or interest payable thereon.

- (4) If any default is made by the company in complying with the terms and conditions of the deposit insurance contract which makes the insurance cover ineffective, the company shall either rectify the default immediately or enter into a fresh contract within thirty days and in case of non-compliance, the amount of deposits covered under the deposit insurance contract and interest payable thereon shall be repaid within the next fifteen days and if such a company does not repay the amount of deposits within said fifteen days it shall pay fifteen per cent. interest per annum for the period of delay and shall be treated as having defaulted and shall be liable to be punished in accordance with the provisions of the Act.

*Rule 6 – Creation of Security*

- (1) For the purposes of providing security, every company referred to in sub-section (2) of section 73 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. In the case of deposits which are secured by the charge on the assets referred to in Schedule III of the Act excluding intangible assets, the amount of such deposits and the interest payable thereon shall not exceed the market value of such assets as assessed by a registered valuer. For the purposes of this sub-rule it is clarified that the company shall ensure that the total value of the security either by way of deposit insurance or by way of charge or by both on company's assets shall not be less than the amount of deposits accepted and the interest payable thereon.

For the purposes of proviso to sub-clause (ix) of clause

(c) of sub-rule (1) of rule 2 and this sub-rule, it is hereby clarified that pending notification of sub-section (1) of section 247 of the Act and finalisation of qualifications and experience of valuers, valuation of stocks, shares, debentures, securities etc. shall be conducted by an independent merchant banker who is registered with the Securities and Exchange Board of India or an independent chartered accountant in practice having a minimum experience of ten years.

(2) The security (not being in the nature of a pledge) for deposits as specified in sub-rule (1) shall be created in favour of a trustee for the depositors on:

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

*Rule 7 – Appointment of deposit trustees.*

*Consent of deposit trustees with respect to their appointment*

No company under sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more deposit trustees for creating security for the deposits. A written consent shall be obtained from the deposit trustee(s) before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the deposit trustee(s) have given their consent to the company to be so appointed.

*Execution of deposit trust deed before issuing advertisement*

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.

*Certain persons not to be appointed as deposit trustees*

No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the deposit holders, 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.

#### *Removal of deposit trustees*

No deposit trustee may 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 appoint independent directors, at least one independent director shall be present in such meeting of the Board

#### *Duties of deposit trustees.*

It shall be the duty of every deposit trustee to -

- (1) 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;
- (2) 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;
- (3) ensure that the company does not commit any breach of covenants and provisions of the trust deed;
- (4) 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;

- (5) take steps to call a meeting of the holders of depositors as and when such meeting is required to be held;
- (6) supervise the implementation of the conditions regarding creation of security for deposits and the terms of deposit insurance;
- (7) do such acts as are necessary in the event the security becomes enforceable;
- (8) carry out such acts as are necessary for the protection of the interest of depositors and to resolve their grievances.

*Rule 9 - Meeting of depositors through deposit trustee*

The meeting of all the depositors shall be called by the deposit trustee on - (1) requisition in writing signed by at least one-tenth of the depositors in value for the time being outstanding; (2) the happening of any event, which constitutes a default or which in the opinion of the deposit trustee affects the interest of the depositors.

*Rule 10 - Form of application for deposits*

- (i) On and from the commencement of these rules, no company shall accept, or renew any deposit, whether secured or unsecured, unless an application, in the form prescribed by the company, is submitted by the intending depositor for the acceptance of such deposit.
- (ii) The application referred to in rule 18(i) shall contain 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.

*Rule 11 - Nomination*

A depositor may, at any time, make a nomination and the provisions of section 72 shall, as far as may be, apply to the nomination made under this Rule.

*Rule 12 - Furnishing of deposit receipts to depositors*

Every company shall, on the acceptance or renewal of a

deposit, furnish to the depositor or his agent a deposit receipt for the amount received by the company, within a period of two weeks from the date of receipt of money or realization of cheques.

Deposit receipt referred to above shall be signed by an officer of the company duly authorized by the Board in this behalf and shall state the date of deposit, the name and address of the depositor, the amount received by the company as deposit, the rate and periodicity of interest payable thereon and the date on which the deposit is repayable.

*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. The amount remaining deposited shall not at any time fall below fifteen per cent. of the amount of deposits maturing, until the end of the current financial year and the next financial year.

*Rule 14 - Registers of deposits*

- (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 seven 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 register or registers referred to in sub-rule (1) 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.

*Rule 15 - General provisions regarding premature repayment of deposits*

When a company makes a repayment of deposits, on the request of the depositor, after the expiry of a period of six months from the date of such deposit but before the expiry of the period for which such deposit was accepted, the rate of interest payable on such deposit shall be reduced by one per cent. from the rate which the company would have paid had the deposit been accepted for the period for which such deposit had actually run and the company shall not pay interest at any rate higher than the rate so reduced. Nothing contained in this rule shall apply to the repayment of any deposit before the expiry of the period for which such deposit was accepted by the company, if such repayment is made solely for the purpose of—

- (a) complying with the provisions of rule 3; or



- (b) providing war risk or other related benefits to the personnel of the naval, military or air forces or to their families, on an application made by the associations or societies formed by such personnel, during the period of emergency declared under article 352 of the Constitution:

When a company referred to in under sub-section (2) of section 73 or any eligible company permits a depositor to renew his deposit, before the expiry of the period for which such deposit was accepted by the company, for availing of a higher rate of interest, the company shall pay interest to such depositor at the higherrate if such deposit is renewed in accordance with the other provisions of these rules and for a period longer than the unexpired period of the deposit. For the purposes of this rule, where the period for which the deposit had run contains any part of a year, then, if such part is less than six months, it shall be excluded and if such part is six months or more, it shall be reckoned as one year.

*Rule 16 - Return of deposits to be filed with the Registrar*

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.

*Rule 17 - Penal rate of interest*

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

*Rule 18 - Power of Central Government to decide certain questions*

If any question arises as to the applicability of these rules to a particular company, such question shall be decided by the Central Government in consultation with the Reserve Bank of India.

*Rule 19 - Applicability of sections 73, 74 and 75 to eligible companies*

Pursuant to provisions of sub-section (2) of section 76 of the Act, the provisions of sections 73, 74 and 75 shall, mutatis mutandis, apply to acceptance of deposits from public by eligible companies.

It may be noted that

For the purposes of this rule, it is hereby clarified that in case of a company which had accepted or invited public deposits under the relevant provisions of the Companies Act, 1956 and rules made under that Act (hereinafter known as "Earlier Deposits") and has been repaying such deposits and interest thereon in accordance with such provisions, the provisions of clause (b) of sub-section (1) of section 74 of the Act shall be deemed to have been complied with if the company complies with requirements under the Act and these rules and continues to repay such deposits and interest due thereon on due dates for the remaining period of such deposit in accordance with the terms and conditions and period of such Earlier Deposits and in compliance with the requirements under the Act and these rules. 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; Without prejudice to above, in case of deposits accepted by an eligible company under section 76 of the Act, the provisions of sub-section (3) and (4) of section 73, provisions of sub-sections (2) and (3) of section 74 and provisions of section 75 shall be applicable irrespective of the fact that such deposits were not accepted by the company before the commencement of this Act.

*Rule 21 - Punishment for contravention*

If any company referred to in sub-section (2) of section 73 or any eligible company inviting deposits or any other person contravenes any provision of these rules for which no punishment is provided in the Act, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first day during which the contravention continues.

**Conclusion**

The provisions of Companies Act 2013 read with rules made under Chapter V, has brought several revamping aspects to protect the interest of depositors. The gist of provisions discussed above is as follows.

- Company may accept deposit from its members by passing a resolution in general meeting and subject to conditions as may be prescribed in the Rules including Credit rating, Deposit insurance etc.
  - Public companies may accept deposits, if it has 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 and where applicable, with the Reserve Bank of India before making any invitation to the Public for acceptance of Deposits.
  - No company under sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more deposit trustees for creating security for the deposits.
  - Contract providing for deposit insurance at least thirty days before the issue of circular or advertisement.
  - Companies accepting deposit from members or eligible companies as defined, has to fulfill the conditions specified in Companies(Acceptance of Deposits)Rules 2014.
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