

# CHAPTER - DEBT CAPITAL

## PART B

### What is a deposit?

Section 2(31) of the Companies 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?

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

- Any amount received from the Central Government or a State Government, whose repayment is guaranteed by the Central Government or a State Government
- Any amount received from foreign Governments, foreign/international banks, subject to the provisions of Foreign Exchange Management Act, 1999 and rules there under.
- 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 notified by the Central Government
- Any amount received against issue of commercial paper
- Any amount received by a company from any other company;
- Any amount received from a person who, at the time of the receipt of the amount, was a director or relative of direction of the company.

- any amount raised by the issue of bonds or debentures secured by a first charge

on any assets excluding intangible assets of the company and bonds/ debentures compulsorily convertible into shares of the company within ten years.

- Any amount brought in by the promoters of the company by way of unsecured loan
- Any share application money is received by company towards subscription of securities

But, if shares are not allotted within 60 days of application then refund such amount within 15 days. If not, then such amount will be treated as deposit.

- any amount received from a Person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the Private company:

a declaration by the director/relative of director 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

- any amount raised by issue of non-convertible debenture:

- not creating any charge on assets of company.
- Listed on stock exchange.
- Interest free security deposit from an employee not exceeding his annual salary
- Any non-interest bearing amount received and held in trust
- Any amount received by company in course of business such as ]

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| <p>If advance amount is refunded, due to fact that company don't have necessary permission to deal, then company must refund, within 15 days, else, it is a deposit</p> | <ul style="list-style-type: none"> <li>➤ Advance amount for supply of goods and services.<br/> <div style="border: 1px solid black; background-color: #cccccc; padding: 2px; display: inline-block; margin: 5px 0;">Time limit = 365 days.</div> </li> <li>➤ Advance amount received as consideration for an immovable property</li> <li>➤ Advance received under any long-term projects/supply of capital goods.</li> </ul>   |
|   | <ul style="list-style-type: none"> <li>➤ Advance amount for providing future services in form of warranty.<br/>                     Ex.- 1) AMC of water R.O.<br/>                     2) AMC of account.<br/> <div style="border: 1px solid black; background-color: #cccccc; padding: 2px; display: inline-block; margin: 5px 0;">Time limit – 5 years or common business practice prevail in industry whichever is less.</div> </li> <li>➤ Advance received as per direction of regulator/ government.</li> <li>➤ Advance for subscription towards publication Any security deposit for performance of contract for supply of goods.</li> </ul> |

- any amount accepted by a Nidhi Company under any offer or promise.

any additional contributions, over and above the offer amount made by the company as part of such offer, shall be treated as a deposit

- any amount received by way of subscription in respect of a chit under the Chit Fund Act, 1982
- any amount received by the company under any collective investment scheme
- an amount of twenty five lakh rupees or more received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding 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

### TEST YOUR KNOWLEDGE

#### Illustration

Please check which of the following source of funds are coming under the definition of deposits in case of a company.

- (a) rs.5 Crore from Government Agency, Financial institutions, Banks or by way of Commercial Paper.
- (b) rs. 50 Lakhs by way of Share Application money
- (c) rs.50 Lakhs from one of its director by way of loan (d) `50 Lakhs from issue of bonds and debentures
- (e) Rs.50 Lakhs by means of inter corporate deposit
- (f) rs.25 Lakhs from its employees.
- (g) rs.50 Lakhs as business advance from customers
- (h) rs.50 Lakhs as advance against consideration for an immovable property.
- (i) rs.25 Lakhs as security deposit for performance of provision of services
- (j) rs.50 Lakhs from its promoter.
- (k) rs.25 Lakhs raised by issue of non convertible debentures. These are not constituting charge on assets of the company.

#### Solution

(a) The said amount is to be received or borrowed from any government agency or Financial Institution

or Bank or by way of Commercial paper is not covered under deposits.

(b) Company must allot share within 60 days of receipt of share application money or it must refund the

share application money to the subscribers within 15 days from the date of completion of sixty days,

otherwise, such amount shall be treated as a deposit.

(c) Company can receive loan from its director (or relative of director of the private company) provided

they give a declaration to the company that the loan given is from own funds and not from borrowed money.

(d) Company can raise money by way of bonds and debentures provided amount is secured by a first

charge against property; or such bonds or debentures should be compulsorily convertible into shares within 10 years; otherwise it would come under the definition of deposits.

(e) Inter corporate deposits are not covered in the definition of deposits

(f) If amount received from employee doesn't exceed their total annual salary; and such deposits

should be non-interest bearing security deposit it would not come under the definition of deposit.

## WHO IS DEPOSITOR?

### 'Depositor' means-

- Any member of the company who has made a deposit with the company.
- Any person who has made a deposit with a public company.

## WHO IS AN ELIGIBLE COMPANY?

“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.

## 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

- A banking company and
- Non- banking financial company.
- To such other company as the Central Government may, specify.

## CONDITIONS FOR ACCEPTANCE OF DEPOSITS FROM MEMBERS

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

- The passing of an **ordinary resolution** in general meeting
- Issuance of a circular to its members in **form DPT-1**
- filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;
- Providing such deposit insurance

## RULES UNDER CHAPTER V

### **Rule 3- Terms and conditions as to acceptance of deposits**

No company shall accept or renew any deposit, 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 TO THE RULE (3)

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, subject to the condition that-

- Such deposits shall **not exceed ten per cent** of the aggregate of the paid up share capital and free reserves of the company,
- Such deposits are repayable **not earlier than three months** from the date of such deposit.

#### *The Quantum of deposits :*

| Type of company                     | Members  | Public   |
|-------------------------------------|--|--|
| Eligible Company                    | Upto <b>10 %</b> of aggregate of the paid up share capital and free reserves | Upto <b>25 %</b> of aggregate of the paid up share capital and free reserves |
| Company other than Eligible Company | Upto <b>35 %</b> of aggregate of the paid up share capital and free reserves | Prohibited   |
| Government Company                  | -  | Upto <b>35 %</b> of aggregate of the paid up share capital and free reserves |

It may be noted that private companies and public companies (other than eligible companies) are not allowed to accept deposits from public

### SUMMARY/ PRACTICE AT HOME

#### POINTS OF DIFFERENCE

| Category of Company                                   | Private Company  | Public Company (other than eligible company)  | Public company (eligible company under section 76 of the Act)   |
|---|--|---|---|
| Source of deposits                                    | From directors and members   | From directors and members  | From directors, members and <b>general public</b>   |
| Conditions for deposits to be taken from shareholders | It is allowed to be taken subject to the limit of 35% of the paid up share capital and free reserves and security premium account. the compliance of condition as specified under (a) to (e) of section 73(2) of the act | It is allowed to be taken subject to the limit of 35% of the paid up share capital and free reserves subject to the compliance of provisions of section 73(2) of the Act. | It is allowed to be taken subject to the limit of 10% of the paid up share capital and free reserves subject to the compliance of provisions of section 73(2) of the Act. Provided that at any point of time, deposits shall not exceed 25% of the paid up share capital and free reserves. |

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|   | are exempted in case it accepts from members monies not exceeding 100% of aggregate of the paid up share capital, free reserve and securities premium account. This is subject to compliance of Point (f) of 73(2) and Rules specified |  |  |
| Conditions for deposits to be taken from Public | Prohibited   | Prohibited   | It is allowed to be taken subject to the limit of 25% of the paid up share capital and free reserves. However, in case of Government company, who is eligible to accept deposits from public under section 76, it is allowed to be taken subject to the limit of 35% of the paid up share capital and free reserves. |
| Resolution                                      | The company should pass a resolution in a general meeting.   | The company should pass a resolution in a general meeting. | The company should pass a special resolution in a general meeting and file the same with the Registrar. However, ordinary resolution would be sufficient if the amount is within the limit specified under section 180 of the Act.   |
| Advertisement                                   | Not necessary  | Not necessary  | Necessary  |
| Display of circular on website                  | Optional   | Optional   | Mandatory, if any  |

#### POINTS OF SIMILARITY

| Category of Company | Private Company   | Public Company (other than eligible) | Public company (eligible company under section 76 of the Act) |
|---------------------|---|--------------------------------------|---|
| Tenure of deposits  | The deposit shall not be repayable on demand or upon receiving a notice within a period of less than 6 months and more than 36 months. However, To meet the short requirements of fund, such companies can accept or renew deposits for a |                                      |   |

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|                                   | period of less than six months but not less than three months and such deposits should not exceed ten per cent of aggregate of paid up capital and free reserves of the company.  |
| Registration of circular          | The circular signed by majority of directors or their agents duly authorised along with the statement shall be submitted to registrar 30 days before the date of such issue.  |
| Deposit insurance                 | Deposit insurance shall be taken 30 days prior to the date of issuance of the circular or renewal, which shall ensure the repayment of deposits.  |
| Deposit repayment reserve account | On or before 30th April of each year, a sum not less than 15% of the amount of deposits maturing in the current financial year and the next financial year shall be deposited in a scheduled bank in a separate account called deposit repayment reserve account which shall be free from charge or lien. |
| Register                          | One or more separate registers for deposits accepted or renewed shall be maintained at the registered office and entries shall be made within 7 days from the date of issuance of deposit receipt.  |
| Return of deposits                | A return shall be filed on or before 30th June of every year with the Registrar in Form <b>DPT- 3</b> along with fee giving the status as on 31st March of that year duly audited by the auditor of the company.  |
| Penal rate of interest            | A penal Rate of 18% p.a. shall be payable for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.   |
| Premature payment                 | In case of premature payment of deposits, 1% shall be reduced from the interest agreed to be paid.  |

### PROCEDURE OF ACCEPTANCE OF DEPOSITS FROM MEMBERS

1. The companies intending to invite deposits from its members shall convene a Board meeting to consider and approve the business to propose and accept deposits from members and decide the day, date, time and place of the general meeting.
2. Issue notice of general meeting to the members of the company.
3. Hold the general meeting and pass resolution for acceptance of deposits.
4. Comply with the Rules prescribed in consultation with RBI and terms and conditions mutually agreed by the company and deposit holders either for acceptance or for repayment of deposits.
5. Issue circular to the members of the company
6. File the copy of aforesaid circular in the **Form DPT-1** with the Registrar within thirty days before the date of issue of circular.
7. In case, a company does not secure the deposits or secures such deposit partially, then, the deposits shall be termed as “unsecured deposits”.
8. A company inviting secured deposits shall provide for security by way of a charge on its assets for the due repayment of the amount of deposit and interest thereon. The company shall submit Form **CHG-1** with Registrar for assets other than intangible assets

9. After the expiry of 30 days of filing Form DPT-1, the circular in Form DPT-1 along with application form is sent to all members
10. Collect duly signed application form along with money from the members.
11. Issue receipts of deposits within 21 days of the receipts of money/realization of cheque.
12. Maintain register of deposits at its registered office
13. Pay interest as per the rate proposed on agreed terms.
14. Deposit such sum which shall not be less than fifteen percent of the amount of its deposits maturing during the financial year and the financial year next following and keeping it in a separate bank account called deposit repayment reserve account.
15. Submit return of deposits in Form **DPT-3** on or before 30th June each year for information as on 31st March of respective year

**\* Exempted for private companies if it accepts from its members monies not exceeding 100 per cent of aggregate of paid-up share capital and free reserves and the company files the details of monies so accepted to Registrar.**

#### CONDITIONS FOR ACCEPTANCE OF DEPOSITS FROM PUBLIC (OTHER THAN MEMBERS)

1. Convene a Board meeting to consider and approve the business to propose and accept deposits from public and to decide the day, date, time and place of the general meeting.
2. Hold the general meeting and pass special resolution, for acceptance of deposits.
3. Submit Form **MGT-14** with the Registrar of Companies within 30 days of passing the resolution.
4. Once the proposal is approved, Directors are required to approach to the credit rating agency for the grant of rating, execution of deposit insurance contract, appointment of depositor trustee and execution of trust deed,
5. Circular shall be issued to its members of the company by registered post with acknowledgement due in Form **DPT-1** The eligible companies have to file a copy of the text of advertisement signed by a majority of directors with the Registrar before 30 days of publication.
6. File the copy of aforesaid circular in the **Form DPT-1** with the Registrar within thirty days before the date of issue of circular.
7. In case, a company does not secure the deposits or secures such deposit partially, then, the deposits shall be termed as “unsecured deposits”
8. The company shall execute a deposit trust deed in Form **DPT-2** at least seven days before issuing circular or circular in the form of advertisement.
9. Eligible company inviting secured deposits shall provide for security by way of a charge on its assets for the due repayment of the amount of deposit and interest thereon. The company shall submit Form **CHG-1** with Registrar for assets other than intangible assets
10. Eligible companies proposed to accept deposits from public is required to issue advertisement one in English newspaper having country wide circulation and one newspaper in vernacular language having wide circulation in the state in which the registered office of the company is situated.
11. Collect duly signed application form along with money from the members.



12. Issue receipts of deposits within 21 days of the receipts of money/realization of cheque.
13. Maintain register of deposits at its registered office
14. Pay interest as per the rate proposed on agreed terms.
15. Deposit such sum which shall not be less than fifteen percent of the amount of its deposits maturing during the financial year and the financial year next following and keeping it in a separate bank account called deposit repayment reserve account.
16. Company inviting deposits shall enter into a contract providing for deposit insurance at least thirty days before the issue of circular
17. Submit return of deposits in Form **DPT-3** on or before 30th June each year for information as on 31st March of respective year.

#### **Q. CHECKLIST OF SECRETARIAL COMPLIANCE FOR ACCEPTANCE OF DEPOSITS AS PER COMPANIES ACT, 2013:**

Checklist of secretarial compliance for acceptance of deposits under Companies Act, 2013, are discussed

below. The Company Secretary should check:

- Whether proper Board meeting has been held and the matter of acceptance of deposit has been proposed
- Whether general meeting has been held and approval of the shareholders by means of a special or ordinary resolution has been passed.
- Whether the said resolution has been filed with Registrar in Form MGT-14 within 30 days of passing of such resolution.
- Whether copy of Circular/Form of Advertisement approved by the Board has been filed with the Registrar of Companies in Form DPT-1 for registration.
- Whether one or more deposit trustees for creating security for the secured deposits has been appointed and the company has executed a deposit trust deed in Form DPT-2 at least seven day before issuing circular or circular in the form of advertisement.
- Whether the company has obtain the rating unless exempted
- Whether the company has issued circular/form of advertisement after 30 days from the date of filing of a Copy of Circular/Form of Advertisement with the Registrar.
- Whether the company has uploaded the copy of the circular on the Company's website, if any.
- Whether the company has issued deposit receipt in the prescribed format and under the signature of officer duly authorized by Board, within a period of two weeks from the date of receipt of money or realization of cheques.
- Whether the company has made entries in the register as per the instruction provided in the rules 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.

- Whether the company has filed deposit return in Form DPT-3 by furnishing information contained therein as on 31st day of March duly audited by auditors before 30th June every year.
- Whether the company has prepared the statement regarding deposits existing as on the date of commencement of the act in Form DPT-4.

### **Drafting of resolution**

#### **SPECIMEN RESOLUTION FOR ACCEPTANCE OF DEPOSITS FROM MEMBERS AND/OR PUBLIC**

“RESOLVED THAT pursuant to the provisions of Section 73 and 76 of the Companies Act, 2013 (the Act) read with the Companies (Acceptance of Deposits) Rules, 2014 (the Rules) and other applicable provisions, if any, and subject to such conditions, approvals, permissions, as may be necessary, consent of the members be and is hereby accorded to the Company to invite/accept/renew/receive money by way of unsecured/secured deposits from its members and public.

RESOLVED FURTHER THAT Mr. x, Chairman & Managing Director, be and is hereby authorized to issue the circular or circular in the form of advertisement, which has been approved by the Board of Directors of the company at their meeting held on —the (day) of — (month), 2014 (year) and which delineates the silent features of the deposit scheme of the company and other relevant particulars as prescribed by the Act and the Rules.