

Acceptance of Deposits by Companies

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1. Introduction:

The Companies Act, 2013 was assented by the President of India on 29, August 2013 and Published in the Official Gazette on 30, August, 2013. Out of 470 Sections of the New Act, on 12th September, 2013, 98 Sections have been notified and on 26th March, 2014 vide Notification further 183 Sections have been notified and come into force from 01st April, 2014. In total, 281 Sections are in force. Chapter V of the Companies Act, 2013 deals with Acceptance of Deposits by Companies. The Chapter V has four sections from Section 73 to 76. The Companies (Acceptance and Deposits) Rules, 2014 have also been notified and comes into force on 01st of April, 2014.

2. 1956 Vs 2013:

Companies Act, 2013		Companies Act, 1956	
Section	Particulars	Section	Particulars
73	Prohibition on acceptance of deposits from public	58A	Deposits not to be invited without issuing an advertisement
74	Repayment of Deposits, etc., acceptance before commencement of this Act		
75	Damages of fraud		
76	Acceptance of Deposits from public by certain companies		
Rules	The Companies (Acceptance and Deposits) Rules, 2014	Rules	The Companies (Acceptance and Deposits) Rules, 1975

3. Important Definitions:

- **Deposit:** Section 2(31) of the Companies Act, 2013 defines the “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. Further the definition of Deposit must be read with Rule 2 (1)(c) of Companies (Acceptance of Deposits) Rules, 2014
- **Depositor:** Pursuant to Rule 2(1)(d) of Companies (Acceptance of Deposits) Rules, 2014, “Depositor” means
 - i. Any member of the Company who has made a deposit with the Company in accordance with the provisions of Sub-Section (2) of Section 73 of the Act or
 - ii. Any person who has made a deposit with a public Company in accordance with the provisions of Section 76 of the Act.
- **Eligible Company:** Pursuant to Rule 2 (1)(e) of Companies (Acceptance of Deposits) Rules, 2014, “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.

4. Applicability and Non Applicability of the Section and Rules:

This Sections and Rules will applicable to all the companies irrespective whether it is public or private limited company.

Section 73 of the Act specifically exempted the following class of companies:

- Banking companies
- Non Banking financial Companies as per Reserve Bank of India Act
- Other class of Company as specified by the Central government after consultation with the Reserve Bank of India.

5. Exempted Deposits:

Rule (1)(c) exempted the following amounts received by the companies are not to be considered as Deposits.

- i. Receipt from the Central Government or a State Government or any other source whose repayment is guaranteed by the Central Government or a State Government or from a local authority or from a Statutory Authority constituted under an Act of Parliament or a State Legislature;
- ii. Receipt from foreign Governments, foreign or international banks, multilateral financial institutions, 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 FEMA and rules and regulations made there under;
- iii. Any loan or facility from any banking company, banking institution notified by the Central Government, Public Financial Institutions notified by the Central Government or a notified Cooperative Bank;
- iv. Any amount received against issue of commercial paper or any other instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India;
- v. Intercorporate deposits;
- vi. Any amount received and held pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities, including share application money or advance towards allotment of securities pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for. It further provides that the allotment should be made within 60 days of the receipt. If the allotment has not made, the amount received should be refunded within 15 days from the expiry of 60 days.

Any adjustment of the amount for any other purpose shall not be treated as refund.

- vii. Receipt from a person who was a director at the time of receipt. The director has to furnish 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.
- viii. Any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets 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 five years;
- ix. Any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit;
- x. Any non-interest bearing amount received or held in trust;
- xi. Any amount received in the course of, or for the purposes of, the business of the company;
- xii. Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to specific conditions;
- xiii. Any amount accepted by a Nidhi company in accordance with the rules made under section 406 of the Act.

6. Section 73 – Prohibition on acceptance of deposits from Public:-

- (i) Section 73(1) provides that no company shall invite, accept or renew deposits under this Act from the public except in the manner provided under this chapter.
- (ii) Section 73(2) states that company can accept deposits from its members subject to passing a resolution in General meeting of members and fulfillment of certain conditions.
- (iii) Section 73(3) states that deposits accepted by the company under sub-section (2), shall be repaid with interest in accordance with the terms and conditions.
- (iv) Section 73(4) states that if a company fails to repay the deposit or part thereof or any interest thereon, the depositor may apply to the Tribunal.
- (v) Section 73(5) states that the deposit repayment reserve account shall not be used by the company for any purpose other than repayment of deposits.

7. Section 74 – Repayment of deposits, etc., accepted before commencement of this Act:-

- (i) Section 74(1) provides that any deposit accepted prior to new act and interest due thereon if remains unpaid or becomes due at any time on or after commencement of the new Act, then
 - file, within a period of three months from 01.04.2014 or from the date on which such payments, are due, with the Registrar a statement of all the deposits accepted by the Company and sums remaining unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment in DPT – 4, pursuant to the Rule 20 of the Rules.
 - Repay within one year or from the date on which such payments are due, whichever is earlier
- (ii) Section 74(2) provides company can make an application to the Tribunal for allowing further to repay the deposit.
- (iii) Section 74(3) provides that the minimum fine for the company will be Rs. 1 Crore and maximum fine will be Rs. 10 Crores for the default in repayment of the deposits and interest thereon within the time limit prescribed under sub-section (1) and (2) and every default officer is punishable with fine or imprisonment or both.

8. Section 76 – Acceptance of Deposits from public companies:

- (i) Section 76(1) states that an eligible company can accept deposits from persons other than its members subject to the compliance with the requirements provided in Sub-Section (2) of Section 73.
- (ii) Every such company accepting deposits from public shall be required to obtain rating from a recognised credit rating agency.
- (iii) Further, the company accepting secured deposits from the public it shall, within 30 days of the accepting deposits shall create a charge over the assets for not less than deposits accepted in favour of the depositors as per the Rule 6.

9. Rule 3 – Terms and Conditions of acceptance of deposits by companies:

- (i) Acceptance/renewal of deposit by Company w.r.t. Section 73(2) of the Act
 - **From the Members:** It shall not exceed 25 per cent of the aggregate of the paid-up share capital and free reserves of the Company. The 25% limit is to be computed considering such deposits together with the amount of other

deposits outstanding as on the date of acceptance or renewal of such deposits.

- (ii) Acceptance/renewal of deposit by Eligible Company w.r.t. Section 76 of the Act
 - **From the members:** It shall not exceed 10 per cent of the aggregate of the paid-up share capital and free reserves of the Company. The 10% limit is to be computed considering such deposits together with the amount outstanding from the members on date of acceptance or renewal of such deposits.
 - **From the Public:** It shall not exceed 25 per cent of the aggregate of the paid-up share capital and free reserves of the Company. The 25% limit is to be computed considering such deposits together with the amount outstanding from the Public on date of acceptance or renewal of such deposits.
- (iii) Acceptance/renewal of deposit by Government Company w.r.t. Section 76 of the Act
 - **From the Public:** It shall not exceed 35 per cent of the aggregate of the paid-up share capital and free reserves of the Company. The 35% limit is to be computed considering such deposits together with the amount outstanding from the Public on date of acceptance or renewal of such deposits.
- (iv) Interest on deposit and payment of brokerage to authorized person shall not exceed the maximum rate prescribed by the Reserve Bank of India for acceptance of deposits by Non-Banking financial companies.
- (v) The Company cannot alter the terms and conditions which are prejudicial to the depositors in the deposit, deposit trust deed and deposit insurance contract after circular or circular in the form of advertisement issued and deposits are accepted.

10. Rule 4 – Forms and Particulars of advertisements and circulars:

- (i) Deposits shall be accepted by issue of Circulars/Advertisements.
- (ii) Every Company (including Eligible Company) intending to invite deposit from its members shall issue a circular to all its members by registered post with acknowledgement due or speed post or by electronic mode in Form DPT – 1.
- (iii) Every Eligible Company intending to invite deposits from public shall issue an advertisement in Form DPT -1.
- (iv) Every Company inviting deposits from the public shall upload a copy of the circular on its website, if any.

- (v) The draft Circular/Form of Advertisement should be approved by Board and must be signed by majority of the directors of the Company.
- (vi) At least 30 days before issue of Circular/Form of Advertisement, deliver a copy of Circular/Form of Advertisement approved by Board to the Registrar of Companies for registration.
- (vii) The Circulars/ Form of Advertisement shall be valid until the expiry of six months from the date of closure of the financial year in which it is issued or until the date on which the financial statement is laid before the Company in general meeting or, where the annual general meeting for any year has not been held, the latest day on which that meeting should have been held in accordance with the provisions of the Act, whichever is earlier.
- (viii) Effective date of issue of circular shall be the date of dispatch of the circular but not from the date of Advertisement in news paper.

11. Rule 5 - Manner and Extend of Deposit Insurance:

- (i) The Company, at least 30 days before issue of Circular/Form of Advertisement enter into a contract providing for deposit insurance to cover both principal and interest thereon.
- (ii) If the deposit amount and interest thereon is less than Rs.25,000/- the insurance coverage will be full amount of deposit amount and interest thereon and if the deposit amount and interest thereon is more than Rs.25000/- then minimum coverage is not less than Rs.25000/-
- (iii) The Insurance Premium shall be borne by the Company.
- (iv) Fresh insurance coverage to be taken if at any time terms and conditions of the deposit insurance contract which makes the insurance cover ineffective.

12. Rule 7 – Appointment of trustee for depositors:

- (i) Before issue of Circular/Form of Advertisement, appoint one or more deposit trustees.
- (ii) A written consent should be obtained from the trustee of depositors before their appointment. The Circular/Form of Advertisement should contain a statement that the Deposit Trustee has given their consent to act as Deposit Trustee.
- (iii) The Company shall execute a deposit trust deed in DPT - 2 at least 7 days before issuing the circular or circular in the form of advertisement.
- (iv) The Company should not appoint certain class of person as trustee for depositors as per clause 3 of the Rule 7.

- (v) The Deposit trustee shall not 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.

13. Rule 10, 11 & 12 – Form of application, Nomination & Deposits Receipts to Depositors:

- (i) Deposit to be accepted only in the prescribed form.
- (ii) The application shall contain a declaration from the depositor to the effect that the deposit is not being made out of any money borrowed by him from any other person.
- (iii) A depositor may, at any time, make a nomination.
- (iv) Deposit receipt shall be issued in the prescribed format and shall be signed by an officer duly authorized by Board, within a period of 21 days from the date of receipt of money or realization of cheques.

14. Rule 13 - Maintenance of liquid assets and creation of Deposit Repayment Reserve Account.

- (i) Each Company to create a deposit repayment reserve account and deposit a sum not less than 15% of the deposit amount matured during the current financial year with any schedule bank. The amount deposited shall not at any time fall below 15% of the amount of deposits maturing until the current financial year and the next financial year.
- (ii) The amount in deposit repayment reserve account shall not be utilized for any purpose other than for the repayment of deposits.

15. Rule 14 & 16 - Registers & Returns of deposits:

- (i) Every company accepting deposits shall maintain at its registered office one or more separate registers for deposits accepted or renewed.
- (ii) Make entries in the register - information to be entered as per rules within 7 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 for this purpose.
- (iii) The registers shall be preserved in good order for a period of not less than eight years from the financial year in which the latest entry is made in the register.
- (iv) File deposit return in DPT - 3 by furnishing information contained therein as on 31st day of March duly audited by auditors before 30th of June every year.

16. Rule 15 & 17 – Premature repayment of deposits & Penal Interest:

- (i) If at any time the depositor request for repayment after expiry of a period of six months from the date deposit but before the maturity period, the rate of interest payable by the Company on such deposit shall be reduced by one per cent from the contracted rate.
- (ii) A penal rate of interest of eighteen per cent per annum shall be payable for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.

17. Secretarial compliance for acceptance of deposits:

- (i) Board to decide the acceptance of deposit and authorize for issue of notice for holding general meeting for obtaining approval of the shareholder.
- (ii) Hold the General Meeting and obtain approval of the shareholder by means of a special resolution.
- (iii) File the said resolution with Registrar.
- (iv) Hold Board meeting and obtain the approval of the draft Circular/Form of Advertisement from the Board and ensure that the draft Circular/Form of Advertisement must be signed by majority of the directors of the Company. The Board should also took a note of the following:
 - Name of the authorized person, who will solicit deposits on behalf of the Company and rate of brokerage for the services.
 - Authorize nominated officer for furnishing deposit receipts.
 - Compliance of provision of deposit insurance, Creation of security deposit for secured deposit & deposit Trustee.
- (v) Deliver a copy of Circular/Form of Advertisement approved by the Board with the Registrar for registration.
- (vi) Before issue of Circular/Form of Advertisement, appoint one or more Deposit trustees.
- (vii) Execute a Deposit trust deed in DPT - 2 at least 7 days before issuing the circular or circular in the form of advertisement.
- (viii) Enter into a contract providing for deposit insurance at least thirty days before the issue of circular or advertisement with Insurance Company.

- (ix) Obtain the rating from a recognized credit rating agency for informing the public the rating given to the Company.
- (x) The Circular can be issued to members by registered post with acknowledgement due or speed post or by electronic mode or publish the circular in the form of an advertisement in DPT – 1 as case maybe.
- (xi) Upload a copy of the circular on the Company's website, if any.
- (xii) Issue deposit receipt in the prescribed format and under the signature of officer duly authorized by Board within a period of 21 days from the date of receipt of money or realization of cheques.
- (xiii) Make entry in Register of Deposits as per Rule.
- (xiv) File deposit return in DPT - 3 with Registrar as required by the Rule.

18. To Sum up:

The provisions and Rule of the deposits from members and public are very harsh and stringent particularly to the private limited companies. Now, even private limited companies have to follow all these formalities and procedure if it has accepted deposits from its shareholders and relatives. Before, it is exempted for Private limited companies. Moreover, the penalty clause is very harsh i.e. minimum penalty under section 74 is Rs. 1 Crore irrespective of the default amount. It is true that the Government has made these provisions to safeguard the interest of the small depositors. However in relation to private limited companies, these provisions are too harsh and difficult to follow. Hope the new Government will take all these considerations and exempt the private limited companies from these stringent provisions and rules.

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