

Ch:- 5 Acceptance of Deposits by Companies

Deposits?

Eligible companies

19
points

Amounts not considered as deposits

Depositor?

Exempted companies

Banking Co.

NBFC

HFC

Co. prescribed
by Cr.

Provisions regarding acceptance of deposits from members

Provisions regarding acceptance of deposits from Public

Punishment for contravention
of provisions u/s 73 to 76

**DON'T
FORGET**

only by
eligible Cos.

Repayment of deposits accepted before the
commencement of Companies Act, 2013

⇒ some basic definitions

1. Deposit

> Any receipt of money by way of:

a) deposit;

b) loan;

c) in any other form.



> It does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.

> Repayment of deposit is time-bound (along with interest)

> It can be secured or unsecured.

> It may be accepted in joint names not exceeding three persons.

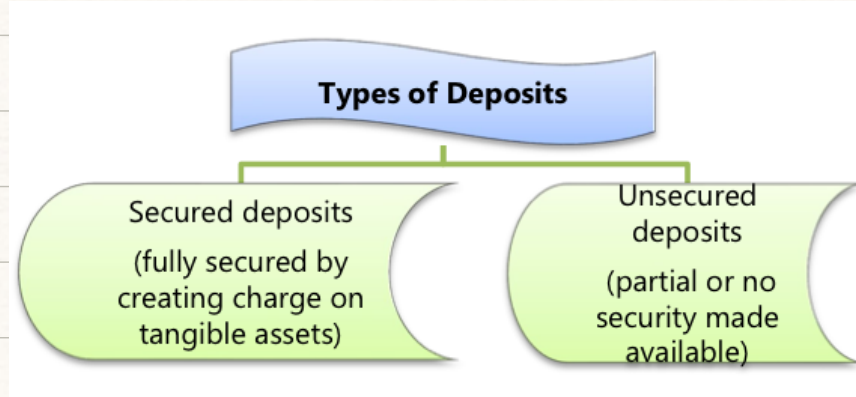
> Nominee may be appointed.

> Premature Repayment can be made by the company.

> A private company can accept deposits from its members only.

> A Public Company can accept deposits from its members & also from public if it fulfills certain parameters.

⇒ Amounts not considered as deposits



(I) Institutions

- (i) Government (CG., SG., LA., guarantee by govt.)
- (ii) Foreign Exchange as per FEMA.
(Foreign govt., banks, collaborators, authorities, etc.)
- (iii) Bank
(Banking co., SBI or its subsidiary, co-oper. bank)
- (iv) Public Financial Institution (PFI)
(PFI, Regional FI., Insurance Cos., Scheduled Banks)
- (v) Other Company
(Inter company deposit)

(II) Instrument

- (vi) commercial paper
(or any other instrument issued in accordance with RBI guidelines)

(vii) Subscription for Security as per Relevant Act

(so long as appropriated only against the amount due on allotment of securities applied for).

(within 60 days of receipt of application money, shares must be allotted; however, if not allotted then the money must be refunded to the subscribers within 15 days, otherwise the said amount shall be considered as deposit).

~~***~~ (viii) Secured Bonds / Debentures or Completely Convertible Debentures ≤ 10 yrs
(matlab; ye debentures 10 years ke andar shares mei convert ho jaye chahiye)

→ on RSE.

(ix) Listed Non-convertible Debentures
(for Unsecured Debt)

(III) Other Exclusions

(x) Nidhi company

(xi) Chit Fund

(xii) Start-Up company

→ 25 lakh Rs. or more; received by way of convertible note in a single tranche from a person.

CONVERTIBLE NOTE MEANING
instrument evidencing receipt of debt, convertible into equity shares or repayable within a period not exceeding 10 yrs.

(xiii) Collective Investment Scheme (CIS)

(xiv) AIF → Alternative Investment Fund

MF → Mutual Funds

VCF → Venture Capital Fund

InVits → Infrastructure Investment Trust

REIT → Real Estate Investment Trusts

(IV) Persons

+ its disclosure to be given in Board's Report

(v) director; or relative of director in case of Private Co.

(Note → a declaration in writing must be given to the Co. that amt. given by them is not given out of borrowed funds).

(vi) employees → upto their annual salary (12 months) → in the nature of non-interest bearing security deposit.

(vii) Promoter (+) Bank's stipulation
→ in the form of Unsecured loan

(V) In ordinary course of Business

(viii) Non-Interest Bearing amount held in trust.

5-star

(ix) Trade advances (Pre-Booking का पैसा)

deemed as deposit on the expiry of 15 days from the date of becoming due for refund

- (against the supply of goods or provision of services within 365 days of date of acceptance of such advance)
- (advance against supply of capital goods)
- (advance received & allowed by sectoral regulator in acc. with guidance of CG/SG)
- (advance towards subscription of a publication, to be adjusted further).
- (advance towards warranty & maintenance services, to be provided within period relevant as per common business practice or 5 yrs., whichever is lower).

Summary of definition of deposits & its exclusions :-

⇒ depositor {rule 2(1)(d)}

(i) any member of the Co. who holds deposit with a Co. in accordance with Sec. 73(2) of the Act ;

(ii) any person who has made a deposit in a public Co. in accordance with Sec. 76 of the Act.



⇒ eligible company

(a) It should be a public company.

(b) It should have net worth of minimum ₹ 100 Crore or a turnover of minimum ₹ 500 Crore.

(c) It has obtained the prior consent by means of a special resolution passed in the general meeting.

(d) The special resolution has been filed with the Registrar of Companies.

(e) An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under section 180(1)(c).

Sec. 73 → Prohibition on acceptance of deposits from Public.

⇒ Exempted Companies

The provisions relating to deposits (as laid under this Act) shall not be applicable on the following companies:-

	(NBFC)	(HFC)	
Banking company	Non-Banking Financial Co.	Housing Finance Co.	any other Co. notified by Cr.

⇒ Provisions regarding acceptance of deposits from members.



1. Passing of Resolution [Sec. 73(2)]
→ Ordinary Resolution to be passed in General Meeting.

2. Issuance of a Circular containing Statement [Sec. 73(2)(a)]

→ Circular to be issued to all the members in Form DPT-1.


to be issued in BOD'S Authority

may be published in English language in an English newspaper (+) in vernacular in a vernacular newspaper having wide circulation in the State where Registered office of the Co. is situated.

→ A Statement should also be attached showing financial position of the Co., credit rating obtained, total no. of depositors, amt. due towards previous deposits & other particulars.

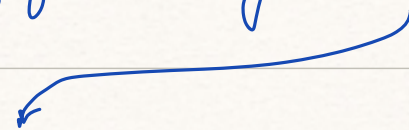
→ Certificate from statutory auditor to be attached along with Form DPT-1.  stating

Co. has not committed any default in repayment of deposits or interest thereon.

↓
→ However, if such default is committed, then auditor must state that 

The Co. has made good the default & period of 5 years has elapsed since the date of making good the default.

→ The Circular shall remain valid till the earliest of following dates :-

 upto 6 months of closure of F.Yr. in which it is issued.

- AGM ✓ → on the date of AGM
- AGM X → Last date to conduct AGM.

A fresh circular is to be issued in each succeeding F.Yr. for inviting deposits

3. Filing of circular [Sec. 73(2)(b)]

→ to be filed with Registrar within 30 days before the date of issue of circular.

[Sec. 73(2)(c)]

4. Requirement of Deposit Repayment Reserve A/c. (DRR)

→ to be made on or before 30th April each year

→ Amt. = at least 20% of the amt. of deposits

↪ maturing during the following F.Yr.

Bal. of DRR A/c must not fall below the said 20%.

→ Kept in a scheduled bank in a separate bank A/c called DRR A/c.

→ not to be utilised for any purpose other than Repayment of deposits.

5. Certification as to no default in Repayment [Sec. 73(2)(e)]

stating

> No default in Repayment of deposits accepted or payment of interest thereon.

> If default made → Co. has made good the default & period of 5 yrs. has lapsed.

Exemption to certain Private Companies

Sec. 73(a) to (e) shall not apply to following Cos.:

- (i) Money accepted from members $\geq 100\%$ (PVSC + FR + SPR)
- or (ii) Start-up Co.:- upto 5 yrs. from date of incorporation
- or (iii) Co. which fulfills all those conditions :-

- (a) X Associate / Subsidiary Co. of another Co.
- (b) Borrowings from Bank / FIs / Body Corporate less than {twice (PVSC) or 50 Cr. Rs.} \rightarrow lower
- (c) No Subsisting Default in Repayment of Deposits

• PVSC :- Paid up Share Capital

• FR :- Free Reserves

• SPR :- Securities Premium Reserve

→ Note :- Such Cos. shall file the details of monies accepted to the Registrar in Form DPT-3.

6. Provision of Security

> Any security may be provided for the due repayment of deposits or interest thereon \rightarrow (+)

steps shall be taken for creation of charge on the property or assets of the Co.

> deposits which are not secured or are partially secured are known as 'unsecured deposits'.



to be specified in every circular, form, other related doc.

7. Repayment of deposits.

> Every deposit to be repaid **with interest**.

8. Application to National Company Law Tribunal (NCLT) if company fails to repay.

> Depositor may apply to NCLT for an order to direct the co. to **repay the sum due or for any loss or damage** incurred by him (caused because of such non-payment) and such other orders as NCLT **may deem fit**.

9. Utilising the amount of deposit repayment reserve **A/c**.

> DRR. **A/c** shall **not** be utilised for any purpose **other than Repayment of Deposits**.

* 10. **Tenure** for which deposits can be accepted

> **Minimum Tenure** → **6 months**

{ co. cannot accept deposits (secured or unsecured) which is **repayable on demand or in less than 6 months** }

> **maximum tenure** → **36 months**

Exception :- For the purpose of meeting its **short term requirements**

of funds → a co. may accept/renew deposits for less than 6 months subject to following conditions :-



(i) such deposits $\leq 10\%$ (PVSC + FR + SPR) of the Co.

AND

(ii) such deposits shall be repayable only on or after 3 months from the date of such deposits/renewals.

* 11.) maximum amount of deposits from members

> Max. upto $\rightarrow 35\%$ (PVSC + FR + SPR)

\rightarrow including the amount of outstanding deposits as on date of accepting new deposits

> In case of Specified IFSC Public Co. & Private Co.

\rightarrow Max. upto $\rightarrow 100\%$ (PVSC + FR + SPR)

(+) \rightarrow file details of such monies accepted with Registrar in Form DPT-3.

> Maximum limit in respect of deposits to be accepted from members, shall not apply to following classes of Private Companies :-

{ unlimited deposits from members }

(i) Start-up company \rightarrow upto 10 yrs. from date of incorporation;

(ii) which fulfills all the following conditions :-

such cos. are required to file details of such monies in Form DPT-3.

(X) associate or subsidiary Co. of another company

Borrowings from Bank, FI or any Body Corporate $< \{2 \times (PVSC) \text{ or } 50 \text{ cr.}\}$ less

no subsisting default of the Co. in Repayment of such Borrowings.

12) Appointment of Depositor Trustee

{refer provisions of acceptance of deposits from Public}

13) Trustee to call meeting of depositors in following cases :-

(a) on receipt of written requisition from at least $1/10^{\text{th}}$ depositors in value;

(b) on happening of such event; which

Constitutes a Default

Affects the interest of depositors

14) Ceiling on Rate of Interest & Brokerage Payable on Deposits

> The rate of interest or brokerage shall not exceed the maximum rate of int./brokerage prescribed by RBI in case of NBFC.



No brokerage shall be paid to any person except the person who is authorised in writing by the Co.

15) Filling of application Form for making deposits

> Co. shall accept or renew deposits only when an application is made by the depositor to the Co.

> The application shall contain a declaration by the depositor
↓ that

Deposit is not being made out of borrowed money.

16) Deposit in Joint Names allowed ✓

> Jointholders shall not exceed three.

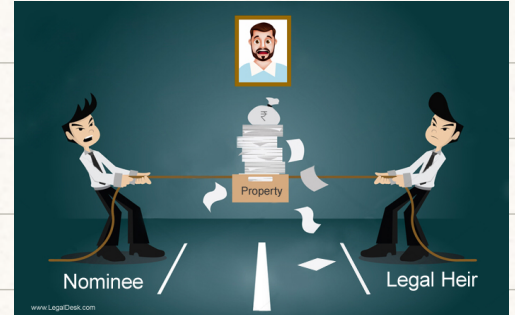
> Joint deposits may be accepted with or without the clauses → "jointly", "either or survivor", "first name or survivor", "Anyone or Survivor".

17) Nomination

> Nominee may be appointed at any time.

shall be

Holder of the deposits in the event of actual holder's death.



18) Deposit Receipt

> within 21 days from date of receipt of money / date of renewal

co. is required to furnish deposit receipt \rightarrow depositor/^{his} agent

> Deposit Receipt $\xrightarrow{\text{to be}}$ duly authorised by the **Board**.
↓ (same as FD Receipt)

State the amount of deposit, name & address of depositor,
Rate of interest & maturity date.

19) Register of deposits

20) Premature Repayment
of deposits

} In provisions of
'Acceptance of deposits from Public'

21) Filing of Return of deposits with Registrar

> Only **audited** return to be filed in Form **DPT-3**
(containing particulars as on 31st March every year)

↓
to be filed on or before **30th June** of that year

↓
along with **declaration of auditor of Form DPT-3**.

↙ it shall include ↘

Amounts
considered as
deposits

Particulars of
(other than Govt. Co.)

Amounts **not**
considered
as deposits

22) No right to alter T&C of deposit

↘ which may prove **disadvantageous** to the
interest of depositors

> No change after circular/advertisement for deposits is issued & deposits are accepted.

> No change in Tbc of Deposits, Deposit Trust Seed, deposit Insurance.

23) Disclosures in Financial Statements

Public company



disclose about money
recd from directors.

Private company



disclose about money
recd from directors
or Relatives of directors

24) Penal Rate of Interest

> If co. fails to repay the deposits (secured/unsecured)



Penal ROI → @ 8% for overdue period

25) Punishment for contravention

> Fine upto ₹ 5,000; &

> continuing default]


₹ 500 / day

} Co. (+) officer in default

Sec. 76 :- Provisions regarding acceptance of deposits from public by eligible companies

(1) eligible company! {definition in the beginning of the chapter}.

(2) Special Resolution in General Meeting

also, file the said resolution with the Registrar.  before making invitation to the public.

co. may accept deposits within limits of Sec. 180(1)(c) by passing an Ordinary Resolution.

(3) Obtain credit Rating

> to be obtained at least once in a year → shall be sent to the Registrar along with Form DPT- 3.



credit rating shall not be below the minimum investment grade rating or other specified credit rating for FDs.



to be obtained from credit rating agencies specified for NBFCs

4) Charge creation on assets Necessary if deposits are secured.

> Charge to be created within 30 days of acceptance of deposits.

> Amount of charge \geq amount of deposits accepted.
to interest thereon.

> Charge to be created in favour of deposit holders.
{ in favour of depositor Trustee }

> Charge can be created only on tangible assets not intangible assets.

> Market value of assets subject to charge

to be assessed by Registered Valuer

5) Tenure for which deposits can be accepted { Same }.

6) Appointment of Trustee for Depositors

> one or more trustees to be appointed by the Co.

> Written consent to be obtained from trustees.

> A statement shall appear in advertisement with reasonable prominence \rightarrow that

trustees have given their consent to the Co. for such appointment

> Deposit Trust Deed to be executed in Form DPT- 2 at least 7 days before issuing circular (relating to deposits).

**> No person / company shall be appointed as depositor trustee ; if he/it is :-

(a) Director, KMP or any other officer or employee of the Co. or its Co.⁺ (holding, subsidiary, associate) or a depositor in the Co.,

(b) Indebted to the Co., or its Co.⁺,

(c) has any material pecuniary relationship with the Co.,

(d) has entered into any guarantee arrangement in respect of principal debts secured by deposits,

(e) Related to the person specified in clause (a).

> No depositor trustee shall be removed after issue of circular & before completion of its term



unless agreed by all directors present at the meeting

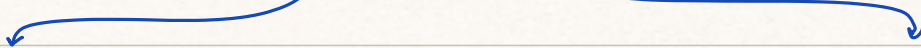


If co. has independent director $\xrightarrow{\text{then}}$ at least one ID must be present in the meeting

7) meeting of depositors to be called by Trustee in following cases :-

(a) on receipt of written requisition from at least $1/10^{\text{th}}$ depositors in value;

(b) on happening of such event; which



Constitutes a Default

Affects the interest of depositors

8) Maximum amount of deposits

(including all outstanding as on date of renewal/acceptance)

From members



max:

10%. (PVSC + FR + SPR)

From Persons other than

members



max

35%. (PVSC + FR + SPR)

(9) Maximum Amount of acceptable deposit in case of an eligible Government Company

↓

$$\text{max } 35\% (PUSC + FR + SPR)$$

(10) Issuance of Circular in the Form of advertisement
↳ same as discussed above.

(11) Maintenance & Using the Amount of deposit Repayment Reserve account
↳ same as discussed above.

(12) Ceiling on Rate of Interest & Brokerage Payable on deposits
↳ same as discussed above.

(13) Filling of Application Form for making deposits
↳ same as discussed above.

(14) Deposit in Joint Names
↳ same as discussed above.

(15) Nomination → same as discussed above.

(16) Deposit Receipt → same as discussed above.

(17) Register of deposits

> Co. shall maintain one or more separate registers for deposits accepted or renewed



at its registered office

> Following particulars of each depositor to be entered :-

① Name, address, PAN	⑥ Duration of deposit	⑩ Date(s) on which interest shall be paid
② Particulars of guardian (in case of minor)	(+) Repayment date	⑪ particulars of security / charge created
③ Particulars of Nominee	⑦ Rate of Interest	⑫ any other relevant particulars
④ deposit receipt No.	⑧ Due date for Interest Payment	
⑤ Date & amt. of deposit	⑨ mandate & instructions for int. payment & non-deduction of TDS	



entry to be made within 7 days from the date of issuance of receipt



duly authenticated by a director / secretary of Co.
or by other authorised officer

> Register to be preserved in good order for 8 years from the F.Yr. in which latest entry is made in the Register.

18) Premature Repayment of deposits

> After expiry of 6 months, but before actual date of maturity.

> The rate of interest payable shall be 1% less than the rate which would be payable for the period for which deposit has actually run
(1% less than actual rate of interest)

> Period for which deposit has run

DON'T FORGET

contains any part which is less than 6 months



Exclude / Ignore

If that part is 6 months or more



consider it as 1 year

> Reduction of Rate is not applicable if:



Premature Repayment is made in order to reduce the total amt. of deposits



to bring it within permissible limits



Premature Repayment is made to provide for war risk / other related benefits to the personnel of navy, military or air force or their families during the period of emergency.

19) Premature closure to Earn Higher Rate of Interest

> Higher Rate of Interest shall be paid only if;
↓

Deposit is renewed for a period longer than the unexpired period of deposit

20) Filing of Return of deposits with the Registrar
↳ same as discussed above.

21) Disclosure in Financial Statements

Public Co. → shall disclose (in notes to A/c.)

↓

about money recd. from Directors

(22) Penal Rate of Interest

↳ same as discussed above.

(23) No Right to alter any T & C of deposit

↳ same as discussed above.

(24) Punishment for contravention

↳ same as discussed above.

(25) Applicability of Section 73 and 74 to Eligible Companies

↳ Sec. 73 & 74 shall apply, *mutatis mutandis*, to acceptance of deposits from public by eligible Cos.

Punishment for contravention of section 73 or 76 [Sec. 76A]

Punishment for co.

↓
Fine :

{ 1 crore Rs.
or
2 x (deposits accepted)
lower →
max. upto 10 cr. Rs.

Punishment for
officer - in - default
↓

- Imprisonment upto 7 years
- Fine → 25 lakhs to 2 crore Rs.

Section 447 shall apply ↓ if wilful default is made by the officer

Sec. 74 :- Repayment of deposits accepted before commencement of Companies Act, 2013

(i) Filing of statement of deposits with the Registrar of Companies & Repayment Thereafter

> within 3 months from commencement of the Act or the date on which such payments are due ; file with the Registrar :-

- a statement of all deposits due & interest thereon. →

To be done irrespective of requirement under any other act.

> Repay within 3 yrs. from the commencement of the Act / on or before due date of Repayment
↓

whichever is earlier

(ii) Extension of Time for Repayment of Deposits by the Tribunal

↳ on an application made by the Co.
↓

Tribunal may
↓

extend the time to repay the deposit

Points to be considered by Tribunal :

⊙ Amount of deposits

⊙ Financial Position ⊙ Int. payable

(iii) Punishment for Non-Repayment of Deposits

→ → Company ← ←

Min. fine → 1 cr. Rs.

Max. fine → 10 cr. Rs.

→ officer - in - default ←

imprisonment upto 7 yrs.
or / and

Fine → ₹ 25 lakhs to 2 crores

Power to CG to decide certain Questions

(regarding the applicability of these rules on any company).