

**Papa, Mummy, Shruti, Aishwarya this one  
is for you all**



PRO

AI BRO

## **For my KIDS-**

**Let me delve a little deeper into the story of Vincent van Gogh, one of the most iconic painters of the 19th century. Born in the Netherlands, Vincent was always drawn to the arts. Despite his family's objections, he pursued his passion for painting, driven by a deep love for the art form. However, Vincent's journey as a painter was far from easy. He struggled to make a name for himself, and his work was often criticised and rejected by the art world.**

**Despite the many setbacks and obstacles he faced, Vincent never lost his passion for painting. He continued to create, despite the lack of recognition and support, and today, his works are some of the most famous and valuable in the world. Vincent's persistence and dedication to his art serves as a testament to the power of perseverance and the importance of never giving up on your dreams.**

**So, my dear students, I want you to take a page from Vincent's book. Embrace your struggles and use them as opportunities to grow and learn. Life is not a competition with others, but a journey to become the best version of yourself. Don't be afraid to face challenges head-on, and never lose sight of what you're passionate about. Remember, life is a canvas, and it's up to you to create the masterpiece that is your life.**

**And always remember, life is not a competition with others, but a journey to become the best version of yourself. Use your struggles as opportunities to grow, to learn, and to become a better person. Embrace the journey and never give up on your dreams. This is the message that Vincent van Gogh's life and legacy can teach us, and it is one that I hope you will take to heart.**

**And finally, I want you to think of your life as a work of art. The choices you make, the experiences you have, and the person you become, will all come together to create a beautiful masterpiece.**

## ABOUT ME- LAW KA BHAI, ADV.SHUBHAM JOSHI



- **Main Rambo ka baap hoon, Terminator ka chacha, Rocky ka dadu aur Bruce Lee ka nana; last action hero hoon main....**
- **The one who cares, the one who wants the best for you all  
Aapka- PROF.J, THE REAL BHAI**

### Contact details

**Mobile Number (WhatsApp)- 9657073003**

**Or DM me on my Instagram handle- prof\_shubham\_\_joshi**

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PROF. J'S LAW KA BHAI BRO

# ACCEPTANCE OF DEPOSITS BY COMPANIES



**EVERYONE AFTER GIVING DEPOSITS TO COMPANY**

## Contents of this Topic-

This chapter has very less sections but has rules which could become complicated if not paid attention

### LIST OF SECTION OF THIS TOPIC

SECTION	TOPIC
73	Prohibition on acceptance of DEPOSITS
74	Repayment of deposits
75	DAMAGES FOR FRAUD
76	Acceptance of deposits from Public
76A	Punishment for contravention

**Definition:** According to section 2 (31) of the Act, the term '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.

## INTRODUCTION



- **Acceptance of deposits** from the members as well as public at large **is an important source of finance** for the corporate sector.
- It is, therefore, necessary to control the companies which invite deposits in order to safeguard the general and wider interest of all those persons who offer deposits out of their precious savings.


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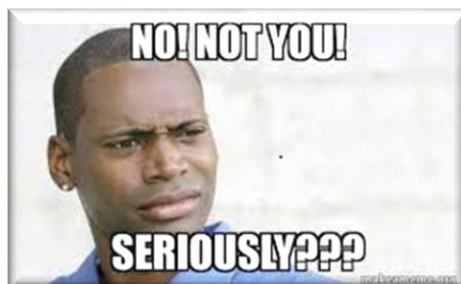
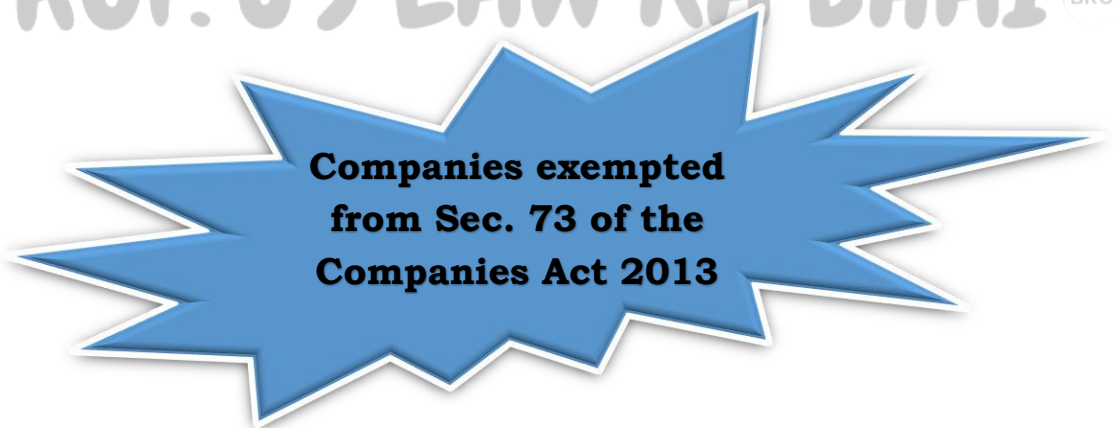
## ELIGIBLE COMPANY

### RULE 2 (1) (E)



(a) It should a public company.	<b>ELIGIBLE COMPANY</b>	(b) It should have net worth of minimum Rs.100 Crore or a turnover of minimum Rs.500 Crore
(c) It has obtained the prior consent by means of a special resolution passed in the general meeting	<b>FOR ACCEPTING DEPOSITS FROM PUBLIC</b>	(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).	

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A banking company;

A non-banking financial company as defined in the Reserve Bank of India Act, 1934;

A housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987; and

Such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf. [Section 73(1) read with Rule 1(3)].

**Rule 3 of the Companies  
(Acceptance of Deposits)  
Rules 2014**

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BHAI LTD (LISTED CO)

1. PAISA DIYA  
(MONEY)

For good Rate of Interest

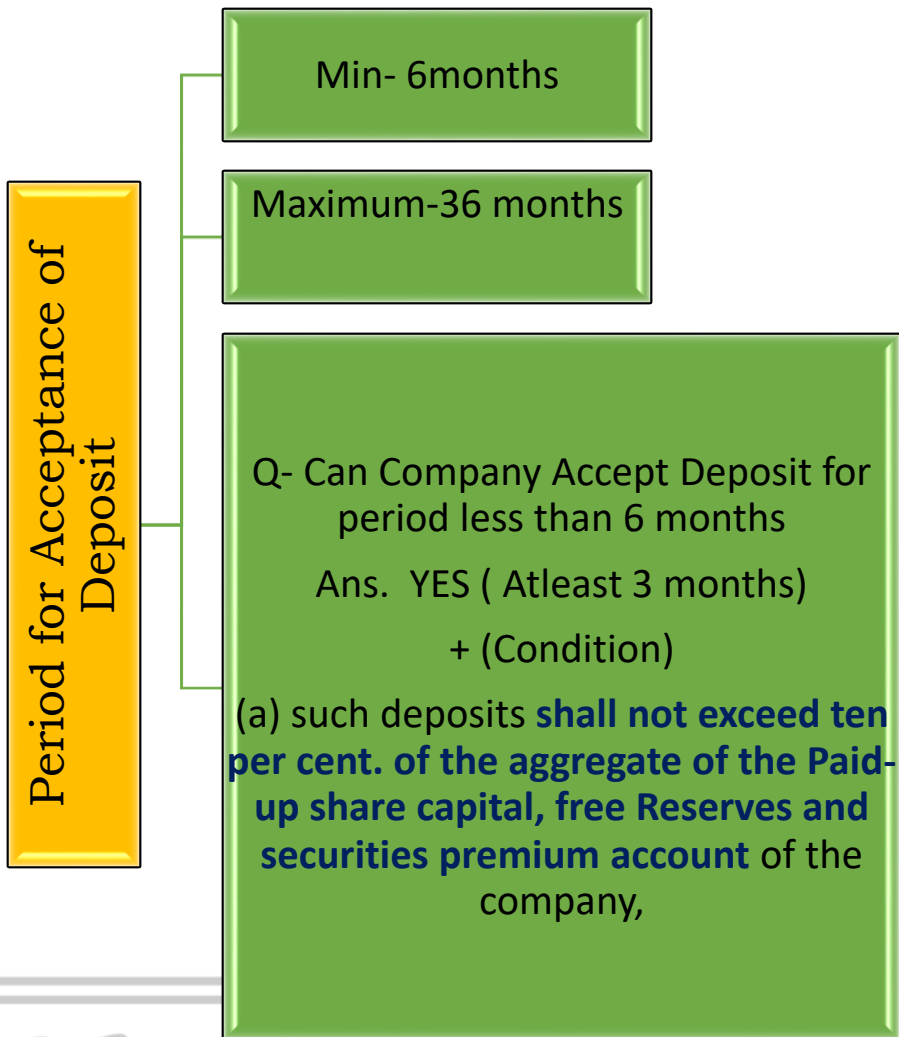


CAN ACCEPT FOR  
MINIMUM OF 6 MONTHS  
and MAX 36 MONTHS

**Minimum** Period for Acceptance of Deposit- 6 months

**Maximum** Period for Acceptance of Deposit- 36 months





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**Q1.** What is the THRESHHOLD LIMIT FOR COMPANIES TO ACCEPT DEPOIST? ( **HOW MUCH DEPOSIT CAN BE ACCEPTED BY COMPANIES** )

**ANSWER.**

<i>Type of company</i>	<i>Members</i>	<i>Public</i>
Eligible Company	Upto 10% of aggregate of the paid up share capital, free reserves and securities premium account	Upto 25% of aggregate of the paid up share capital, free reserves and securities premium account
Company referred in section 73(2) i.e. Non-eligible Companies	Upto 35% of aggregate of the paid up share capital, free reserves and securities premium account	Prohibited
Government Company (eligible under section 76)	–	Upto 35% of aggregate of the paid up share capital, free reserves and securities premium account

❖ **Eligible Co-**

- FROM MEMBERS- MAX 10% of PUSC+FR+SP
- FROM PUBLIC- MAX 25% of PUSC+FR+SP

❖ **Govt Co-**

- FROM PUBLIC- MAX 35% of PUSC+FR+SP

❖ **Non Eligible CO-**

- FROM MEMBERS- MAX 35%

**Q2. IS THERE ANY COMPANY EXEMPTED FROM THE ABOVE MENTIONED LIMITS?**

**ANSWER.**

TYPE OF COMPANY	EXEMPTION GRANTED
Specified IFSC Public company and a private company	may accept <b>from its members monies not exceeding one hundred per cent.</b> of PUSC+FR+SP
The maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies, namely:-	<p>i. a <b>private company</b> which is a <b>start-up, for ten years</b> from the <b>date of its incorporation</b>;</p> <p>ii. a <b>private company</b> which fulfils all of the following conditions, namely</p> <p>a. which <b>is not an associate or a subsidiary company</b> of any other company;</p> <p>b. the <b>borrowings</b> of such a company from banks or financial institutions or any body corporate <b>is less than twice of its paid up share capital or fifty crore rupees, whichever is less</b> ; and</p> <p>c. such a company has <b>not defaulted in the repayment of such borrowings</b> subsisting at the time of accepting deposits under section 73</p>

**Q3.**What is the maximum rate of Interest or what rate at which brokerage be offered by Co?

**Answer.**

- No company or any eligible company shall pay 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.

### Misc Area in Rule 3

❖ **Rights to alter terms & conditions-**

- The company shall not reserve to itself either directly or indirectly a right to alter, to the prejudice or disadvantage of the depositor

❖ **Credit Rating**

- 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 along with the return of deposits in Form DPT-3

PROF. J'S LAW KA BHAI 

**WHAT IS NOT A DEPOSIT  
and WHEN WILL IT  
BECOME DEPOSIT?**

LISTEN KIDS, FOR THIS I'M HERE!! TRUST ME WHEN I SAY THIS,

**THIS IS THE REAL DEAL AND ONLY ONE GUY CAN SAVE YOU FROM THIS**



**J'S LAW KA BHAI** BRO

BHAI KE DIAGRAMS KO STICK KARO TO UNDERSTAND THE FOLLOWING CONCEPT- **ALL THE BEST**

**I LOVE YOU ALL and NEVER FORGET**

**BHAI HAI**

**BHAI THA**

**BHAI RAHEGA**

**AIR-1 BHAI DILAYEGA**

All of the above was random motivation for you all!! CHALO LETS GO BACK TO CONCEPT, PAGE 14 Pe Aajao

(i)	<b>any amount received from the Central Government or a State Government</b> , 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)	<b>any amount received from foreign Governments</b> , foreign or 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 Governments 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)	<b>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</b> notified by the Central Government under section 51 of the Banking Regulation Act, 1949, or a corresponding new bank as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or in clause (b) of section (2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or from a co-operative bank as defined in clause (b-ii) of section 2 of the Reserve Bank of India Act, 1934;
(iv)	<b>any amount received as a loan or financial assistance from Public Financial Institutions</b> notified by the Central Government in this behalf in consultation with the Reserve Bank of India or any regional financial institutions or Insurance Companies or Scheduled Banks as defined in the Reserve Bank of India Act, 1934;
(v)	<b>any amount received against issue of commercial paper</b> or any other instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India;
(vi)	<b>any amount received by a company from any other company;</b>
(vii)	<b>any amount received and held pursuant to an offer</b> made in accordance with the provisions of the Act towards subscription to any securities, including <b>share application money or advance towards allotment of securities pending allotment</b> , so long as such amount is appropriated only against the amount due on allotment of the securities applied for; <p>(a) 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 60 days, such amount shall be treated as a deposit under these rules.</p> <p>(b) any adjustment of the amount for any other purpose shall not be treated as refund.</p>
(viii)	<b>any amount received</b> from a person who, at the time of the receipt of the amount, was a <b>director of the company or a relative of the director of the Private company</b> : Provided that the director of the company or relative of the director of the private company, as the case may be, 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 and the company shall disclose the details of money so accepted in the Board's report;
(ix)	<b>any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking <i>pari passu</i></b> with the first charge on any assets referred to in Schedule III of the Act excluding intangible assets of the company or bonds or debentures compulsorily convertible into shares of the company within Ten years. Provided that 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;
(ixa)	<b>any amount raised by issue of non-convertible debenture</b> not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India;

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(x)	<p><b>any amount received from an employee of the company</b> not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit;</p> <p><b>Test Yourself:</b></p> <p>The salary of Mr. Rahul is Rs. 20 lacs per annum of the ABC Ltd.. The company has the requirement of fund of Rs. 50 lacs. However, Rs. 30 lacs is shortfaling for the working capital requirement. The remaining amount is agreed to be funded by Mr. Rahul. Please comment whether the fund will be treated as deposit or not.</p>
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(xii)	<p><b>any amount received</b> in the course of, or <b>for the purposes of, the business</b> of the company,-</p> <p>(a) as an <b>advance for the supply of goods or provision of services</b> accounted for in any manner whatsoever 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 the date of acceptance of such advance, Provided that 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;</p> <p>(b) as <b>advance</b>, accounted for in any manner whatsoever, received in connection with [<b>consideration for an immovable property</b>] under an agreement or arrangement, provided that such advance is adjusted [against such property] in accordance with the terms of agreement or arrangement;</p> <p>(c) as <b>security deposit</b> for the performance of the contract for supply of goods or provision of services;</p> <p>(d) as advance received under <b>long term projects</b> for supply of capital goods except those covered under item (b) above;</p> <p>(e) as an <b>advance towards consideration for providing future services</b> 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;</p> <p>(f) as an <b>advance received and as allowed by any sectoral regulator</b> or in accordance with directions of Central or State Government;</p> <p>(g) as an <b>advance for subscription towards publication</b>, whether in print or in electronic to be adjusted against receipt of such publications.</p> <p>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, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a Deposit under these rules.</p> <p><i>Explanation:</i> For the purpose of sub-clause the amount shall be deemed to be deposits on the expiry of 15 days from the date they become due for refund.</p>
(xiii)	<p><b>any amount brought in by the promoters of the company by way of unsecured loan</b> in pursuance of the stipulation of any lending financial institution or a bank subject to fulfillment of the following conditions, namely:-</p> <p>(a) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance;</p> <p>(b) the loan is provided by the promoters themselves or by their relatives or by both; and</p> <p>(c) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter.</p>

(xiv)	<p><b>any amount accepted by a Nidhi company</b> in accordance with the rules made under section 406 of the Act.</p> <p><i>Explanation.-</i> For the purposes of this clause, any amount.-</p> <p>(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</p> <p>(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 considered as deposits unless specifically excluded under this clause.</p>
(xv)	<b>any amount received by way of subscription in respect of a chit</b> under the Chit Fund Act, 1982.
(xvi)	<b>any amount received by the company under any collective investment scheme</b> in compliance with regulations framed by the Securities and Exchange Board of India.
(xvii)	<b>an amount of twenty five lakh rupees or more received by a start-up company, by way of a convertible note</b> (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person.
(xviii)	<b>any amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds, "Infrastructure Investment Trusts", "Real Estate Investment Trusts" and Mutual Funds</b> registered with the Securities and Exchange Board of India in accordance with regulations made by it.



### 1. Passing of a Resolution

**2. Issuance of a Circular containing Statement:** The company is required to 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. **(if defaulted by company in repayment of previous default then a period of five years has lapsed since the date of making good the default as the case may be + this circular is valid for 6 months)**

**3. The company is required to file a copy of the circular containing the statement with the Registrar within 30 days before the date of issue of the circular.**



- 4. Requirement of Deposit Repayment Reserve Account:** The company is required to deposit, **on or before 30th of April each year, at least 20% of the amount of its deposits maturing** during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account.

### BOX BANA O AND LIKHO YEDOOO

**Provided that the amount remaining deposited shall not at any time fall below twenty per cent of the amount of deposits maturing during the financial year.**

### 5. Certification as to No default in Repayment

6. **Provision of Security:** The company may provide security, if any, for the due repayment of the amount of deposit or the interest thereon. Further, if security is provided, the company shall take steps for the creation of charge on the property or assets of the company.
7. **Deposits in Joint Names:** In case the depositors so desire, deposits may be accepted by the company in joint names not exceeding three. A joint deposit may be accepted with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor".

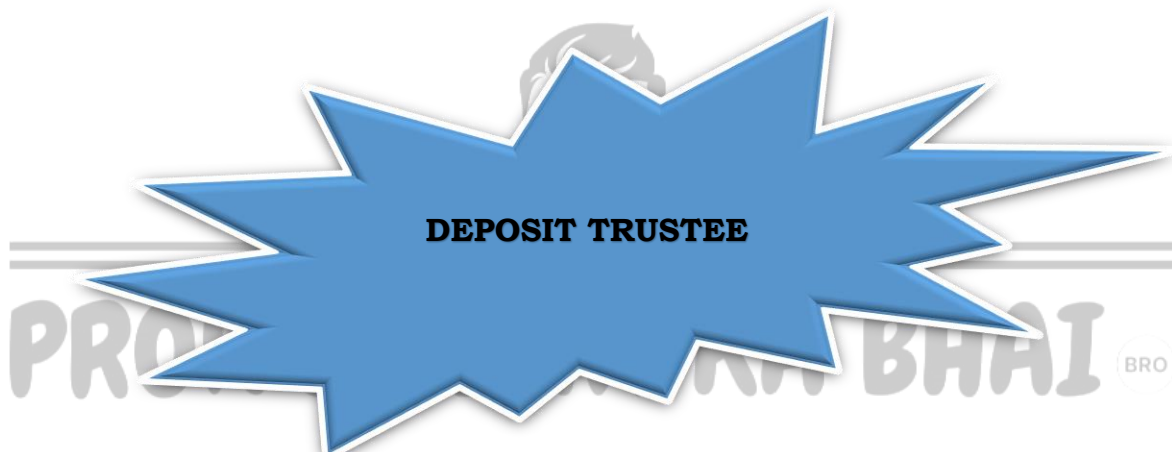
**Example** A, B and C have jointly deposited ₹ 3,00,000 in a company.

- *In case of 'Jointly' clause:*  
the repayment of deposit on maturity shall be made to all the three together i.e. A, B and C or the survivors.
- *In case of 'Either or Survivor' clause:*  
the repayment of deposit on maturity shall be made to either of the three i.e. either A or B or C or the survivor.
- *In case of 'First named or Survivor' clause:*  
the repayment of deposit on maturity shall be made to the first named person i.e. A if he is the first named person or the survivor.

8. **Deposit Receipt:** Within a period of twenty-one days from the date of receipt of money or realization of cheque or date of renewal, the company is required to furnish a deposit receipt to the depositor or his agent.
9. **No Right to Alter any Terms and Conditions of Deposit:** The company has no right to alter, either directly or indirectly, any of the

terms and conditions of the deposit, deposit trust deed and deposit insurance contract which may prove disadvantageous to the interest of the depositors.

- 10. Penal Rate of Interest:** In case the company fails to repay deposits (both secured and unsecured) on maturity, after they are claimed, it shall pay penal **rate of interest of eighteen per cent per annum for the overdue period.**
- 11. Charge Creation on Assets Necessary if the Deposits are Secured:** Every company which accepts secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets.  
**The amount of charge shall not be less than the amount of deposits accepted.** The charge shall be created in favour of the deposit holders in accordance with the prescribed rules. **(ONLY TANGIBLE ASSETS)**



❖ **KEY POINTERS FOR THE SAME**

- **One or more trustees** for depositors need to be appointed by the company for creating security for the deposits.
- A written **consent shall be obtained from the trustees** before their appointment.
- A statement shall appear in the **advertisement** with reasonable prominence to the effect that the **trustees for depositors have given their consent** to the company for such appointment.
- The company shall execute a **Deposit Trust Deed in Form DPT-2** at least seven days before issuing the circular or circular in the form of advertisement.
- **No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee** for the depositors, 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.
- 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.
- The **trustee for depositors shall call a meeting** of all the depositors in the following cases:
  - a. on receipt of a **requisition** in writing signed **by at least one-tenth of the depositors in value** for the time being outstanding;

- b. on **the happening of any event, which constitutes a default** or which, in the opinion of the trustee for depositors, affects the interest of depositors.



## QUESTION AND ANSWERS



Q.1 Enumerate the amounts which when received by a company in the ordinary course of business are not to be considered as deposits.

### Answer.

According to Rule 2 (1) (c) (xii) of the Companies (Acceptance of Deposits) Rules, 2014, following amounts if received by a company in the course of, or for the purposes of, the business of the company, shall not be considered as deposits:

(a) any amount received as an advance for the supply of goods or provision of services accounted for in any manner whatsoever to be appropriated within a period of three hundred and sixty-five days from the date of acceptance of such advance:

However, in case any advance is subject matter of any legal proceedings before any court of law, the time limit of three hundred and sixty-five days shall not apply.

(b) any amount received as advance in connection with consideration for an immovable property under an agreement or arrangement. However, such advance is required to be adjusted against such property in accordance with the terms of agreement or arrangement;

(c) any amount received as security deposit for the performance of the contract for supply of goods or provision of services;

(d) any amount received as advance under long term projects for supply of

capital goods except those covered under item (b) above;

(e) any amount received 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;

(f) any amount received as an advance and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;

(g) any amount received as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;

However, if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules.

Further, for the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of fifteen days from the date it became due for refund

**Q2.** State the procedure to be followed by companies for acceptance of deposits from its members according to the Companies Act, 2013. What are the exemptions available to a private limited company?

**Answer.**

Acceptance of deposits by a company from its members: As per section 73 (2) of the Companies Act, 2013, a company may, subject to the passing of a resolution in general meeting and 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 30 days before the date of issue of the circular;

(c) Depositing, on or before the thirtieth day of April each year, such sum which shall not be less than twenty per cent of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;

(d) Omitted

(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 where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default; 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.

Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement. Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the National Company Law Tribunal (NCLT) 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 NCLT may deem fit.

**Exemption to certain private companies:**

In terms of Notification No. GSR 464 (E), dated 05-06-2015 as amended from time to time, Clauses (a) to (c) and (e) of sub-section (2) of section 73 with respect to issue of circular, filing the copy of such circular with the Registrar, depositing of certain amount and certification as to no default committed, shall not apply to a private company:

(A) which accepts from its members monies not exceeding one hundred per cent of aggregate of the paid-up share capital, free reserves and securities premium account; or

(B) which is a start-up, for five years from the date of its incorporation; or

(C) which fulfils all of the following conditions, namely:

(a) which is not an associate or a subsidiary company of any other company;

(b) if 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 lower; and

(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section.

However, such a company [as referred to in clauses (A), (B) or (C)] shall file the details of monies accepted to the Registrar in the specified manner (i.e. in Form DPT-3).

**Q3.** Explain the provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013 read with the 'Acceptance of Deposits' Rules, 2014.

**Answer.**

Appointment of Trustee for Depositors: In this respect following provisions are required to be observed as mentioned in Rule 7 of the Companies (Acceptance of Deposits) Rules, 2014:

- One or more trustees for depositors need to be appointed by the company for creating security for the deposits.
- A written consent shall be obtained from the trustees before their appointment.
- A statement shall appear in the circular or advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company for such appointment.
- The company shall execute a deposit trust deed in Form DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.
- No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, 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.



• 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.

**Q4.** What are the provisions relating to 'Credit Rating' which an 'eligible company' must follow if it wants to raise public deposits?

**Answer.**

The provisions relating to obtaining of 'Credit Rating' to be followed by an 'eligible company' are contained in Section 76 (1) of the Companies Act, 2013 and Rule 3 (8) of the Companies (Acceptance of Deposits) Rules, 2014 as amended from time to time. Accordingly, an 'eligible company' which desires to raise public deposits shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency. The given rating which ensures adequate safety shall be informed to the public at the time of invitation of deposits from the public. Further, the rating shall be obtained every year during the tenure of deposits.

As per Rule 3 (8), copy of the credit rating which is being obtained at least once in a year shall be sent to the Registrar of Companies along with the Return of Deposits in Form DPT-3.

Further, the credit rating shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits. It shall be obtained from any one of the approved credit rating agencies as specified for Non-Banking Financial Companies in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, as amended from time to time

**Q5.** Discuss the following situations in the light of 'deposit provisions' as contained in the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time.

(i) Samit, one of the directors of Zarr Technology Private Limited, a start-up company, requested his close friend Ritesh to lend to the company Rs.30.00 lakh in a single tranche by way of a convertible note repayable within a period six years from the date of its issue. Advise whether it is a deposit or not.

(ii) Polestar Traders Limited received a loan of Rs.30.00 lakh from Rachna who is one of its directors. Advise whether it is a deposit or not.

(iii) City Bakers Limited failed to repay deposits of ` 50.00 crore and interest

due thereon even after the extended time granted by the Tribunal. Is the company or Swati, its officer-in-default, liable to any penalty?

(iv) Shringaar Readymade Garments Limited wants to accept deposits of Rs.50.00 lakh from its members for a tenure which is less than six months. Is it a possibility?

(v) Is it in order for the Diamond Housing Finance Limited to accept and renew deposits from the public from time to time?

**Answer.**

**(i)** In terms of Rule 2 (1) (c) (xvii) if a start-up company receives rupees twenty-five lakh or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person, it shall not be treated as deposit.

In the given case, Zarr Technology Private Limited, a start-up company, received Rs.3.00 lakh from Ritesh in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. In view of Rule 2 (1) (c) (xvii) which requires a convertible note to be repayable within a period of ten years from the date of its issue, the amount of ` 30.00 lakh shall not be considered as deposit.

**(ii)** In terms of Rule 2 (1) (c) (viii), any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written 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 further, the company shall disclose the details of money so accepted in the Board's report.

In the given case, it is assumed that Rachna was one of the directors of Polestar Traders Limited when the company received a loan of ₹ 30.00 lakh from her. Further, it is assumed that she had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by her by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report. If these conditions are satisfied Rs.30.00 lakh shall not be treated as deposit.

**(iii)** By not repaying the deposit of ` 50.00 crore and the interest due

thereon even after the extended time granted by the Tribunal, City Bakers Limited has contravened the conditions prescribed under Section 73 of the Act. Accordingly, following penalty is leviable:

- **Punishment for the company:** City Bakers Limited shall, in addition to the payment of the amount of deposit and the interest due thereon, be punishable with fine which shall not be less than rupees one crore or twice the amount of deposit accepted by the company, whichever is lower but which may extend to rupees ten crores.
- **Punishment for officer-in-default:** Swati, being the officer-in default, shall be punishable with imprisonment which may extend to seven years and with fine which shall not be less than rupees twenty-five lakh but which may extend to rupees two crore. Further, if it is proved that Swati had contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, she will be liable for action under section 447 (Punishment for fraud).

**(iv)** According to Rule 3 (1), a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months.

However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:

**(i)** such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and

**(ii)** such deposits are repayable only on or after three months from the date of such deposits or renewal.

In the given case of Shringar Readymade Garments Limited, it wants to accept deposits of Rs.50.00 lakh from its members for a tenure which is less than six months. It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid-up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after three months from the date of such deposits.

**(v)** According to section 73 (1) of the Act, no company can accept or renew deposits from public unless it follows the manner provided under Chapter V of the Act (contains provisions regarding acceptance of deposits by companies) for acceptance or renewal of deposits from public.

However, Proviso to Section 73 (1) states that nothing in this sub-section shall 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. Further, Rule 1 (3) (iii) states that the Companies (Acceptance of Deposits) Rules, 2014 shall not apply to a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987.

In the given case, it is assumed that Diamond Housing Finance Limited is registered with the National Housing Bank and therefore, the 'Acceptance of Deposits' Rules shall not apply to it. Hence, Diamond Housing Finance Limited being an exempted company, can accept and renew deposits from the public from time to time without following the prescribed manner.

**Q6.** ABC Limited having a net worth of ₹ 120 crore wants to accept deposit from its members. The directors of the company have approached you to advise them as to what special care has to be taken while accepting such deposit from the members in case their company falls within the category of an 'eligible company'.

**Answer.**

According to section 76 (1) of the Act, an "eligible company" means a public company, 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 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.

According to Rule 4 (a), an 'eligible company' shall accept or renew 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 does not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

ABC Limited is having a net worth of 120 crore rupees. Hence, it falls in the category of 'eligible company'.

Thus, ABC Limited has to ensure that acceptance of deposits from its members together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from the members, in no case, exceeds 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

**Q7.** Define the term 'deposit' under the provisions of the Companies Act, 2013 and comment quoting relevant provisions whether the following amounts received by a company will be considered as deposits or not:

(i) Rs.5,00,000 raised by Rishi Confectionaries Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India.

(ii) Rs.2,00,000 received by Raja Yarns Limited from its employee Mr. Tarun, who draws an annual salary of Rs.1,50,000, as a non-interest bearing security deposit under a contract of employment.

(iii) Rs.3,00,000 received by a private company from one of the relatives of a Director. The said relative has furnished a declaration that the amount was received by him from his mother as a gift.

**Answer.**

Deposit: According to Section 2 (31) of the Companies Act, 2013, the term '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.

Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014 states various amounts received by a company which will not be considered as deposits. In terms of this Rule the answers to the given situations shall be as under:

(i) Rs.5,00,000 raised by Rishi Confectionaries Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub-clause (ix) of Rule 2 (1) (c).

(ii) Rs.2,00,000 received by Raja Yarns Limited from its employee Mr. Tarun, who draws an annual salary of ` 1,50,000, as a non-interest bearing security deposit under a contract of employment will be considered as deposit in terms of sub-clause (x) of Rule 2 (1) (c), for the amount received is more than his annual salary of Rs.1,50,000.

(iii) Rs.3,00,000 received by a private company from one of the relatives of a Director. When the relative furnishes a declaration that the said amount was received by him from his mother as a gift, then it will not be considered as deposit in terms of sub-clause (viii) of Rule 2 (1) (c). In fact, the preceding sub-clause requires that any amount given by a relative of a director of a private company shall not be considered as

deposit if the relative furnishes 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. Thus, the amount given to the private company out of gifted money by one of the relatives of a director is not a 'deposit'.

As an additional requirement, the company shall disclose the details of money so accepted in the Board's report. Further, according to Rule 16 (A) (2), it shall also disclose in its financial statement, by way of notes, about the money received from the directors, or relatives of directors.

**Q8.** State, with reasons, whether the following statements are 'True or False'?

**Answer.**

(i) As per the provisions of Section 73 (2) of the Companies Act, 2013 read with Rule 3 (3) of the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding thirty-five per cent of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

It is provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in Form DPT-3.

Therefore, the given statement where ABC Private Limited is accepting deposits from its members to the extent of Rs.50.00 lakh is 'true'.

(ii) As per Rule 3 (5) of the Companies (Acceptance of Deposits) Rules 2014, a Government Company is not eligible to accept or renew deposits under section 76, 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, free reserves and securities premium account.

Therefore, the given statement where the limit of 25% has been stated for acceptance of deposits is 'false'.

**Q9. Answer the following citing relevant provisions:**

(a) Prayas Electricals Limited having paid-up capital of Rs.1 crore availed a term loan of Rs.10,00,000 from Beta Bank Limited to purchase electrical

items. Mr. Sambhav, one of the directors of the company, is of the opinion that it shall be considered as 'deposit'. Is his contention correct?

**(b)** Eklavya Publishing Company Limited facing acute cash crunch wants to utilise a portion of 'Deposit Repayment Reserve Account' to pay off its short-term creditors who are pressing hard for repayment of Rs.20,00,000. Is it justified to use funds lying in 'Deposit Repayment Reserve Account' in this manner?

**(c)** Sanjiv is a shareholder in Utsah Textiles Private Limited holding 10,000 shares of Rs.10 each. His wife Sneha and his three sons Aayush, Pranav and Himanshu are also shareholders in the company holding 1,000 shares each. In response to the invitation from the company inviting deposits from its members, Sanjiv wants to deposit Rs. 1,00,000 for 36 months jointly with his wife and three sons. Whether Utsah Textiles Private Limited can accede to the request of Sanjiv and accept deposit jointly in five names since all the depositors are shareholders of the company.

**Answer.**

(a) In terms of Rule 2 (1) (c) (iii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received as a loan or facility from any banking company shall not be considered as 'deposit'.

In view of the above, the contention of Mr. Sambhav that the term loan of Rs.10,00,000 availed by the company from Beta Bank Limited shall be considered as 'deposit' is not correct.

(b) Rule 13 of the Companies (Acceptance of Deposits) Rules, 2014, states that the amount deposited in the 'Deposit Repayment Reserve Account' shall not be used by a company for any purpose other than repayment of deposits.

Since there is a prohibition, Eklavya Publishing Company Limited is not permitted to utilise its 'Deposit Repayment Reserve Account' to pay off its short-term creditors.

(c) Rule 3 (2) of the Companies (Acceptance of Deposits) Rules, 2014, provides that where depositors so desire, deposits may be accepted in joint names not exceeding three.

In view of this provision, Sanjiv can deposit Rs.1,00,000 with Utsah Textiles Private Limited jointly with two other persons only irrespective of the fact that all the five persons are members of the company.

**Q10.** Shubhra Chemicals Private Limited (not a start-up company) is desirous of accepting 'deposits' from its members amounting to two hundred percent of aggregate of its paid-up share capital, free reserves and securities

premium account. What are the conditions it must fulfill before such acceptance?

**Answer.**

According to first proviso to Rule 3 (3), a private company may accept from its members monies not exceeding 100% of aggregate of the paid-up share capital, free reserves and securities premium account.

According to second proviso to Rule 3(3), the maximum limit in respect of deposits to be accepted from members shall not apply to the classes of private company which fulfils all of the following conditions, namely:

(a) which is not an associate or a subsidiary company of any other company;

(b) 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

(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:

According to third proviso all the companies accepting deposits shall file the details of monies so accepted with the Registrar in Form DPT-3.

In case Shubhra Chemicals Private Limited is not an associate or a subsidiary company of any other company and its borrowings from banks, etc. is less than twice of its paid-up share capital or fifty crore rupees, whichever is less and also it has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits, then it can accept 'deposits' from its members amounting to two hundred percent of aggregate of its paid-up share capital, free reserves and securities premium account.

Further, it shall file the details of monies so accepted with the Registrar in Form DPT-3

