[Acceptance Of Deposits]

Section Used : Sec 73 - 76A of Companies Act - 2013

Deals about various provisions relating to Deposits:

Rules : The Companies (Acceptance of Deposits) Rules - 2014

Form : DPT - 1, 2, 3, 4

[Chapter - Outline]

→ Deposit & what is not deposit	2 types of Deposit: Deposits from member Sec-73 / Deposit from Public Sec-76	Common Condition for acceptance of Deposits (As per Deposits Rules)	Penalty (Sec. 76A) → Sec. 74 & 75) → Treatment of deposit accepted under Companies Act - 1956

Sources of Fund

- Own Fund
- Borrowed - Fund
  - Short term ⇓ 6 - 36 month ⇓ Deposits
  - Long term ⇓ Debenture

Concept - 1: Deposits & what is not Deposits (sec 2(31) + Rule 2(1)(c) of companies (Acceptance of Deposits) Rules - 2014.

(I) Def. of Deposits [Sec - 2(31)]:

Includes	doesn't include
⇓	⇓
Any receipt of money by way of deposit or loan or in any other form	Such categories of amount as prescribed by CG after consultation with RBI

II Amounts Not Considered as Deposits: [Rule 2(1)(c) of Deposit Rules - 2014]

Total = 19 types of amounts, although received by co, but not classified as Deposits:

(i) Amount received from Government: ~~It~~ ~~also~~
It also include CG/SG or both

(ii) Amount received from Foreign Govt./ Foreign Citizen

(iii) Loan or facility from Bank: It includes loan from bank including co-operative bank.

(iv) loan or Facility from Public - Financial Institution

(v) Commerical paper :- Such paper/instrument which are issued by a co. as per guidline or notification of RBI

(vi) Inter Company Deposits : When a company receive loan from another company. then such amount is not treated as deposits
Reason: Separately controlled u/s 186 of Companies Act

(vii) Application Money : Generally application money is not classified as deposit if it is used for allotment within 60 days or refunded within next 15 days.

(viii) Debentures : Following types of debenture/bond are not treated as deposits:

ⓐ Fully secured with first charge or having pari-passu charge [security shall not be created on intangible assets	ⓑ Compulsorily Convertible Debenture within a period of 10 years	Listed debentures, whether unsecured as well as non-Convertible.

(ix) Employee : Any amount received by a co. from its employee as "security deposits" will not be treated as deposits if

a) the amount of security deposits doesn't exceed his annual salary,

b) the amount is non-interest bearing i.e., the co. doesn't pay any interest to such employee.

(X) Advance from Customer

Goods	Services
The co. shall supply goods within a period of 365 days from date of receipt of such advance	The co. shall supply services within a period of 5 year or such customary period whichever is lower.

* Disputed advance : (Litigation Pending in Court) : No Time Limit

(xi) Unsecured loan from Promoters :→

Any amount brought by promoter (or his relative) will not be called as deposits, if these 3 condition are satisfied :

a) The amount of loan is unsecured

b) The loan brought by promoter ~~is~~ or his relative is as per stipulation [condition] imposed by bank / financial - Institution.

c) The amount brought by ~~payment~~ promoter shall not extended after repayment of loan of bank / Financial Institution

(xii) Amount received from director

Pvt. Co.	Public - Company
Any amount is received from ~~his from~~ director or his relative in the company will not called as Deposit, if such director/ relative give an affidavit/ [declaration] that such loan amount is out of his own sources	Any amount received from director only in case of public Co. will not be treated as a public-deposit, if such director gives a declaration that loan amount is invested in Co, out of his own fund.

(xiii) Amount received & held as a Trustee:

→ Any amount received by the Co. as a Trustee [caretaker] for money of another person

(xiv) Mutual Fund:- Any amount received by a mutual-fund company, by selling its units

(xv) Collective Investment scheme: Any amount received by a Company, running CIS, will not be treated as deposits

(xvi) Nidhi - Co: [Sec - 406]:- ~~Any~~ Any amount received by a Nidhi - company from its members.

(XVII) Chit fund Co: Any amount received by a chit-fund Co. which is registered under chit-fund Act - 1982.

(XVIII) Start-up Co: [Pvt. Co. + Not older than 10 years + Recognise by DPIIT.

* DPIIT :- Department of Promotion of Industry & Internal trade

Any amount of ₹ 25 lakh or more received by a start-up Co. from a person in single tranche by issuing convertible note, where such convertible note is converted into equity or repaid within 10 years.

Q/No. 7 ICAI book

(I) Def. of Deposits [Sec 2(31)]:

Any amount received by a Co. by way of deposits, loan or whatever name called, ~~exp~~ except those categories of amount, Prescribed by CG, after consultation from RBI

II Comments on Different circumstances

(1) Issue of Non-Convertible Debenture: but listed on stock-Exchange

As per Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules 2014, a non-convertible debenture not carrying any charge but listed on RSE will not classified as deposit.
So, ₹ 5 lakh will not be considered as deposit.

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Concept-2: Acceptance of Deposit from members [Sec. 73(2) - 73(4)]

Any Co. can accept deposits from its member after passing ordinary resolution & fulfilling these conditions:

a) Issuerance of Circular [sec-73(2)(a)]:

The company shall prepare a circular in form DPT-1 having details like:

(I) Financial position	(ii) Credit rating (through this debt repayment capacity is checked)	(iii) No. of existing depositor	(iv) Aggregate amount of existing depositor	(v) other matter may be prescribed

b) Filing Copy of Circular at ROC-[Sec-73(2)(b)]

→ Before issuing of circular to member, file a copy of OPT-1 to ROC, at least 30 days in advance.

c) Create DRR:

The Co. shall Create Deposit Repayment Reserve a/c by opening an A/c in Schedule bank and depositing at least 20% of amount maturing in "Next Financial Year". This deposit shall be made upto 30^{th} April of relevant year.

Eg:- Suppose, X Pvt. Ltd. accepted deposit from its member, which is maturing during 2026-2027. In which F.Y. reserve will be created?

Ans ⇒ 2025-2026 [@ 20% of amount of deposit maturing during 2026-2027].

d) Deposit insurance [Ommitted w.e.f 2018] [sec-731(2)(d)]

e) Certificate about no default :→ [sec 73(2)(e)]

→ The co. need to obtain a certificate from its statutory - auditor about no default w.r.t repayment of deposits accepted or interest thereon or if there was default, then 5 years have lapsed after making good the default.

f) Creation of Security [sec-73(2)(f)]

→ If company has accepted secured deposits, then charge shall be created on property of assets of company.

Note (i) Sec-73(3): Deposits accepted u/s 73(2) shall be repaid with int. as per terms & condition of agreement.

(ii) Sec 73(4): Member to apply → Tribunal for repayment of deposit, after failure of company in repayment as per terms & condition already agreed.

Concept-3: Acceptance of Deposits from public by Certain Companies [Sec. 76]

(I) Eligible Company [Sec. 76(1) + Rule 2(1)(e)]

→ As per Sec. 76(1) only eligible Co. can accept deposit from public As per rule 2(1)(e), a public Co. is called eligible public Co. if such public-company fullfill any of these condition

a) its networth ≥ ₹ 100cr.
its turnover ≥ ₹ 500cr.

II Condition for acceptance of deposit from public

a) Eligible Company
b) Pass S/R: For accepting deposits from Public, the eligible Co. shall obtain Consent of its members by passing special - Resolution. However, S/R will be replaced by O/R if existing borrowing as well as proposed borrowing doesn't exceed aggregate of PUSC + FR + SPR
[Free Reserve + Securities Premium Reserve

c) Obtain Credit Rating: [Proviso to Sec-76(1)]:

"The eligible Co." shall be required to obtain Credit rating, which shall be renewed every year.

d) ~~Other Conditions~~:

d) Other Conditions: are same as Sec. 73(2) like:

i) Issuance of CIFA: [Circular in form of Advertisement]:

Now circular will be replaced by more comprehensive document known as CIFA in form DPT-1

(ii) Filing with ROC
(iii) Creation of DRR A/c
(iv) Certificate about no result
(v) Creation of Security etc.

Concept-4:- Common Condition for Acceptance of Deposits [from member + Public

1. Tenure of Deposits [Rule - 3(1)]

Minimum Tenure	Max. Tenure
A Co. is not permitted to accept deposit ⇓ Repayable on demand or Repayable within 6 Months.	36 Months

However, a Co. can accept deposits for less than 6 Months but not lesser than 3 months provided amount of deposits shall not exceed 10% of PUSC + FR + SPA

(2) Ceiling or rate of interest & Brokerage [Rule 3(6)]

→ A co. may accept deposit by offering interest and pay brokerage, which shall not exceed the rate of interest & brokerage, prescribed by RBI for NBFC.

3→ Deposit in joint-name: [Rule 3(2)]

→ A Co. Can accept deposit in joint name but shall not exceed 3 persons.

4→ Limit on Deposit [Rule 3(4)]

	① Eligible Pub. Co.	② Public Co.	③ IFSC Pub. Co.	④ Private Co.	⑤ Start up + + Pvt. Co.	⑥ pvt. Co. + 3 Condition
a)	M = 10%	a) → M = 10%	a) → 100%	a) → 100%	a) Unlimited	a) Unlimited
b)	Public = 25%	b) → 0%	b → 0%	b = 0%	b) = 0%	b) = 0%

Note to Understand Table:

% = % of PUSC + FR + SPA
a) = Deposit from Member
b) = Deposit from Public

3 Condition for Unlimited acceptance of deposit by a pvt. Co.:

A private Co. may accept deposit from its member without any limit, subject to fulfillment of these 3 condition

a) Such pvt. Co is neither a holding nor a subsidiary or associate.

b) existing borrowing from bank, financial institution does exceed twice of PUSC or ₹50cr, whichever is lower

c) No default in repayment of deposits:

→ Ceiling limit for eligible Govt. Co.

An eligible Govt. Co can accept deposits in aggregate of 35% without splitting into member & public.

IFSC:- International Financial Services Centre:

An area, specially designed for promoting exchange of foreign currency, foreign-loan & ~~services~~ other financial services.

5 Circular (or) Circular in form of Advt. [Rule-4] [Sec.76]

It is issued when a co. wants to accept deposits from member	It is issued, when an eligible co. wants to accept deposit from Public

→ Form : DPT-1

→ Validity of C/CIFA:- C/CIFA is valid for earliest of these two

a) upto 6 months from end of F.Y in which it was issued.

b) Actual date of AGM:

6. Appointment of Depositors Trustee [Rule 7,9]

I About:

→ When: Co wants to accept ______ deposits:

→ The co. shall appoint one or more depositor's trustee, if it accepts secured deposits, within 7 days before issue of C or CIFA.

→ The appointment shall be through "Deposit-Trust-Deed" in form DPT-2

II 5 disqualifications: Following persons can't be appointed as Depositor Trustee.

(Depositor or himself)

a) Director, KMP, officer of CASH i.e., relevant Co, its associate, its holding as well as subsidiary

b) indebted Person

c) material Pecuniary relation
financial monetary

d) Guarantor i.e. a person, who has given guarantee for repayment of deposits

e) Relative of director, KMP etc. Specified in (a)

III Meeting of Depositors [Rule - 9]

The trustee shall Call & hold meeting of depositors.

a) On the request of depositor(s) who hold at least 10% of total outstanding deposit

b) On happening of any event which in the opinion of trustee, will adversally affect the int. of depositors.

7 Nomination [Rule - 11]:

Every depositor may nominate any person at any time, who will receive the amount of deposit after the death depositer.

8 → Deposit Receipt [Rule 12]

→ Co. shall issue deposit receipt within 21 days from the date of realisation of cheque or date of ~~rene~~ renewal.

→ This receipt shall be signed by authorised officer and have details like:

- date of deposit
- name & address of depositor
- amount of deposit
- rate of interest
- Maturity - date

9> Register of Deposits : [Rules - 14] :

→ Place: Co. shall maintain one or more registrar at its R.O.

→ Contents: • Name, address & PAN of depositor
• Particulars of the guardian (if depositor is minor)
• Nominee's Particular
• Deposit Receipt No.
• Rate of int. & due-date for payment of int.
• Particular of security charge created for repayment of deposits.

→ Time to make entry: Within 7 days from the date of issuance of Deposit - receipt

→ Preserved for: At least 8 years from the F.Y. in which the latest entry is made in the register of deposits.

10 Premature Repayment of Deposit [Rule - 15]

Suppose the depositor withdraw the amount of deposit within 8 months, then rate of int. will be reduced by 1% (i.e., effective rate will be (7 - 1% = 6%)

> However reduction in rate of interest will be @ 1% for every completed year.

Exception to reduction in int. rate : In

Exception to reduction in int. rate : In these two cases, Co. shall not reduce rate of interest.

(i) Refund by Co. to comply with the requirement of ceiling - limit

(ii) Refund by Co. to personnel of

Military Naval Airforce Families

due to war risk.

11 Premature closure of Deposit to earn Higher rate of interest : [Proviso to Rule-15]

→ Permitted but amount (tenure) of deposit which is being closed shall not be more than tenure of new-deposits. The rate of interest on new deposit shall be higher than rate of interest. closed pre-mature deposit

V.V.I 12→ Return of Deposit : [Rule-16]

→ The Co. shall file a return of deposits on or before 30th June, every year, containg particular as on 31st March every year. in form DPT-3. This return shall be certified by statutory auditor & director.

→ DPT-3 shall also have details of those amount which are not treated as deposits.

13> Disclosure in financial statements: [Rule-16A]

loan from Director ~~16A~~ (in case of Public - Co) and loan from Director & their relative shall be seprately disclose through "Notes to Accounts"

14> Penal rate of interest: [Rule-17]

On failure to repay deposit on due-date the Co. shall pay interest @ 18% p.a for the delayed period.

15> Punishment for Contravention [Rule-21]:

Any Contravention of "Deposit - Rules" any contravention for which punishment is not provided.

the Co. + O-I-D shall be punished as under.

a) Fine : upto ₹5000 and
b) Continuing Contravention : upto ₹ 500/day

Concept - 5: Punishment for Contravention of Sec. 73 & 76 [Sec - 76A]

(I) Punishment for Company:

Minimum	Maximum
1 Cr. or 2 times of amount of deposit accepted by Co, whichever is lower;	₹ 10cr.

II Punishment for officer-in-Default

Imprisonment upto 7years

Fine ₹ 25 lakh to 2 crore

Note:- In the offence is comitted by officer-in-default with intention to deceive Co./ shareholder / Depositors etc. he shall be liable for punishment u/s 447

~~Concept-6~~