

13. DEPOSITS

Q.No.1. Define the term "Deposit". What are the exempted deposits under the Companies Act, 2013? (A)
(NEW SM, OLD SM)

Definition of Deposit 2(31):

- 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 RBI.

Rule 2(1)(c) Exempted Deposits [Sec 73 does not apply for following]:

- a) Any amount received from
 - Central Government or a State Government, or
 - a local authority, or a statutory authority constituted under an Act of Parliament or a State Legislature or
 - any other source whose repayment is guaranteed by the CG or SG
- b) Any amount received from foreign Governments; or foreign international banks; or multilateral financial institutions etc. subject to the provisions of FEMA Act, 1999.
- c) Any amount received from any banking Company (as a loan or facility).
- d) Any amount received from Public Financial Institutions (as a loan or financial assistance)
- e) Any amount received against issue of commercial paper or any other instruments (issued in accordance with the guidelines or notification issued by RBI);
- f) Any amount received by a Company from any other company (Inter-corporate loans)
- g) Amount received as advance:
 - 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.
 - If allotment not done within 60 days of receipt of application money, the same shall be refunded within 15 days from completion of 60 days or else it shall be treated as deposit.
- h) Loan from Director:
 - In case of Public Company – Loan can be taken from directors.
 - In case of Private Company – Loan can be taken from directors or his relatives¹.
- i) Secured debentures:
 - Any amount raised by the issue of bonds or debentures secured first charge on any assets excluding intangible assets provided that it shall not exceed the market value of such assets.
 - Convertible bonds or debentures, which are convertible into shares within 10 years.
- j) Non convertible unsecured debentures listed in the stock exchange.
- k) Non-interest bearing security deposit received from an employee of company not exceeding their annual salary.
- l) Any non-interest bearing amount received and held in trust;
- m) Any amount received in the course of, or for the purposes of, the business of the Company as an advance for the supply of goods or provision of service.

¹ Note: However, director of the company or relative of director of private company, 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 from others.

- n) 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.
- o) Any amount accepted by a Nidhi Company (u/s 406 of the Companies Act, 2013).
- p) Any amount received by way of subscription in respect of a chit (under the Chit Fund Act, 1982)
- q) Any amount received by the Company under any collective investment scheme in compliance with regulations framed by the SEBI.
- r) Rs. 25 lakhs or more received by start-up Company by way of a convertible notes². It should be received in a single tranche from a person.
- s) Any amount received from Alternate Investment Funds, Domestic Venture Capital Funds, Infrastructure Investment trust, Real Estate Investment trusts and Mutual Funds registered with the SEBI.

SIMILAR QUESTIONS:

1. **State the categories of companies to which the provisions of the Companies Act, 2013 relating to invitation and acceptance of deposits do not apply?**

A. Refer the above answer - Government, Banking, Financial institutions and Nidhi companies etc.

Q.No.2. What are the conditions specified u/s 73(2) of the companies act, 2013 for accepting deposits from members (A) (NEW SM, OLD SM)

COMPLIANCE OF CONDITIONS SPECIFIED U/S 73(2): A Company may accept deposits from its members by fulfilling all the following conditions:

1. A company may accept deposits from members by passing resolution at General Meeting (Ordinary Resolution)
 - On such terms and conditions as may be agreed between the company and the members.
 - Subject to the rules prescribed by CoS
2. **Circular:**
 - a. Company shall issue a circular to the members inviting deposits from them.
 - b. Contents of Circular: The Circular shall contain the following –
 - Financial position of the company
 - Credit Rating obtained,
 - Total number of depositors,
 - Amount due towards previous deposits accepted by the company, and
 - Other particulars as per Rules.
 - c. File a copy of Circular, with ROC, within 30 days before the date of issue of the circular.
3. **Deposit Repayment Reserve Account (DRR):**
 - a. Company shall deposit such sum not less than (at least) 20% of the amount of deposits maturing during the following Financial Year.
 - b. Company shall deposit in a scheduled bank in a separate bank account called DRR account.
 - c. The deposit shall be made on or before 30th April of each year.
 - d. The DRR account shall not be used by the company for any purpose other than repayment of deposits.
4. **Certificate of no default:** The Company shall certify that it has not defaulted in repayment of any deposits or interest thereon.

² Convertible into equity shares or repayable within 5 years

Note: If such default had occurred and the company made good the default and a period of 5 years has lapsed since the date of making good the default then the company can accept the deposits

5. **Security on deposits:** The Company may provide security for repayment of deposits and interest payable thereon. For this purpose the company can create charge on its assets.

Note: In case of unsecured deposit³, every circular, advertisement or document through which deposits are accepted shall state 'unsecured deposits'.

6. **Repayment of deposits:**

a. Company should repay deposits and interest thereon as per terms and conditions of deposits.

b. **Failure to repay the deposits:**

- If a company fails to repay deposit or part thereof or any interest thereon, the depositor concerned may apply to tribunal.
- Tribunal directs the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment.
- Tribunal may pass such orders as it deems fit

c. **Rule 17:** Every Company shall pay a penal rate of interest of 18% p.a. for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.

7. **Exemptions to Private Limited Company:** The above requirements (*point 1 to 3*) u/s 73 are not applicable to a private company -

a. Deposits from members not exceeding 100% of aggregate of paid up share capital, Free Reserves and securities premium (or)

b. which is a start up for 5 years from incorporation or

c. which fulfills all of the following conditions:

- It is not an associate or subsidiary of any other company.
- Borrowings from banks or financial institutions or body corporate is less than twice of its paid up share capital or Rs. 50 Crores whichever is less.
- It has not defaulted in repayment of such borrowings.

d. The aforesaid companies shall file with ROC details of money accepted in Form DPT-3.

SIMILAR QUESTIONS:

1. *Atul Ltd. has passed a resolution in its GM regarding accepting deposits from its members. Can this Company accept deposit from its members under the companies Act, 2013? If yes, State the conditions to be fulfilled regarding this? (M16 - 8M, MTP-M18) (NEW)*
2. *State the procedure to be followed by companies to accept deposits from its members according to the Companies act, 2013. What are the exemptions available to the Private Limited Company?*

Q.No.3. What is the prohibition on accepting deposits from public under the companies Act, 2013? (Sec 73) (C) (NEW SM, OLD SM) (For Students self-study)

PROHIBITION ON ACCEPTANCE OF DEPOSITS FROM PUBLIC:

1. No Company shall invite, accept or renew deposits under this Act from the public except in a manner provided u/s 73 to 76A.
2. **Exception:** This prohibition shall not apply to the acceptance of deposits from public by the following companies:
 - a) Banking Company.

³ in case where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as "unsecured deposits"

- b) Non-banking financial Company as defined in the RBI Act, 1934,
- c) A housing finance Company registered with the National Housing Bank established under the NHB Act, 1987, and
- d) Such other Company as the CG may specify, after consultation with the RBI.

Note: Prohibition on acceptance of deposits contained in sec 73 shall not apply where a public Company accepts deposits in compliance of sec 76 of the Act.

SIMILAR QUESTION:

1. **Certain companies are exempted from the provisions of deposits under Companies Act, 2013. Comment.**

A. **Statement is correct. Refer Point 2 above.**

Q.No.4. Discuss the provisions of the Companies Act, 2013 with respect to acceptance of deposits from public by certain companies (i.e. Eligible Public Companies) having high net worth or high turnover as may be prescribed [Sec 76] (A) (NEW SM, OLD SM)

ACCEPTANCE OF DEPOSITS FROM PUBLIC BY CERTAIN COMPANIES (SEC 76):

Eligible company:

- a) It should be a Public Company
- b) It should have net worth⁴ of not less than Rs.100 Crores or Turnover of not less than Rs. 500 Crores;
- c) It has obtained the prior consent by means of a special resolution passed in general meeting;
- d) The SR has been filed with the ROC (before making invitation of such deposits).
- e) An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified u/s 180(1)(c).

REQUIREMENTS:

- a) Compliance of conditions of sec.73(2) (i.e. conditions for accepting deposits from the members)
- b) Compliance of the rules, framed by CG in consultation with the RBI.
- c) **Rating of deposits:**
 - i) Obtaining the rating of its deposits⁵ from a recognized credit rating agency in a specified manner.
 - ii) The rating shall be obtained every year during the tenure of deposits.
 - iii) A copy of such rating shall be sent to the ROC along with the return of deposits in form DPT-3.
 - iv) The rating obtained by the Company, shall be informed to the public at the time of invitation of deposits from the public, which ensures adequate safety.
- d) **Company duty to register charges:**
 - i) In case of secured deposits from public, charge should be made:
 - Created within 30 days of accepting a secured deposit from public
 - Created on assets of company.

⁴ NET WORTH [SEC 2(57) OF COMPANIES ACT, 2013] - means

- a. The aggregate value of the paid-up share capital and
- b. All reserves created out of the profits and securities premium A/c & debit or credit balance of P&L Account.
- c. After deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet,
- d. But does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.

⁵ including its net worth, liquidity and ability to pay its deposits on due date

- ii) The value of charge shall not be less than the amount of deposits accepted

Note:

- Provisions of sec 73 to 76A of the Companies Act, 2013 shall apply mutatis mutandis to acceptance of deposits from public by eligible public companies.
- Private companies are prohibited from accepting deposits from public.

Amendments:

- Every Company, other than a private Company, shall disclose in its financial statements, by way of notes, about the money received from the director.
- Every private Company shall disclose in its financial statements, by way of notes, about the money received from the directors, or relatives of directors.

SIMILAR QUESTIONS:

- State the manner in which the Companies Act regulates acceptance of deposits by companies.
 - Refer the above answer (Sec 76) and also sec 73 of the Companies Act, 2013.
- The BOD of Growmore Ltd. decides to invite deposits from public. You being the Company secretary of the Company have been asked to prepare and place before the Board, a detailed note on the conditions for inviting public deposits so that the legal requirements are duly complied with. Prepare a note advising the Company.
 - Refer the above answer

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 1)

Q.No.5. Explain Repayment of deposits accepted before commencement of this act (Sec.74) (B) (NEW SM, OLD SM)

- Deposit accepted by company before the commencement of new act which is due thereafter:
 - File with ROC a statement of all deposits accepted or unpaid, Interest due – within 3 months from April 1, 2014.
 - Repay within 3 years from such commencement (or) on or before expiry of the period for which the deposits were accepted, whichever is earlier.

However, that renewal of deposits shall be done in accordance with the provisions of Chapter V and the rules made there under.
- Application to the tribunal (NCLT) can be made to avail further time to repay the deposit.
- Default to repay the deposit:** In addition to amount of deposit and interest due, shall be punishable with the following:

Who is Punishable	Punishment
Company	Fine Minimum: Rs. 1 Crore; Maximum Rs. 10 Crores
every officer of the company in default	Imprisonment – up to 7 Years or Fine – Rs. 25 Lakhs to Rs. 2 Crores or Both

Q.No.6. Explain the Punishment for contravention of sections 73 or 76 (Sec.76A) (C) (NEW SM, OLD SM)

PUNISHMENT FOR CONTRAVENTION OF SECTIONS 73 OR SECTION 76 [SECTION 76A]:**1. Contravention:**

- Accepting or inviting or causing any other person to accept or invite on its behalf any deposit in contravention of Sec. 73 or Sec. 76 or rules there under.
- Failure to repay the deposit or part thereof or any interest due thereon within the

- time specified u/s 73 or 76 or rules there under or
- further time as may be allowed by the Tribunal u/s 73,

2. Punishment:

Who is Punishable	Punishment
Company	Fine: Minimum: Rs. 1 Crore or twice the amount of deposit accepted by the company, whichever is earlier Maximum: Rs. 10 Crores Note: The fine is in addition to the payment of deposit or interest due thereon
Every officer in default	Imprisonment: Up to 7 years and Fine: Minimum Rs. 25 Lakhs, Maximum: Rs. 2 Crores

3. Action u/s 447:

- If it is proved that the officer of the company who is in default, has contravened such provisions knowingly or willfully with the intention to deceive
 - the company or
 - its shareholders or depositors or creditors or tax authorities,
- then he shall be liable for action under section 447

SIMILAR QUESTION:

1. What is penalty for default in repayment of deposits including interest within the time limits specified u/s 73 or 76 of the Companies Act, 2013? (Sec 76A)

A. Refer the above answer.

Q.No.7. State the maximum amount of deposits that a company can accept under Companies (Acceptance of Deposits) Rules, 2014? (A) (NEW SM)

1. Private Company or Non eligible Public Company

- Company (referred u/s 73(2)) shall not accept deposits, if the amount of outstanding deposits along with the amount of deposits proposed to be accepted exceeds 35% of the aggregate of the Paid-up share capital, free Reserves and securities premium account.
- Exception:**
 - However, a private company and IFSC public and private company may accept deposits from its members up to 100% of its aggregate of paid up share capital, free reserves and securities premium account and
 - such Company shall file the details of monies so accepted to ROC in such manner as may be specified.

2. Eligible Company u/s 76 shall not accept or renew deposits in excess of:

- From Members: 10% of the aggregate of the Paid-up share capital, Free Reserves and securities premium account of the Company;
- From Public: 25%. Of aggregate of the Paid-up share capital, Free Reserves and securities premium account of the Company.

3. In case of **Government Company** being eligible u/s 76, the overall ceiling limit is 35% of the aggregate of its Paid-up share capital, free Reserves and securities premium account of the Company (i.e. no breakup as to 10% and 25%).

Q.No.8. Write about appointment of trustee for depositors under rule – 7. (B) (NEW SM)

1. **Applicability:** Company referred to Sec. 73(2) or any Eligible company can issue circular or advertisement inviting secured deposits only if company has appointed one or more trustees for depositors for creating security for the deposits:
2. **Consent of trustee:**
 - Written consent shall be obtained from the trustee for depositors before their appointment
 - The circular or advertisement should state with reasonable prominence, that the trustees for depositors have given their consent to the Company to be so appointed.
3. **Deposit Trust Deed:** The Company shall execute a deposit trust deed in Form DPT-2 at least 7 days before issuing the circular or advertisement.
4. **Disqualifications for Trustee:** The following persons are not eligible to be appointed as Trustee for depositors -
 - a) Director, KMP 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) Person indebted to the Company, or its subsidiary or its holding or associate Company or a subsidiary of such holding Company;
 - c) Person having material pecuniary relationship with the Company;
 - d) Person who has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;
 - e) Person related to any person specified in point (a) above.
5. **Removal of Trustee from Office:**
 - a) Trustee for depositors can be removed from office after the issue of circular or advertisement and before the expiry of his term, only with the consent of **all** the directors present at a meeting of the board.
 - b) If the Company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

SIMILAR QUESTION:

1. Explain provision for 'Appointment of Trustee for Depositors' under the Companies Act, 2013.

A. Refer above answer.

(M18 - 6M) (NEW)

ADDITIONAL QUESTION BANK – FOR STUDENTS SELF STUDY

Q.No.9. Share application money not treated as deposit under the provisions of the companies act, 2013. (B) **(NEW SM, OLD SM)**

Any amount received and held pursuant to an offer made towards subscription to any securities, so long as such amount is appropriated only against the amount due on allotment, is not treated as deposit

NOTE:

1. Without prejudice to any other liability or action, 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 also be treated as a 'deposit'.

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

SIMILAR QUESTIONS:

1. When an amount received and held pursuant to an offer made towards subscription to any securities can be treated as deposit under the provisions of the companies act, 2013?

Q.No.10. Acceptance of deposits from director or his relative under the Companies Act, 2013. (B) (NEW SM, OLD SM)

- Any amount received from a person who, at the time of the receipt of the amount, was a director of the Company or relative of the director of the Company is not a deposit.
- The director of the Company or relative of the director of the private Company, from whom money is received shall furnish to the Company, 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.
- The Company shall disclose the details of money so accepted in the Board's report;

NOTE:

1. The amount received by a Company in the joint names of a director and a non director will not be exempted from the definition of deposit.
2. Deposit by a Director out of borrowing from a Third Party is a deposit, and not entitled for exemption.
3. **Disclosure requirements:**
 - i) Every Company, other than a private Company, shall disclose in its financial statements, by way of notes, about the money received from the director.
 - ii) Every private Company shall disclose in its financial statements, by way of notes, about the money received from the directors, or relatives of directors.

SIMILAR QUESTION:

1. When an amount received from director or his relative can be treated as deposit under the Companies Act, 2013 and rules made thereunder. What are the disclosure requirements in such a case?

Q.No.11. Debentures which are not treated as a deposit (B) (NEW SM, OLD SM)

- 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 shall not be treated as deposit.
- Assets for the above purpose Excludes intangible assets of the Company.
- Such bonds or debentures shall be compulsorily convertible into shares of the Company within 10 years.
- 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.

SIMILAR QUESTION:

1. State the circumstances under which, any amount received in the course of or for the purposes of the business of the Company can be treated as deposit under the Companies Act, 2013 and rules made thereunder?

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Q.No.12. What are the provisions of the Companies (Acceptance of Deposits) Rules 2014 about creation of security. (B) (NEW SM)

Rule 6- Creation of security:

1. **Applicability:** Every company referred to Sec 73(2) and every Eligible company, inviting secured deposits.
2. **Creation of security:** The company shall provide for security by way of a charge on its assets as referred to in Schedule III of the Act, excluding intangible assets of the Company
3. **Purpose of Security:** For the due repayment of the amount of deposit and interest thereon
4. **Conditions as to amount of security:** The amount of such deposits and the interest payable thereon shall not exceed the market value of such assets as assessed by registered Valuer.

Explanation - I:

The Company shall ensure that the total value of the security either by way of deposit insurance or by way of charge or by both on Company's assets shall not be less than the amount of deposits accepted and the interest payable thereon.

The security (not being in the nature of a pledge) for deposits as specified in sub rule (1) shall be created in favour of a trustee for the depositors on:

- a) Specific movable property of the Company, or
- b) Specific immovable property of the Company wherever situated, or any interest therein.

Q.No.13. Write about Register of Depositors to be maintained by company accepting deposits. (B) (NEW SM)

Rule 14: Register of Deposits

1. Every company accepting deposits shall maintain at its registered office, Register of Deposits containing following particulars:
 - a. Name, address and PAN of the depositor;
 - b. Particulars of guardian, in case of a minor;
 - c. Particulars of the nominee;
 - d. Deposit receipt number;
 - e. Date and the amount of each deposit;
 - f. Duration of the deposit and the date on which each deposit is repayable;
 - g. Rate of interest or such deposits to be payable to the depositor;
 - h. Due date for payment of interest;
 - i. Mandate and instructions for payment of interest and for non-deduction of tax at source, if any;
 - j. Date or dates on which the payment of interest shall be made;
 - k. Details of deposit insurance including extent of deposit insurance;
 - l. Particulars of security or charge created for repayment of deposits;
 - m. Any other relevant particulars;
2. Entries shall be entered into within 7 days. Such entries shall be authorized by a director or secretary of the company or by any other officer authorized by the Board for this purpose.
3. Register to be maintained for a period of not less than 8 years from the financial year in which the latest entry is made in the register.

Rule 16- Return of deposits to be filed with the Registrar

- a. **Return:** The Company shall file with ROC, a return of deposits in form DPT-3
- b. **Due Date:** on or before 30th June of every year

- c. **Information:** Information in DPT-3 is as on 31st March of that year, duly audited by auditor of the company

Rule 16A- Disclosures in the financial statement

- a. Every public company shall disclose in its financial statements, money received from directors and their relatives.
- b. Every private company shall disclose in its financial statement, by way of notes, about the money received from the directors and relatives of directors.

Rule 21- Punishment for contravention (General Punishment)

Contravention: Company referred to section 73 (2) or any eligible company inviting deposits or any other person contravenes any provision of these rules for which no punishment is provided in the Act.

Who is Punishable	Punishment
Company	Fine up to Rs. 5,000.
every officer of the company	In case of continuing one – further fine up to Rs. 500 every day during which the contravention continues.

QUESTIONS FOR ACADEMIC INTEREST – FOR STUDENTS SELF STUDY

Q.No.14. Write the difference between Deposit and Loan. (A)

DEPOSIT VS. LOAN:

- a) Apparently there seems to be little difference between a 'deposit' and a 'loan'. But if you closely analyze the terms, you shall find an appreciable amount of difference between the two.
- b) Under the Limitation Act, 1963, the limitation in case of a loan and in case of a deposit, begins at different points of time.
- c) In case of a loan, it commences from the date of incurring that loan, whereas in the case of a deposit, it begins from the date where the demand is made.
- d) In simple words, unlike a loan there is no immediate obligation to repay in the case of deposits.

Q.No.15. Exemptions to private Company and specified IFSC public Company to accept unsecured deposits from its members (B)

Private Company and specified IFSC public Company can accept unsecured deposits from its members up to 100% of its paid up capital and free reserves, without complying requirements relating to:

- Issue of circular to the members
- Filing of circular
- Providing security

The details should be informed to Registrar in prescribed manner.

Q.No.16. Write a short note on duties of trustee (C)

DUTIES OF TRUSTEE:

It shall be duty of every Deposit trustee to

- Ensure that assets on which charge is created together with amount of deposit insurance are sufficient to cover principal amount and interest thereon.
- Circulation inviting deposit does not contain any information which is inconsistent with trust deed or provisions of Act.
- Ensure that the Company does not commit any breach of covenants and provisions of the trust deed.

- Take step to call a meeting of the deposit holders as and when required.
- Supervise the implementation of the conditions regarding creation of security for deposits and terms of deposit insurance.
- Do such acts as are necessary in the event the security become enforceable.
- Protect the interest of depositors and to resolve their grievances.

Meeting of Depositor through Trustee:

The meeting of depositors shall be called by deposit trustee on:

- Requisition in written signed by at least 1/10th of the depositors in value for the being outstanding: or
- The happening of any event, which constitutes a default or which in the opinion of the deposit trustee, affects the interest of the depositors.

PRACTICAL QUESTIONS

Q.No.1. 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 lacs 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. Discuss 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. **(NEW SM-TYK)**

Provision: As per Rule 2 (1) (c) (xvii), if a start-up company receives Rs. 25 Lakhs or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding five years from the date of issue) in a single tranche, from a person, it shall not be treated as deposit.

Analysis: In the given case, Zarr Technology Private Limited, a start-up company, received Rs. 30.00 lakhs 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.

Conclusion: In view of Rule 2 (1) (c) (xvii) which requires a convertible note to be repayable within a period of five years from the date of its issue, the amount of Rs. 30.00 lakhs shall be considered as deposit.

Q.No.2. Polestar Traders Limited received a loan of Rs. 30.00 lacs from Rachna who is one of its directors. Advise whether it is a deposit or not. Discuss 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. **(NEW SM-TYK)**

Provision: As per 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.

Analysis: 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 Rs. 30.00 lakhs 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.

Conclusion: If these conditions are satisfied Rs. 30.00 lakhs shall not be treated as deposit.

Q.No.3. City Bakers Limited failed to repay deposits of Rs. 50.00 crores 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? Discuss 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.

(NEW SM-TYK)

By not repaying the deposit of Rs. 50.00 Crores 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 Rs. 1 Crore or twice the amount of deposit accepted by the company, whichever is lower but which may extend to Rs. 10 Crores.
- **Punishment for officer-in-default:** Swati, being the officer-in-default, shall be punishable with imprisonment which may extend to 7 years and with fine which shall not be less than Rs. 25 lakhs but which may extend to Rs. 2 crores.
- Further, if it is proved that Swati had contravened such provisions knowingly or willfully 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).

Q.No.4. Shringaar Readymade Garments Limited wants to accept deposits of Rs. 50.00 lacs from its members for a tenure which is less than six months. Is it a possibility? Discuss 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.

(NEW SM-TYK)

Provision: 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 36 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 6 months subject to the conditions that:

- such deposits shall not exceed 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and
- such deposits are repayable only on or after 3 months from the date of such deposits or renewal.

Analysis and Conclusion: In the given case of Shringaar Readymade Garments Limited, it wants to accept deposits of Rs. 50.00 lakhs from its members for a tenure which is less than 6 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 3 months from the date of such deposits.

Q.No.5. Is it in order for the Diamond Housing Finance Limited to accept and renew deposits from the public from time to time? Discuss 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.

(NEW SM-TYK)

Provision: 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 such prohibition with respect to the acceptance or renewal of deposit from public, inter-alia, shall not apply to a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987.

Analysis and Conclusion: In the given case, it is assumed that Diamond Housing Finance Limited is registered with the National Housing Bank and therefore the prohibition contained in section 73 (1) of the Act with respect to the acceptance renewal of deposit from public shall not apply to it. In other

words, it being an exempted company, can accept deposits from the public from time to time without following the prescribed manner.

Q.No.6. Enumerate the amounts which when received by a company in the ordinary course of business are not to be considered as deposits. (NEW SM-TYK)

According to Rule 2 (1) (c) (xii), 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 they become due for refund.

Q.No.7. Referring to the provisions of the Companies Act, 2013, examine the validity of the following: ABC Limited having a net worth of Rs. 120 crore rupees wants to accept deposit from its members. They have approached you to advise them regarding that if they fall within the category of eligible Company, what special care has to be taken while accepting such deposit from members. (NEW SM-TYK)

Provision: "Eligible Company" means a public Company as referred to in sec 76 (1), having a net worth of not less than 100 crores rupees or a turnover of not less than 500 crores rupees and which has obtained the prior consent of the Company in GM by means of a SR and also filed the said resolution with the ROC before making any invitation to the Public for acceptance of deposits:

However, an eligible Company, which is accepting deposits within the limits specified under sec 180 (1) (c), may accept deposits by means of an ordinary resolution.

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 exceeds 10% of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the Company.

Analysis and Conclusion: ABC Limited is having a net worth of 120 crores rupees. Hence, it can fall in the category of eligible Company. Thus, ABC has to ensure that acceptance deposits from members should not exceed 10% of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the Company.

Q.No.8. ABC Ltd. having a net worth of Rs. 80 crores and turnover of Rs. 30 crores wants to accept deposits from public other than its members. Referring to the provisions of the Companies Act, 2013, state the conditions and the procedures to be followed by ABC Ltd. for accepting deposits from public other than its members. **(N17 - 8M)**

Provision: According to section 76 of the Companies Act, 2013, a public Company, having net worth of not less than 100 crores rupees or turnover of not less than 500 crores rupees, can accept deposits from persons other than its members subject to compliance with the requirements provided in sec 73 (2) and subject to such rules as the CG may, in consultation with the RBI, prescribe.

Provided that such a Company shall be required to obtain the rating (including its net worth, liquidity and ability to pay its deposits on due date) from a recognized credit rating agency for informing the public the rating given to the Company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.

Provided further that every Company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

Analysis and Conclusion: Since, ABC Ltd. has a net worth of Rs. 80 crores and turnover of Rs. 30 crores, which is less than the prescribed limits, hence cannot accept deposit from public other than its members. If the Company wants to accept deposits from public other than its members, it has to fulfill the eligibility criteria of net worth or Turnover or both and then the other conditions as stated above.

SECTION NUMBERS

CONCEPT	SECTION NO.
Deposit	2(31)
Prohibition on acceptance of deposits from public	73
Repayment of deposits etc. accepted before the commencement of the Act	74
Damages for Fraud	75
Acceptance of deposits from public by certain companies	76
Punishment of contravention of sections 73 and 76	76A

PENALTY

SI.NO	DEFAULT	PERSON LIABLE	PENALTY
1.	Default in repayment of deposits (including interest) outstanding on the date of commencement of the Co. Act, 2013, or Within such time extended by NCLT [Sec 74(3)]	Company Every officer of the Company who is in default	Fine of not be less than Rs.1 Crore but which may extend upto Rs.10 Crores <ul style="list-style-type: none"> • Imprisonment for a term which may extend upto 7 years or • Fine of not be less than Rs.25 Lakh but which may extend to Rs.2 Crores or • Both
2.	Damages for Fraud [Sec 75]	Every officer of the Company who was responsible for the acceptance of such deposit	<ul style="list-style-type: none"> • Liable u/s 74(3) and 447 of the Companies Act, 2013. and • Personally responsible, without any limitation for all or any of the loss or

			damage incurred by depositors.
3.	Punishment of contravention of sections 73 and 76 [Sec 76A]	Company	<ul style="list-style-type: none"> Company shall repay deposit along with interest thereon, and Fine of not be less than Rs.1 Crore or twice the deposits accepted whichever is less but which may extend upto Rs.10 Crores
		Every officer of the Company who is in default	<ul style="list-style-type: none"> Imprisonment for a term which may extend upto 7 years and Fine of not be less than Rs.25 Lakhs but which may extend upto Rs.2 Crores (in case of willful default, they shall be punishable u/s 447)

TIME - LIMITS

PARTICULARS	TIME – LIMIT
Time limit for treating application money or advance received for subscription of securities as a deposit, incase of non refunding of such money for failure in allotting securities within 60 days	After the expiry of 15 days from the date of completion of 60 days of receipt of the application money or advance for such securities.
Time limit for filing a copy of circular along with statement with ROC (Sec 73)	Within 30 days before the date of issue of the circular to public.
Time limit for providing contract of deposit insurance before inviting deposits form public	At least 30 days before the issue of circular or advertisement or at least 30 days before the date of renewal, as the case may be.
Time limit for Filing of statement with ROC about the status of deposits outstanding on the date of commencement of Companies Act, 2013 (Sec 74)	<ul style="list-style-type: none"> Within 3 months from the commencement of the Act, in case of deposits due & unpaid Within 3 months of due date of deposits, in case of deposits not due for repayment
Time limit for repayment of deposits outstanding on the date of commencement of the Companies Act, 2013. (Sec 74)	Repay within 3 year from such commencement or from the date on which such payments are due, whichever is earlier

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THE END