

ACCEPTANCE OF DEPOSITS BY COMPANIES
AND DPT 3
PRACTICAL ISSUES

by CS L.JAYARAMAN
9490190956



ACCEPTANCE OF DEPOSITS BY COMPANIES

- Deposits from the public are an **important mode of finance** in the corporate sector.
- It is accordingly **necessary to control the companies inviting deposits** from the public in order to safeguard the general and wider interest of the public at large.



What is a Deposit

The term 'deposit' includes any receipt of money by a company, as deposit or loan or in any other form, but does not include

- 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 ;



- any amount received from foreign Governments, foreign international banks, multilateral financial institutions etc.
- any amount received as a loan or facility from any banking company.
- any amount received as a loan or financial assistance from Public Financial Institutions



- any amount received against issue of **commercial paper** or any other instruments issued in accordance with the guidelines or **notification issued by the RBI**
- any **amount received by a company from any other company;**
- **(probably it includes foreign company)**
- **(amount received from an LLP is not exempted and they come under the definition of deposit)**



- any amount received and held 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 and such application money or advance is not refunded to the subscribers within 15 days thereafter, 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.



- any amount received from the 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.**
- Such person shall furnish a **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 the company shall disclose the details of money so accepted in the Board's report



- 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 (**not exceeding their market value**), **excluding intangible assets** of the company or
- any amount raised by the issue of **bonds or debentures compulsorily convertible into shares** of the company within 10 years.



- any amount raised by the issue of non convertible debentures and unsecured and listed on the recognized stock exchange.
- 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**;
- any **non-interest bearing amount received or held in trust**;



- any amount received in the course of or for the purposes of the business of the company:
 - ✓ as an advance for the supply of goods or provision of services accounted and such advance is appropriated against supply of goods or provision of services within 365 days from the date of such advance (within 15 days after 365 days), unless such advance is subject matter of any legal proceedings before any court of law.



- ✓ as advance 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; (nowhere it is mentioned as written agreement of registered agreement)
- ✓ as advance received under long term projects for supply of capital goods;
- ✓ as security deposit for the performance of the contract for supply of goods or provision of services;



- If the amount received 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.



- ✓ 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;
- ✓ as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;
- ✓ as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;



- 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 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;



- any amount accepted by a **Nidhi company** in accordance with the rules made under section 406 of the Act.
- any amount received by way of subscription in respect of a **chit under the Chit Fund Act**,
- any amount received by the company under any **collective investment scheme** in compliance with regulations framed by SEBI;



- an amount of Rs 25 lakhs 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 five years from the date of issue) in a single tranche, from a person.
- any amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds, Infrastructure Investment Trusts and Mutual Funds registered with SEBI.

Exception : This sub-section with respect to the acceptance of deposit from public shall not apply to a banking company, NBFC company and Housing finance companies.



Acceptance of deposits from its members

(Private Company)

1. A company may, subject to the passing of a resolution in general meeting, accept deposits from its members or renew any deposit from its members.
2. The amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits shall not exceed 100% of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.



3. The maximum limit in respect of deposits to be accepted from members shall not apply to a private company which is a start-up, for five years from the date of its incorporation.



4. The **maximum limit** in respect of deposits to be accepted from members **shall not apply to a private company** which fulfils all of the following conditions, namely:-

- ✓ which is not an **associate or a subsidiary company of any other company**;
- ✓ 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
- ✓ such a **company has not defaulted in the repayment**

5. The company shall **file the details of the money so accepted with the ROC in DPT- 3.**



Acceptance of deposits from its members (Public Company)

1. A company may, subject to the passing of a resolution in general meeting, accept deposits from its **members** or renew any deposit from its members.
2. The amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits **shall not exceed 35% of the aggregate of the Paid-up share capital, free Reserves and securities premium account** of the company.



Other Compliances in case of public company.

- 1. The company shall 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 Form DPT-1
- 2. The company shall file a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular;



- The company shall deposit **on or before the 30th day of April each year**, (extended upto 30th September for the current year due to Covid 2019) such sum which shall not be less than **20% 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**;
- 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 in case of default, the said default was rectified and 5 years has elapsed from the date of rectification.**



- The company **may provide 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:
- Where 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.



Acceptance of deposits from public by Eligible companies: section 76

"Eligible company" means

- ✓ a public company,
- ✓ having a net worth of not less than Rs 100 crores or
- ✓ a turnover of not less than Rs 500 crores 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. (Borrowings not exceeding paid-up capital, free reserves and securities premium)



2. **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, free Reserves and securities premium account of the company;**

(b) **any other deposit**, if the amount of such deposit together with the amount of such other deposits, outstanding on the date of acceptance or renewal exceeds **25% of aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.**



3. **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, free Reserves and securities premium account of the company.**



4. 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 having country wide circulation and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated, and shall also place such circular on the website of the company, if any.



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 and in case of a default , stating that the company had made good the default and a period of five years has lapsed



5. 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 alongwith the return of deposits in Form DPT-3. The credit rating shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits, from any one of the approved credit rating agencies.

6. Such companies 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 favour of the deposit holders.



Other rules and provisions regarding deposits:

- **Repayment of deposit** : Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement.
- **Failure on the repayment of deposit** : 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.



- Application of 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



Period of Deposits: No 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 6 months or more than 36 from the date of acceptance or renewal of such deposit.



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 10% of the aggregate of the Paidup share capital, free Reserves and securities premium account of the company, and

(b) such deposits are repayable not earlier than three months from the date of such deposits or renewal thereof.



- **Rate of Interest and Brokerage:** No company shall invite or accept or renew any deposit 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 RBI for acceptance of deposits by NBFC companies. (12.5 Percent interest rate now prescribed by RBI) (2 Percent Brokerage) (0.5 percent for expenses to brokers)
- ✓ A person who is authorised, in writing, by a company to **solicit deposits on its behalf shall only 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.



- **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.



- **Creation of security:** Every company **issuing secured deposits shall** provide for security by way of a charge on its assets excluding intangible assets, 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.**
- Also, 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.



Appointment of Trustee for Depositors:

- 1. No company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors for creating security and obtain a written consent. The company shall execute a **deposit trust deed** in Form DPT-2 **at least 7 days before issuing the circular or circular in** the form of advertisement.



2. No person shall be appointed as a trustee for the depositors, if the proposed trustee

- is a **director, KMP or any other officer** or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;
- is **indebted to the company**, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
- has any **material pecuniary relationship** with the company;
- has **entered into any guarantee arrangement** in respect of principal debts secured by the deposits or interest thereon;
- is **related to any person** specified in clause (a) above.



3. 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.



Register of Deposits

(1) Every company accepting deposits shall maintain at its registered office one or more separate registers for deposits accepted or renewed, in which there shall be entered separately in the case of each depositor the following particulars, namely :

- name, address and **PAN of the depositor/s**;
- particulars of guardian, in case of a minor;
- particulars of the nominee;
- deposit receipt number;
- date and the amount of each deposit;
- duration of the deposit and the date on which each deposit is repayable;



- rate of interest or such deposits to be payable to the depositor;
- due date for payment of interest;
- mandate and instructions for payment of interest and for non-deduction of tax at source, if any;
- date or dates on which the payment of interest shall be made;
- particulars of security or charge created for repayment of deposits;
- any other relevant particulars;



(2) 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.

(3) The 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.



- **Disclosures in the financial statement:** Every company, other than a private company, shall disclose in its financial statement, by way of notes, **about the money received from the director.**
- Every **private company** shall disclose in its financial statement, by way of notes, about the **money received from the directors, or relatives of directors.**



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



Filing of DPT – 3

It has 4 radio buttons

- 1) One time returns – period covering 1.4.14 to 31.3.19 – particulars (not considered as deposits)
- 2) Return of deposits
- 3) Particulars of exempted deposits.
- 4) balance other than 2 & 3.



Filing of DPT – 3(One time returns)(Radio button 1)

- Every company, other than Government company, shall file a
- onetime return of outstanding receipt of money or loan by a company but not considered as deposits,
- from the 01st April, 2014 to 31st March 2019,
- as specified in Form DPT-3 within 30th September 2019
- No fee provided if it is filed within the said due date.



- In normal circumstances for delayed filing, companies has to pay filing fee and additional filing fees.
- But please take advantage of Companies Fresh Start Scheme 2020 (CFSS 2020) and this One time return can also be filed now without additional filing fees.
- This one time returns should be supported by Auditors certificate.
- Should NIL return be filed in case of this One time return of outstanding receipt of money or loan by a company but not considered as deposits? ... conflicting opinions by ROCs.



Filing of DPT – 3

(Return of Deposits) (Radio button 2)

Every company

- covered under section 73 and 76,
- shall on or before the 30th day of June, of every year
- (extended upto 30th September 2020 for this year),
- file with the Registrar, a return in Form DPT-3 as on 31st March of that year along with filing fee
- duly audited by the auditor of the company.
- It is hereby clarified that Form DPT-3 shall be used for filing return of deposit or particulars of transaction not considered as deposit or both by every company other than Government company.



Filing of DPT – 3

(Particulars of exempted Deposits)

(Radio button 3)

- It is hereby clarified that Form DPT-3 should also be filed for return of deposit or particulars of transaction not considered as deposit or both by every company other than Government company.
- Every company
- covered under **section 73 and 76,**
- shall on or before the **30th day of June, of every year**
- **(extended upto 30th September 2020 for this year),**
- **file with the Registrar, a return in Form DPT-3 as on 31st March of that year along with filing fee**
- **duly audited by the auditor of the company.**

Auditors report in CARO 2020 regarding Deposits

- In case, the company has accepted deposits, whether the following has been **complied with the directives** issued by the RBI
- **(a)** The provision of **sec 73 to 76 or any other relevant provision of Companies Act, 2013 and the rules** framed there under, and
- **(b)** If the **order has been passed by company law board (CLB) or National company law tribunal (NCLT) or RBI or any court or any other tribunal.**
- **(c)** However, if any of the above not complied with, the nature of contraventions should be stated.



Punishment for Contravention of Section 73 or Section 76. (Section 76A)

- Where a company accepts or invites any deposit in contravention of section 73 or section 76 or rules made thereunder or if a company fails to repay the deposit or any interest due thereon within the time specified (including non reporting in DPT 3)
- (a) 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 **Rs 1 crore or twice the amount of deposit accepted by the company, whichever is lower, but which may extend to Rs 10 crores; and**



- (b) every officer of the company who is in default shall be punishable with imprisonment which may extend to 7 years and with fine which shall not be less than Rs 25 lakhs but which may extend to Rs 2 crores:
- Provided that 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.



Other consequences

If the company violates the provisions of section 73 or section 76, the company is prohibited to do the following activities

1. Section 63 – Issue of bonus shares
2. Section 66 – Reduction of capital
3. Section 70 – buy-back of shares
4. Section 123 – Payment of Dividend
5. Section 164(2)b – non-payment of interest or repayment of deposits leads to disqualification/vacation of directors for 5 years.



CLASS ACTION SUITS SECTION 245

- Not be less than 100 depositors or 5 percent of the total number of depositors, whichever is less, or any depositor to whom the company owes 5 percent of total deposits,
- 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.



- 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.

