PART VI

INVITATION AND ACCEPTANCE OF DEPOSITS

Chapter 1

Invitation and Acceptance of Deposits

Synopsis

Appendix 14 Specimen of Investors Complaint Form
Appendix 15 Specimen of e-Form 62

Important Provisions at a Glance

Sl. No.	*Sections*	*Matters dealt with*	*Form Nos.*
1.	58A	Deposits not to be invited without issuing an advertisement.	
2.	58AA	Small depositors.	
3.	58AAA	Default in acceptance or refund of deposits to be cognizable.	
4.	58B	Provisions relating to prospectus to apply to advertisement.	
5.		The Companies (Acceptance of Deposits) Rules, 1975	
6.	372A(4)	Companies defaulting in complying with section 58A not to make loan, investment, etc.	

Sections 58A and 58B read with the Companies (Acceptance of Deposit) Rules, 1975 regulate the invitation and acceptance of deposits from public by all companies other than the Non-Banking Financial Companies. All the Non-Banking Financial Companies and Miscellaneous Non-Banking companies are governed by the provisions of the Reserve Bank of India Act, and the directions issued by the RBI from time to time. In case of Housing Finance Companies, they are also governed by the directions issued by the National Housing Bank.

1. Types of companies

Companies have been classified into the following categories for the purpose of regulation of public deposits by them:—

(*a*) Non-Banking Financial Companies (NBFC)

These types of companies are required to comply with the directions issued by the Reserve Bank of India.

(*b*) Non-Banking Non-Financial Companies (manufacturing, trading, service companies, etc.)

These types of companies are required to comply with the requirement of sections 58A, 58B and 58 of the Companies Act, 1956 and the Companies (Acceptance of Deposit) Rules, 1975.

(*c*) Miscellaneous Non-Banking Companies (chit fund, lottery, etc.)

These types of companies are required to comply with the directions issued by the Reserve Bank of India.

(*d*) Residuary Non-Banking Companies

These types of companies are governed with the relevant rules framed in this regard.

2. Definition of 'Deposit'

In terms of the *Explanation* to section 58A of the Companies Act, 1956, provides that deposit means, any deposit of money with, and includes any amount borrowed by a company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.

Therefore, all types of deposit of money or the amount borrowed by a company do not fall within the definition of deposit.

Actually, deposit means unsecured borrowing by a company in accordance with the Companies (Acceptance of Deposits) Rules, 1975. According to Rules, the following terms are essential for a deposit:—

(*a*) The deposit shall not be repayable on demand.

(*b*) The deposit shall be for a fixed period *i.e.* not less than six months and not exceeding thirty-six months.

(*c*) The rate of interest shall not exceed the prescribed rates.

(*d*) Aggregate amount of deposits shall not exceed the limits set in rule 3.

(*e*) Brokerage can be paid for acceptance of deposits, depending upon the duration of deposit.

(*f*) The deposit shall be accepted only on an application form provided by the company.

(*g*) The application form shall contain a statement that the amount being deposited has not been borrowed by the depositor.

(*h*) The company shall issue a receipt for every deposit accepted by the company.

(*i*) The company shall maintain a register in respect of every deposit accepted by the company.

(*j*) The company shall file e-Form 62 with the Registrar for return of deposits every year as at 31st March, on or before 30th June.

2.1 Renewal of deposits

'Renewal of deposits' means 'acceptance of fresh deposits'. [*Jagjivan Hiralal Doshi* v *Registrar of Companies* (1989) 65 Comp Cas 553 (Bom)].

The renewal of deposits amounts to receiving fresh deposits within the meaning of section 58A. [*Sujani Textiles* (*P*) *Ltd.* v *Asstt. Registrar of Companies* (1980) 50 Comp Cas 276 (Mad)].

3. The following category of amount received by a company are not deposit

In terms of the provisions of rule 2 of the Companies (Acceptance of Deposits) Rules, 1975, any deposit or money borrowed under the following circumstances will not be covered under the terms of deposit:—

(*i*) *Borrowings from the Government* [Rule 2(*b*)(*i*)]

Any amount borrowed from the Central or State Government or any amount guaranteed by a Government.

(*ii*) *Borrowings from a foreign source* [Rule 2(*b*)(*i*)]

Any amount borrowed from a foreign Government or a foreign citizen.

(*iii*) *Bank loans* [Rule 2(*b*)(*ii*)]

Any loan received from a scheduled bank or from a co-operative bank.

(*iv*) *Loan from financial institutions* [Rule 2(*b*)(*iii*)]

Loans received from any of the financial institutions.

(*v*) *Inter-company loans* [Rule 2(*b*)(*iv*)]

Loans received from another company.

(*vi*) *Security deposit* [Rule 2(*b*)(*v*)]

Any amount received from an employee of the company as security deposit.

(*vii*) *Advance from purchasing/selling agent or advance against orders for supplies* [Rule 2(*b*)(*vi*)]

Any amount received by way of security from any purchasing or selling agent in the ordinary course of business of the company or advance against orders for supply of goods or rendering of services.

(*viii*) *Subscription against application for shares or other securities* [Rule 2(*b*)(*vii*)]

Any amount received by way of subscription in respect of applications for shares pending allotment and any amount received by way of calls in advance on shares as per the provisions of the Articles of the company.

(*ix*) *Trust money* [Rule 2(*b*)(*viii*)]

Any amount received in trust by a company.

(*x*) *Amount received by a private company* [Rule 2(*b*)(*ix*)]

Any amount received from a person who, at the time of receipt of the amount, was a director or a relative of a director, or member of a private company. Provided that the director, relative or member, 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 money is not given out of funds acquired by him by borrowing or accepting from others. (substituted by the Notification No. GSR 189(E) dated 12th March, 2004)

(*xi*) *Subscription against bonds, debentures, etc. secured by mortgage with or without option to convert into shares* [Rule 2(*b*)(*x*)]

Any amount received with applications for bonds and debentures pending allotment by the company. The bonds and debentures, referred to herein, should be secured by a mortgage of any immovable property of the company. Amount received in respect of fully convertible debentures and convertible portion of partly convertible debentures are also not deposits. The amount of said bonds and debentures shall not exceed the market value of such bonds and debentures.

(*xii*) *Money brought in by promoters* [Rule 2(*b*)(*xi*)]

Amount brought in by promoters of a company by way of unsecured loans as a result of any condition imposed by financial institutions asking the promoters to bring a certain amount of the project cost, subject to the following conditions:—

(*a*) the loans are given by the promoters to the company pursuant to a condition of the financial institutions;

(*b*) the loans are directly given by the promoters and/or their relatives and not from their friends and business associates;

(*c*) the exemption mentioned above will be available so long as the loans of the financial institutions are not repaid.

(*xiii*) Any amount received as loan from the National Dairy Development Board by the Companies owned by it directly or through its subsidiary companies. [Rule 2(*b*)(*xii*) inserted by Notification No. GSR 300(E), dated 3rd April, 2003].

4. Deposits in case of private companies

Private company is prohibited to accept any invitation or acceptance of unsecured loans/ deposits from persons other than its members, directors or their relatives. Therefore, a private company can accept deposits through private arrangement from its members, directors and their relatives and these rules are not applicable thereto.

Rule 2(*b*)(*ix*) exempts any unsecured loan money received from directors and shareholders from the definition of deposits. According to rule 2(*b*)(*ix*), any amount received from members of a private company limited by guarantee are not exempt.

For any invitation and acceptance of unsecured loan/deposits from relatives of directors and members, the company will have to file a statement in lieu of advertisement in accordance with the provisions of rule 4A of the Companies (Acceptance of Deposits) Rules, 1975. The company will also have to file annual return of deposits in accordance with rule 10.

5. Exempted deposits in case of private companies

5.1 Calls received in advance

Under clause 2(*b*)(*vii*) calls received in advance are not considered as deposits for the purpose of section 58A. But in this case it is important to note that articles of association of the company shall prohibit repayment of any such amount. If there is no such provision in the articles of association, in certain situation, such amount may be considered as deposit. Here it is important to note that absence of any provisions in the company's articles regarding repayment or non-repayment of calls received is not equal to a prohibition in that regard. Therefore, ensure there is a prohibitory provision in the articles of association otherwise alter the articles of association.

Table A of Schedule I to the Act also does not contain any such prohibitory clause. Therefore, company's articles of association are required to be examined carefully.

5.2 Application money for securities

Under clause 2(*b*)(*vii*) any amount received as application money for subscribing shares or debentures or bonds issued by the company is also not considered as deposit provided the company has offered shares/debentures/bonds for subscription.

It should be noted that the allotment of securities have been made or amount refunded within the reasonable time, and further that the authorised share capital covered the share application money. Otherwise, the company may be call by the RoC, why the amount should not be considered as deposit?

5.3 Money received from directors

Rule 2(*b*)(*ix*) says "any amount received from a person who at the time of receipt of the amount was a director of the company". The director shall furnish a statement to the company at the time of bringing in the money that the money has not been borrowed or accepted from another person. If a person ceases to be a director of the company after the money has been brought in, the exemption continues.

It should be noted that no fresh amount should be received by the company after cessation of office of director from such person.

5.4 Money received from shareholders

Rule 2(*b*)(*ix*) exempts any amount received by a company from its shareholder from the definition of deposits. The shareholder shall furnish a statement to the company at the time of bringing in the money that the money has not been borrowed or accepted by him from other sources, to make deposit with the company.

5.4.1 Comparison of money received from a director and money received from shareholders

The money received from a director continues to be treated as exempted deposit when the person from whom money has been received ceases to be a director of the company. But, the case is not same in case of a shareholder. If a shareholder from whom company has received any money ceases to be a member of the company, the exemption ceases and, thus, the amount received from him will be considered as deposit within the meaning of section 58A.

5.5 Specific exemption, by Central Government

Under sub-section (8) of section 58A, the Central Government is empowered to grant specific exemption on case to case basis. Therefore, if need arises, an application can be made to Central Government in this regard. (*See* Appendix 1 for Board Resolution)

6. Deposits from HUF

Acceptance of deposit by a private company from HUF:—

(*a*) If all members of HUF are also the directors of private company, such private company can accept deposits/unsecured loans from HUF. This case will be covered under rule 2(*b*)(*ix*) *i.e.* such a deposit is an exempted deposit.

(*b*) If all members of HUF are not the directors of a private company *i.e.* some of them are the partners and remaining are shareholders, still private company can accept unsecured loan/deposit from HUF. This case will be covered under rule 2(*b*)(*ix*) *i.e.* such a deposit is an exempted deposit.

(*c*) If there are some members of HUF who are not the shareholders of a private company, still private company can accept deposits from HUF. This case will not be covered under rule 2(*b*)(*ix*).

7. Deposits from Partnership firm

Acceptance of deposit by a private company from a partnership firm:—

(*a*) If all partners of the firm are also the directors of a private company, such private company can accept unsecured loans/deposits from the firm. This case will be covered under rule 2(*b*)(*ix*) *i.e.* such a deposit is an exempted deposit.

(*b*) If all partners of a firm are not the directors of a private company *i.e.* some of them are the directors and remaining are the shareholders, still private company can accept deposit from the firm.

(*c*) If all partners of a firm are not the directors of a private company *i.e.* some of them are the directors, some of them are shareholders and remaining are relatives of a partners who is a shareholder. This case is not covered under rule 2(*b*)(*ix*).

(*d*) Where some partners are directors in a private company and remaining partners are not their relatives, private company cannot accept deposits from such firm.

8. Distinction between Loan and Deposit

1. In the case of a deposit, the delivery of money is usually at the instance of the giver and it is for the benefit of the person who deposits the money. Deposits could be for safe keeping or as a security for the performance of an obligation undertaken by the depositor. In the case of a loan, however, it is the borrower at whose instance and for whose needs the money is advanced.

2. The borrowing is primarily for the benefit of the borrower although the person who tends the money may also stand to gain thereby by earning interest on the amount lent ordinarily, though not always, in the case of a deposit, it is the depositor who is the prime mover while in the case of a loan, it is the borrower who is the prime mover.

3. The other and more important distinction is in relation to the obligation to return the amount so received. In the case of a deposit which is payable on demand, the deposit would become payable when a demand is made. In the case of a loan, however, the obligation to repay the amount arises immediately on receipt of the loan.

In the case of *Ram Ratan Gupta* v *Director of Enforcement, Foreign Exchange Regulation* (1966) 36 Comp Cas 49: AIR 1966 SC 495, the Supreme Court made a distinction between a loan and a deposit. It said:

> "It is settled law that the relationship between a banker and a customer *qua* moneys deposited in the bank is that of a debtor and creditor. Though, ordinarily a deposit of an amount in the current account of a bank creates a debt, it does not necessarily involve a contract of loan. The question whether a deposit amounts to a loan depends upon the terms of the contract under which the deposit is made."

The Supreme Court considered even Bank deposit as distinct from a loan. It is therefore clear that "loan" and "deposit" are not identical in meaning and cannot always be interchanged. Some loans may be deposits and some deposits may be loans. But all loans are not deposits or *vice versa*.

9. Does acceptance of deposits by a public limited company from its director attract compliance of any of the provisions of section 297, 299, 300 and 301 of the Companies Act?

Providing finance to the company may not be considered as or equated to sale of goods or materials to the company. So also, the same would not tantamount to supply of any services by a director to the company. The consent of the Board of directors pursuant to section 297 would not, therefore, be required. Whereas providing funds to the company may not be considered as a contract falling u/s 297, the same is definitely an arrangement in which director is directly or indirectly interested or concerned and therefore, the disclosure pursuant to section 299 would invariably be required to be made to the Board of directors of the company. Even after disclosing his interest, the concerned director should not take undue advantage because his position is very much like that of a trustee as was held in *Kashinath* v *New Alok Ginning & Pressing Co. Ltd.* (1950) 20 Comp Cas 225 (Nag).

10. Exemption to small scale units

The Central Government has, *vide* Notification GSR No. 73(E), dated 2-2-1996, exempted the companies in small scale sector from the operation of the Companies (Acceptance of Deposit) Rules, 1975, if it comply with the conditions as under:—

(*a*) The paid-up capital of the company does not exceed Rs. 25 lakh.

(*b*) The company can accept deposits from not more than 100 persons.

(*c*) There is no invitation by advertisement to public for deposit.

(*d*) The amount of deposits does not exceed Rs. 20 lakh or the amount of its paid-up capital, whichever is less.

(*e*) For the purpose of these Rules, a small scale unit has been defined as one which has been registered with the Directorate of Industries of the State Government and in which the investment in plant and machinery does not exceed Rs. 100 lakhs.

11. Limit of amount for acceptance of deposits

As per rule 3(2) a company may accept deposits from the public upto the following limits subject to fulfillment of the conditions of the Companies (Acceptance of Deposit) Rules, 1975:—

(*a*) upto 10% of its paid-up capital and free reserves from its shareholders (other than a shareholder in a private company). These deposits may also include any deposit from any person guaranteed by a director of the company or against unsecured debenture issued by a company;

(*b*) upto 25% of the paid-up capital and free reserves of the company from public.

12. Limit applicable for borrowing by a Government company

Rule 3(2A) provides that a Government company may accept or renew deposits, if the amount of such deposits does not exceed 35% of its paid-up capital and free reserves including any short-term deposits accepted by a government company up to 10% of its paid-up capital and free reserves.

13. Minimum and maximum period of deposits

As per rule 3(1)(*a*), the deposits invited/accepted by a company shall be for a period of not less than 6 months and not more than 36 months from the date of acceptance of such deposits or from the date of renewal of such deposits.

However, for the purpose of meeting any short-term requirements of fund, a company is allowed to accept or renew deposits which may be repayable after three months from the date of such deposits or renewal thereof, upto 10% of the paid-up capital and free reserves referred to above.

14. Payment of rate of interest on deposits

As per amendments made in rule 3(1)(*c*), on 29th Sept., 2003, a company covered by the said Rules can pay interest not exceeding the rate prescribed by the Reserve Bank of India for deposits accepted by the Non Banking Financial Companies. This rate is 11% p.a. which may be paid or compounded at rests which shall not be shorter than monthly rests w.e.f. 4th March, 2003 as per RBI Circular No. DNBS. 165/CGM (CSM)-2003 & Circular No. DNBS. (PD) CC. No./02.01/ 2002-03 dated 3rd March, 2003. The above ceiling rate of interest of 11% p.a. is also applicable to the deposits accepted/renewed by Miscellaneous Non-Banking Companies (chit fund companies) as per the directions prescribed by RBI.

15. Brokerage for procurement of deposits

The brokerage that may be paid by a company to brokers for procuring deposits cannot exceed the following limits:—

(*a*) 1% of deposits upto one year;

(*b*) 1.5% of deposits for more than one year and upto two years;

(*c*) 2% of the deposits for a period exceeding two years.

Brokerage may be paid only to a person who is authorised by the company in writing to solicit deposits on its behalf.

16. Requirement of minimum net owned funds for the purpose of invitation of deposits from public

As per rule 3(*e*) amended by Notification No. GSR 873(E), dated 28th November, 2001, no company with a net owned fund of less than rupees one crore shall invite public deposits.

17. Compulsory requirement for issuance of advertisement for inviting deposit

Rule 4 provides that where a non-financial industrial public company proposes to invite and accept deposits from the public, it shall first issue an advertisement in a leading English newspaper and also in a vernacular newspaper circulating in the State in which the registered office of the company is situated.

The advertisement will contain the following details:—

(*a*) Name of the company;

(*b*) Date of incorporation;

(*c*) Business carried on by the company and its subsidiaries with details of branches and factories;

(*d*) Particulars of management of the company;

(*e*) Names, addresses and occupation of directors;

(*f*) Profits before and after tax for three financial years preceding the date of the advertisement;

(*g*) Dividends declared by the company for the last three years;

(*h*) Financial position of the company from the audited accounts for two years preceding the date of the advertisement.

The advertisement will also include a statement to the effect that the advertisement is issued on the authority and in the name of the Board of directors of the company and indicate the date on which the Board of directors has approved the text of the advertisement, including the terms and conditions subject to which the deposits shall be accepted by the company. It is usually stated in the application form that contains the terms and conditions subject to which deposits will be accepted. (*See* Appendix 2 for Specimen of Board Resolution)

18. Requirement for inclusion of a declaration in the advertisement

The advertisement shall be approved by the Board of directors, which shall contain declarations to the effect:—

(*i*) that the company has complied with the provisions of these rules;

(*ii*) that the compliance with these rules does not imply that repayment of deposits is guaranteed by the Central Government; and

(*iii*) that the deposits accepted by the company (other than secured deposits, if any accepted under the provisions of these Rules, the appropriate amount of which may be indicated) are unsecured and ranking *pari passu* with other unsecured liabilities;

(*iv*) that the company is not in default in repayment of any deposit or part thereof and any interest thereupon in accordance with the terms and conditions of such deposit.

19. Approval of advertisement by the Board of directors

The advertisement proposing to invite deposits containing the above particulars should be approved by the Board of directors of the company before any action is taken alongwith the application form and the terms and conditions for acceptance of deposits. Approval regarding arrangements with brokers and bankers shall be taken by the Company as well as authority shall be given to specified officials to sign deposits receipts. The text of the advertisement placed before the Board meeting shall be signed by a majority of the directors or their agents authorized in writing. The directors shall also execute a stamped letter of authority empowering an official of the company to make such changes in the text of the advertisement as may be required by the Registrar. (Appendix 2 & 3)

20. Acceptance of deposit by filing of statement in lieu of advertisement

As per rule 4A, in case if the company willing to accept deposits from public but do not intent to invite them, it may not issue an advertisement for that purpose. In that case, the Board of directors of the company shall approve a statement in lieu of the advertisement containing all the particulars which have to be given in the advertisement alongwith the form of application and file a copy of the statement in lieu of the advertisement, duly signed by a majority of the directors with the Registrar of Companies with e-Form 62 electronically as it shall be covered under the other head for filing of documents, along with requisite filing fee as per provisions of Schedule X of the Companies Act, 1956. After filing the statement in lieu of the advertisement, the company can accept deposits. (Appendix 4)

It should be noted that all other terms and conditions regarding the duration of the statement, rate of interest, brokerage, etc. will be identical to the terms and conditions of inviting deposits from the public. The directors shall also execute a stamped letter of authority empowering an official of the company to make such changes in the text of the Statement in lieu of advertisement as may be required by the Registrar.

21. Validity period of the advertisement issued

Rule 4(3) provides that the advertisement issued at any time will be valid only up to six months from the conclusion of the financial year of the company in which the advertisement was issued. In other words, an advertisement will be valid till the expiry of the annual general meeting of the company for that year if held within the prescribed time or ought to have been held so and a fresh advertisement shall have to be made for accepting deposits in each succeeding financial year, provided there is no delay on the part of the company to hold the annual general meeting in terms of section 166 of the Act.

22. Filing of Advertisement with the Registrar of Companies before publication

In terms of rule 4(4), no company can invite deposits until or before the publication of the advertisement, a copy thereof duly signed by a majority of the directors is filed with the Registrar of Companies alongwith the adequate filing fees as per provisions of Schedule X of the Companies Act, 1956. The advertisements signed as stated above should be filed in e-Form 62 electronically with the Registrar along with:

(*a*) The letter of authority, if any;

(*b*) The power of attorney granted by a director where his attorney signs the advertisement;

(*c*) Filing fees;

(*d*) Consent of the brokers, if any.

23. Compulsory requirement for maintenance of Liquid Funds

To enable a company to make repayment of the deposits on the due date to the deposit holders, it requires for every company to deposit a fixed sum before the 30th of April each year in the following manner:—

(*a*) in a current account with a scheduled bank;

(*b*) in an unencumbered securities of the Central or State Government;

(*c*) in an unencumbered bonds issued by Housing Development Finance Corporation Limited;

(*d*) post office time deposits or special deposit scheme.

The amount for which the above deposits will be made will not be less than 15% of the amount of deposits maturing up to 31st March of the following year and the above said deposit will not be utilised for any purpose other than the repayment of deposits maturing during the year up to 31st March of the following year. (Appendix 5)

Offence of violating rule 3A is not continuing offence and complaint against such an offence after expiry of six months would be barred by limitation. [*Sivandhi Adityan* v *Addl. Registrar of Companies* (1995) 83 Comp Cas 616 (Mad)].

24. Application Form for deposits

A company can not invite or accept deposits unless the intending depositor makes an application to the company which would contain a declaration that the amount is not being deposited out of the funds acquired by him by borrowing or accepting deposits from any other person. Every application supplied by the company to prospective depositors shall contain the text of the advertisement issued by the company and published in a newspaper and also include the terms and conditions.

25. Deposits made in joint names

A company in the joint names of not more than three may accept deposits. It is advisable in such a case to ask the depositors to state whether the basis will be "Either or Survivor", "Number one or Survivor" or "Anyone or Survivor" and company should state under "terms and conditions" that in the case of joint deposits, the company shall pay the interest and make repayment to the person named first in the application unless otherwise desired.

26. Option for appointment of nominee by depositor

As per provisions of sections 109A and 109B of the Companies Act, 1956 it has been provided that a depositor may at any time make a nomination and the provisions of new sections 109A and 109B shall apply to the nomination made under section 58A(*ii*). For this purpose the nomination shall be made in Form 2B (in duplicate). (Appendix 6)

27. Providing receipt of deposit

On acceptance or renewal of deposit the company shall give a receipt to the depositor in respect of the amount received by the company within a period of eight weeks from the date of receipt of money/realisation of the cheque. The receipt shall be signed by an officer of the company, duly authorised in this behalf, it shall contain the following particulars:—

(*i*) Date of receipt;

(*ii*) Name and address of the depositor;

(*iii*) Amount received;

(*iv*) Rate of interest;

(*v*) Date of repayment.

28. Change the terms of deposits

The Company cannot reserve to itself any right to alter any terms and conditions to the prejudice of the depositor. But when a change in the rate of interest is notified by the Central Government, the company will be free to take action accordingly by the Board resolution. The change shall apply to fresh deposits accepted on or after that date and to renewal of existing deposits.

29. Premature repayment of deposits

A company may, on request from a deposit-holder, make premature repayment of a deposit after the expiry of six months from the date of receipt of amount but before the expiry of the period for which the deposit was accepted. When such repayment is made, the company shall pay interest on the deposit at a rate lower by 1% from the rate applicable for the period for which the deposit has run.

30. Register of deposits

Every company accepting deposits under the Rules, is required to keep a register in respect of deposits invited/accepted by the company, containing the following details:—

(*a*) Name and address of the depositor;

(*b*) Date and amount of deposit;

(*c*) Duration of deposit and the date on which the deposit is repayable;

(*d*) Rate of interest;

(*e*) Dates on which interest will be due;

(*f*) Any other particulars.

The abovesaid register shall be kept at the registered office of the company and preserved for a period of eight calendar years from the financial year in which the latest entry is made in the register.

31. Filing of annual return of deposits with the Registrar

Every company which has invited/accepted deposits shall, before the 30th June every year, file with the Registrar in the e-Form 62 attaching electronically, a return in the prescribed Form given in the Rules, containing information as on 31st March of that year. The said return shall be duly certified by the auditors of the company and shall be filed alongwith the prescribed filing fee as per Schedule X of the Companies Act, 1956. (Appendix 15)

A contravention of rule 10 is a continuing offence. [*Hyderabad Vanaspathi Ltd.* v *Registrar of Companies* (1986) 59 Comp Cas 654 (AP)].

Offence arising out of non-compliance of rule 10 is a continuing offence and cognizance thereof is not barred by limitation in terms of section 472A of Code of Criminal Procedure. [*U.P. Paper Corpn.* (*P*) *Ltd.* v *Registrar of Companies* (1987) 61 Comp Cas 728 (Cal)].

Offence of not filing a return under rule 10 of the Companies (Acceptance of Deposits) Rules, 1975 is not punishable if no complaint is made within six months of 30th June. [*Shree Dharma Sugar Industries* (*P*) *Ltd.* v *Registrar of Companies* (1989) 66 Comp Cas 337 (Kar)].

32. Whether the High Court, in exercise of inherent power, can quash criminal proceeding, initiated by the Registrar of Companies for failure to file return of deposits in terms of Section 10

In the case of *Jorhat Tea & Industries* (*P*) *Ltd. and Others* v *State of Meghalaya and Another* (2006) 72 CLA 92 (Gau) the Registrar of Companies filed a complaint in the Court alleging violation of rule 10 of Deposit Rules *i.e.* non-filing of Return of deposits with ROC. According to the Petitioner, the amount in question were not deposits under rule 2(*b*)(*ix*) and 2(*b*)(*vi*) of the Deposit Rules and section 58A and thus the company was not required to file any return of deposits and consequently there was no violation of the provisions of the Act and the Rules. The amounts received by the company were not against any "invitation" which is an essential element to violate the provision of section 58A(2) and not being repayable on demand or on notice or after a period as required by rule 3(1)(*a*) and being free of charge not to offend rule 3(1)(*c*) of the Deposit Rules, are not within the ambit of section 58A of the Act. Further the amounts being advances against sale/supply of the products (tea) of the company are not "deposits" as defined by rule 2 of the Deposit Rules.

It was held that it has been specifically contended that there is violation of the provisions of section 58A of the Act besides the violation of rule 10 of the Deposit Rules. As per section 58A apart from imposition of fine on the company, the officers/directors are also liable by way of imprisonment which may extend to five years. As to whether the alleged violation is within the ambit of section 58A of the Act will be a matter of evidence to be adduced during the trial of criminal proceeding initiated pursuant to the complaint filed by ROC. At this stage there is no basis to arrive at the conclusion that the provisions of section 58A are not attracted. This is a question of fact which will have to be established on evidence during trial.

In the instant case, the whole basis of the claim of the petitioner towards invoking the inherent power of this Court is that even if the alleged violation of rule10 of the Deposit Rules is established, the offence and the complaint thereof being beyond the period of limitation prescribed under the Code of Criminal Procedure, the complaint and the initiation of proceeding thereof are not maintainable. This is the argument advanced at the time of hearing of the case. However neither in the petition nor in the reply of the show cause notice, the petitioners have taken the plea that there is no violation of the provisions of section 58A of the Act.

It is another thing to plead that the amounts received by the company were not against any invitation which is essential element towards violation of the provisions of section 58A, and thus there is no question of offending section 58A. While it is true that the violation of the provision of rule 10 of the Deposit Rules may lead to punishment by way of imposition of fine on the company, but there being express provision for providing punishment of imprisonment to the officers/directors of the company which may extend to five years the provisions of the Criminal Procedure Code will have to be construed in that manner and not merely on the basis of the assertion made by the petitioners that the offence alleged is only in respect of violation of rule 10 of the Deposit Rules.

33. Disclosure of particulars of deposits in the Directors' Report

It is required to disclose the following particulars in the Directors' Report:

(a) the total number of depositors of the company whose deposits have not been claimed by the depositors or paid by the company after the date on which the deposit became due for repayment or renewal, as the case may be, according to the contract with the depositors;

(*b*) the total amount due to the depositors and remaining unclaimed or unpaid.

Where the total of such deposits on the last date of the relevant financial year exceeds Rs. 5 lakhs, the Directors' Report shall also state the steps taken or proposed to be taken by the company for repayment of such deposits.

34. Provisions of Income-tax Act, applicable on deposits

The company is required to deduct income-tax on the interest paid to the depositors as per the rate applicable under the Income-tax Act, 1961. If a deposit-holder (not being a company or a registered firm) files with the company a statement in Form 15H as specified in rule 29A or 29C of the Income-tax Rules, 1962, no deduction of tax shall be made by the company for any amount of interest so paid. The tax deducted from the interest payable on deposits, shall be paid to the credit of the Central Government Account within one week from the last day of the month in which the tax is deducted and the prescribed returns for TDS shall also be filed with the Income Tax Authorities. On deduction of income-tax the company shall furnish a certificate to the depositor as per provisions of section 203 of the Income-tax Act, 1961.

Further that, if the repayment of a deposit or deposits with interest is Rs. 10,000 or more, it cannot be made otherwise than by an account payee cheque.

The following returns shall be filed with the Income Tax Officer:

(*i*) Annual Return in Form 26A

(*ii*) Quarterly Return in Form 27

35. Extension of time to repay deposits by the Tribunal/Central Government

It has been provided in section 58A(8) and (9) of the Companies Act, 1956 that where a company has failed to repay any deposit, the Company Law Board [Powers vested with the Tribunal vide the Companies (Second Amendment) Act, 2002] has power to consider the matter either on its own motion or on the application of a depositor and can order the company to make repayment of the deposit in such manner as the Company Law Board/Tribunal may order. (Appendix 7)

If a company is not in a position to repay deposits on due dates, it may make an application to the Ministry of Company Affairs requesting for extension in time to repay deposits. Before making an application, the company shall publish a general notice to the public at least once in an English daily newspaper and once in a newspaper in the language of the area in which the registered office of the company is situated. (*See* Appendix 8).

36. Directions of the RBI in respect of acceptance of deposits by Non-Banking Financial Companies and Miscellaneous Non-Banking companies

The Reserve Bank of India has issued the following directions:—

1. NBFCs (Acceptance of Public Deposits) (Reserve Bank) Directions, 1998;
2. RNBCs (Reserve Bank) Directions, 1987;
3. Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1977;
4. NBFCs (Prudential Norms) (Reserve Bank) Directions, 1998;
5. NBFCs (Auditor's Report) (Reserve Bank) Directions, 1998.

Besides the foregoing, please also refer the Housing Finance Companies (NHB) Directions, 1989.

37. Consequences in case of default in repayment of deposit or interest by a company

On committing default by a company on repayment of deposit or interest thereon, there shall be the following consequences:—

(*i*) shall not invite deposits unless it is not in default in the repayment of any deposit or payment of interest thereon. [Section 58A]

(*ii*) shall not make any loan or give guarantee or make any investment in shares till the default is made good. [Section 372(4)]

(*iii*) in sub-section (6), the fine for contravention of the provision has been increased to Rs. 10 lakhs but not less than Rs. 50,000. For failure to comply with the order of the Company Law Board/Tribunal the fine has been increased to Rs. 500 for every day of non-compliance. [Section 58A(10)]

(*iv*) in case of a public company commits default in repayment of deposit or interest thereon for a period of one year, the directors of such companies shall not be appointed as a director in any other company for a period of five years from that date. [Section 274(1)(*g*)]

38. Protection to small depositor

Section 58AA provides the protection to small depositor(s) who is defined as depositor who has deposited in a financial year a sum not exceeding Rs. 20,000 in a company and includes his successors, nominees and legal representatives.

39. Intimation to the Company Law Board/Tribunal for default within 60 days

Every company, which accepts deposits from small depositors, shall intimate the Company Law Board/Tribunal within 60 days of any default made by it in repayment of principal or any interest thereon. The company shall also furnish the names and address of each small depositor and the principal and interest due to them. After the default the intimation shall also be given on monthly basis. (Appendix 9)

Because of the use of the words "Every Company" in this sub-section, public as well as private companies are covered. It should be kept in mind that private companies are prohibited from any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

Invoking section 58A read with section 642 of the Companies Act, the Central Government has made rule 2(*ix*) of Companies (Acceptance of Deposits) Rules, 1975. It would be seen here that any amount received by any company (whether public or private) from its directors is not taken as deposit. Moreover, any amount received by a private company from its shareholders is also not a deposit. This Rule will also be applicable to small depositors under section 58AA in view of said sub-section (11).

Thus the position which will emerge is that:—

(*a*) Public companies accepting deposits from public and members of the company will comply with section 58A but acceptance of deposit from directors is exempt and said section need not be followed. Same will be the legal position in case of small deposits under section 58AA.

(*b*) Private companies, while not being able to accept deposits from the public, can accept deposit from their directors and members, which is exempt under Companies (Acceptance of Deposits) Rules, 1975. Hence this section need not be followed. Moreover, section 58AA regarding small deposits would also not apply.

The statutory intimation has to be given within 60 days from the date of default which will mean that if the company had to repay the deposit on say 15th April, 2006, and it fails to do so, the date of default will start from 16th April and the period of 60 days has to be counted from this date. However, the company will not get the full 60 days as the *Explanation* stipulates intimation to be given on monthly basis. Hence time-limit of intimation may be 30th April, 2006 or 31st May, 2006 at the discretion of the company. A default on 28th April will require the intimation to go latest by 31st May. This is as per the assumption that the words "monthly basis" means at the end of the month. In the absence of any definition of these words it appears that a company is free to choose the monthly timing of sending the intimation, however it is advisable to keep the same date every month.

40. Action by the Company Law Board/Tribunal on receipt of intimation of default

The Company Law Board/Tribunal shall take the following action:—

(*a*) It may on its own motion and in exercise of powers conferred by section 58A(9) pass such order as it deems fit.

(*b*) It may pass appropriate order within 30 days from receipt of intimation from the company.

(*c*) The small depositor will be given an opportunity of being heard either in person or through a representative.

As per this sub-section the Company Law Board/Tribunal has to act on receipt of the statutory intimation of default from the company under the preceding sub-section. Strangely enough in clause (*a*), the Company Law Boars/Tribunal is empowered to act on its own motion as per powers conferred in section 58A(9) which goes against the opening provision, stipulating action to be taken by the Company Law Board/Tribunal on receipt of intimation. The Company Law Board/Tribunal while trying the case may give reasonable opportunity of being heard to the company and other interested person/s.

The Company Law Board/Tribunal is required to pass the order on receipt of statutory intimation, giving small depositors an opportunity of being heard to enable the Company Law Board/Tribunal to pass an order after 30 days. However, the small depositor will not be required to be present at the hearing.

[*As per the Companies* (*Second Amendment*) *Act, 2002, the Company Law Board will be dissolved and the powers will vest in the National Company Law Tribunal, necessary notification is yet to be issued by the Central Government for effective date*]

41. CLB to take into consideration the necessity to safeguard the interest of the company and the depositors

Section 45QA of RBI Act reads as follows:

Where a non-banking financial company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board constituted under section 10E of the Companies Act, 1956 (1 of 1956), may, if it is satisfied, either on its own motion or on an application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest, direct, by order, the non-banking financial company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order.

Provided that the Company Law Board may, before making any order under this sub-section, give a reasonable opportunity of being heard to the non-banking financial company and the other persons interested in the matter. [*Vilasini Jaya Praksh* v *St. Mary's Finance Ltd.* M.F.A. No. 994 of 1999, decided on September 8, 1999]

It is clear from the above provision that while considering an application under section 45QA, the Company Law Board has to take into consideration the necessity to safeguard the interest of the company and the depositors. It is necessary to look into public interest also. The power given under sub-section (2) of section 45QA is in the nature of a discretionary power to be exercised taking into consideration all the abovementioned aspects. Reference to the proceeding under section 391 is not an irrelevant consideration. In examining the question whether an individual application filed by a creditor is to be separately considered and relief granted, it is only just and proper for the Company Law Board to have taken into consideration the pendency of a proceeding under section 391 of the Companies Act before this court.

42. Ban on acceptance of further deposit

Such company cannot accept further deposits from small depositors unless each small depositor, whose deposit has matured, had been paid the amount of deposit and interest accrued. This provision will not apply if delay in repayment is not due to the fault of the company.

43. Disclosure of default in future advertisements

Such company shall in every future advertisement and in the application form inviting deposits from the public, state the total number of small depositors and amount due to them in respect of which such default has been made. Where any accrued interest due to small depositors has been waived, that fact shall also be stated in the said advertisement and application form. In terms of sub-section (8), every application form issued to a small depositor shall state that the applicant had been apprised of every (previous) default made by the company as mentioned above and the waiver of interest, if any, and the reasons authorize.

44. Funds obtained from bank for working capital shall be utilised for repayment of deposit and/or payment of interest

Where necessary, a company shall first utilise funds obtained by way of loan from any bank for its working capital, for repayment of any deposit or interest due thereon to small depositors before applying such funds for any other purpose.

Therefore, where a company has accepted deposits from small depositors and subsequent to such acceptances, takes loan for working capital from any bank, it shall first utilise the funds for repayment of any deposit and interest thereon before applying such funds for any other purpose. On a literal interpretation it would be seen that this restriction is applicable irrespective of whether or not the company has failed to pay the deposit and interest.

45. Payment of penal interest @ 20% on compoundable basis

A penal rate of interest @ 18% shall be paid by a company to a depositor for the overdue period of a deposit material and claimed but remaining unpaid. In the case of small depositor, the penal rate of interest shall be 20% compoundable on annual basis. [As per rules 8A inserted on 28-11-2001 *vide* Notification No. GSR 873(E)]

46. Mechanism to make on line complaint to the MCA by the deposit holders

The Ministry of Company Affairs has prescribed e-complain form vide Notification No. GSR 56(E) dated 10th Feb., 2006 for making complaint by a deposit holder against a company if it commits default in repayment of amount of matured fixed deposit, pre-mature payment of fixed deposit, interest, interest on delayed payment, etc. The complain shall be made electronically on the portal of the Ministry of Company Affairs at the website www.mca.gov.in. The concerning Registrar of Companies, having jurisdiction over the company shall take necessary action to resolve the complaint. No fee has been prescribed for making complaint by the deposit holder with the MCA.

The complainant may also check the status of his complaint on the website of the MCA from time to time. (Specimen of the complaint form has been given in Appendix 14).

47. Penalty for non-compliance

Whoever fails to comply with the provisions or fails to comply with any order of the Company Law Board/Tribunal shall be punishable with imprisonment upto three years and with fine upto Rs. 500 for every day of continuance of default. For any offence under the section, a director shall also be liable to be proceeded against and punished.

Section 58A(6)(*b*) make it clear that it does not contain a condition that prosecution of company is a sine qua non for prosecution of every officer of company who is in default though, no doubt, a finding that offence was committed by company is sine qua non for convicting every officer of company who is in default. Main requirement under section 58A is that there should be a finding that contravention was by company before officer could be convicted and it is not necessary that company itself should be prosecuted along with officers of company. If company was not prosecuted due to any legal impediments, officer of company could not on that score alone escape from penal liability as envisaged under section 58A(6)(*b*). [*Rama Bhushanam* v *Registrar of Companies* (2002) 36 SCL 344 (AP)].

48. Relief available under section 58A shall also be available

Relief provided in section 58A shall also be available to a small depositor. The offences under sections 58A and 58AA are cognizable offences and a Company Law Board/Tribunal will take cognizance only against complaint made by the Central Government.

49. Consequence of acceptance of deposit by a private limited company

If a private limited company accept an amount, which may be classified as deposit under section 58A read with the Companies (Acceptance of Deposit) Rules, 1975, it will cease its status of a private limited company and has to make all the compliances for such deposits as per requirement of the said rules, as well as to comply with all the provisions as may be applicable on public limited company such as section 58A, 58AA, 58AAA, 81, 256, 257, 198, 268, 269, Schedule XIII, 274(*i*)(*g*) 295, 297, 300, 301, 372A, etc.

Appendix 1

Specimen of Board resolution for seeking exemption for renewing deposits limits laid down in Deposits Rules

The Chairman informed the Board that the Company had accepted deposits to the extent of Rs. ……. in 2004 which deposits, at the time of their acceptance, were within the limits permissible under the Companies (Acceptance of Deposits) Rules, 1975. He further informed that the Company had suffered losses during the last two years and as a result whereof the paid-up-capital and free reserves of the Company stand at a lower figure than in the year 2004 when the deposits had been originally accepted.

However, the Company is desirous of repaying the existing deposits and the depositors are willing to have deposits renewed in order to tide over the financial difficulties but such renewal would amount to acceptance of deposits exceeding the limits laid down by the said Rules. Therefore, the Company seeks the approval of the Central Government for renewal of existing deposits. The Board discussed the matter and thereafter passed the following resolution unanimously:

RESOLVED THAT the Company do make an application to the Central Government under sub-section (8) of section 58A of the Companies Act, 1956 from exemption from the operation of the said Acceptance of Deposits Rules in so far as the renewal of the existing deposits is concerned.

RESOLVED FURTHER THAT the Central Government be informed that the financial position of the Company is likely to improve considerably over the next two years by reason of the favourable market for the goods manufactured by it so that there would be no difficulty in repaying the renewed deposits on their maturity and the Central Government be further informed that the directors of the Company does not improved as expected, the directors are prepared to put in money as deposits with the Company for the purpose of making repayment.

RESOLVED FURTHER THAT the exemption be sought in the said application to be made to the Central Government from the operation of the said Deposits Rules in so far as the deposits which the directors of the Company or their relatives or friends are required to make in order to ensure payment of deposits now purposed to be renewed.

Appendix 2

Specimen of Board resolution for invitation and acceptance of fixed deposits from public

RESOLVED THAT the Company do invite and accept deposits from public including directors and members of the Company subject to the maximum amount aggregating not more than Rs. 235.25 Lacs only outstanding at any one point of time representing 35% of the paid-up capital and free reserves as per the audited balance sheet as on 31st March 2006, in accordance with the provisions of the Companies (Acceptance of Deposits) Rules, 1975, framed under section 58A of the Companies Act, 1956 on the terms and conditions contained in the draft submitted to this meeting and initialed by the Chairman for the purpose of identification.

RESOLVED FURTHER THAT the text of advertisement inviting deposits from public and containing the information prescribed under rule 4(2) of the Companies (Acceptance of Deposits) Rules, 1975, submitted to this meeting and initialed by the Chairman for the purpose of identification, be and is hereby approved and that the same be signed by the majority of the directors or their agents authorized in writing as provided in section 60 of the Act and be delivered to the Registrar of companies in e-Form 62, for registration and thereafter be published in leading English and vernacular language newspapers circulating in Maharashtra and other such newspapers as may be necessary.

RESOLVED FURTHER THAT Mr. DKJ, Chairman and Managing Director of the Company be and is hereby authorized to make publication of the approved text of the advertisement in newspapers and he be also authorized to allow any person to issue and cause to be issued on behalf of the Company the text of the said advertisement inviting deposits from public.

RESOLVED FURTHER THAT the form of deposit application and statement of particulars referred to in rule 5(2) of the Companies (Acceptance of Deposits) Rules, 1975, submitted to this meeting and initialed by the Chairman for the purpose of identification be and are hereby approved.

RESOLVED FURTHER THAT Ms. AJ, Company Secretary and Mr. DS, Senior Manager (Finance) be and are hereby severally authorized to issue non-transferable fixed deposit receipts, sign and issue post dated interest warrants, make entries in the Fixed Deposit Register and refund the deposits on maturity, prepayment or otherwise, file necessary returns with RBI and comply with other formalities in this regard.

RESOLVED FURTHER THAT the facsimile signature of Mr. DKJ, Managing Director be affixed in the interest warrants and the Banks be authorized to honour all interest warrants bearing such facsimile signature of Mr. DKJ, Managing Director.

Appendix 3

Specimen of Board resolution for approval of statement in lieu of advertisement for acceptance of deposits

RESOLVED THAT the Statement in Lieu of Advertisement for renewal of deposits from the directors and members of the Company in terms of rule 4A of Companies (Acceptance of Deposit) Rules, 1975 read with section 58A of the Companies Act, 1956 (1 of 1956) as placed before the Board, duly initialed by the Chairman for the purpose of identification be and is hereby approved for renewal of deposit subject to a maximum of Rs. 235.25 Lacs from the directors and shareholders and aggregating not more than Rs. 235.25 Lacs only outstanding at any one point of time.

FURTHER RESOLVED THAT the Statement in Lieu of Advertisement be signed by all the directors of the Company present at the meeting and the signed copy of the same be filed with the Registrar of Companies for the purpose of its Registration.

FURTHER RESOLVED THAT Shri JPA, the Managing Director and/or Shri SSA, the Director of the Company be and are hereby severally authorized to make correction/additions/deletions/ amendments in the approved Statement in Lieu of Advertisement as may be required by the ROC and to do all such acts, deeds and things to implement the Scheme of the Fixed Deposit for and on behalf of the Company.

Appendix 4

Specimen of Statement in lieu of Advertisement

NPL LTD.

Regd. Off.: Nagpur Kalan, Ordinance Factory Road, Itarsi (M.P.) 461111

FIXED DEPOSIT SCHEME

Statement in lieu of Advertisement pursuant to rule 4A of the Companies (Acceptance of Deposit) Rules, 1975

FIXED DEPOSIT SCHEME (NON-CUMULATIVE)

Period of Deposit	*Rate of Interest per Annum*
One Year	10.00%
Two Year	10.05%
Three Year	11.00%

Minimum amount of deposit Rs. 5,000 and in multiple of Rs. 1,000

1. Interest on Fixed deposits will be calculated from the date of credit of the amount of the cheques/ drafts and payable at quarterly rests and will cease on maturity unless the same is renewed. Interest on fixed deposit will become due and payable half yearly on 1st January and on 1st July, respectively.
2. Interest will be payable subject to deduction of tax, wherever applicable. No tax would be deducted at source if the interest amount does not exceed Rs. 5,000 per annum, as per the relevant Income Tax provisions as on date or where necessary exemption certificate/declaration in Form No. 15AA/15H of Income-tax Rules is submitted well in advance in every financial year.
3. Acceptance of deposit will be subject to the terms and conditions indicated on the attachment to the application form for acceptance of fixed deposits.
4. Warrants/cheques for payment of interest and principal amount will be payable at par at Central Bank of India, Itarsi Branch.

Particulars as per the Companies (Acceptance of Deposits) Rules, 1975 as amended are as under:—

1. **NAME OF THE COMPANY**: NPL LIMITED.
2. **DATE OF INCORPORATION**: 21st November, 1990 and obtained the Certificate for commencement of business on 13th March, 1991.
3. **BUSINESS CARRIED ON BY THE COMPANY WITH DETAILS OF BRANCHES OR UNITS, IF ANY**: The company is engaged in the business of manufacturing, processing, buying and selling and dealing in all kinds of soya product and its by-products. The company does not have any branch in India or elsewhere.
4. **BRIEF PARTICULARS OF THE MANAGEMENT OF THE COMPANY**: The affairs of the company are managed by the Managing Director and Whole-Time Directors subject to the superintendence control and direction of the Board of Directors.
5. **NAME, ADDRESS & OCCUPATION OF DIRECTORS:**

Name	*Address*	*Occupation*
1. Shri Jagdish Prasad Agrawal Managing Director	Chawal Lane Itarsi (M.P.)	Consultant
2. Shri Surendra Singh Arora Whole Time Director	Gandhi Nagar Itarsi (M.P.)	Industrialist
3. Shri Kailash Chand Sharma Whole Time Director	Sarafa Bazar Itarsi (M.P.)	Business
4. Shri Madan R. Agrawal Director	10/3, Himaliya 109, Worli Sea Face Mumbai	Chartered Accountant
5. Shri K.V. Iyer Nominee Director of IDBI	Industrial Development Bank of India Bhopal	Service

6. PROFIT OF THE COMPANY BEFORE & AFTER MAKING PROVISION OF TAX AND DIVIDEND DECLARED BY THE COMPANY FOR THREE FINANCIAL YEARS IMMEDIATELY PRECEDING THE DATE OF THE STATEMENT OF ADVERTISEMENT

Financial year Ended 31st March	*Rupee in Lakhs*		*Dividend Declared*	
	Profit before tax	*Profit after tax*	*Amount*	*Rate %*
2004	33.75	29.75	Nil	Nil
2005	27.26	24.76	Nil	Nil
2006	25.29	23.39	Nil	Nil

7. SUMMARISED FINANCIAL POSITION OF THE COMPANY AS APPEARING IN TWO LATEST AUDITED BALANCE SHEETS

(Rs. In Lakhs)

Liability	*As on*		*Assets*	*As on*	
	31-3-2006	*31-3-2005*		*31-3-2006*	*31-3-2005*
Share Capital	419.85	419.85	Fixed Assets (Net)	663.09	664.44
			Capital WIP	11.69	39.54
Reserve & Surplus	273.26	249.87	Current Assets Loans & Advance	1347.85	1390.44

Liability	*As on*		*Assets*	*As on*	
	31-3-2006	*31-3-2005*		*31-3-2006*	*31-3-2005*
Secured Loan	1048.17	1098.87	Preliminary & Capital Issue Exp.	16.77	20.96
Unsecured Loans	88.84	50.00			
Current Liabilities & Provisions.	209.28	296.79			
Total	2,039.40	2,115.38		2,039.40	2,115.38

Particulars of contingent Liabilities:—Rs. In Lakhs.

1. Claims against the company not acknowledged as debt. (Already advance payment made Rs. …….. Lakhs) …….
2. Undertaking to indemnify Banks and others for providing Guarantee (Against FDR of full amount of Rs. ……… Lakhs) …….
3. Estimated amounts of contracts remaining to be executed on capital account (Advance paid Rs. …….. Lakhs) …….

8. AMOUNT WHICH THE COMPANY CAN RAISE UNDER THE COMPANIES (ACCEPTANCE OF DEPOSITS) RULES, 1975:

35% of the aggregate of paid up capital and Free Reserves.	Rs. 235.25 Lacs.
Deposit from shareholders and directors upto 10%	Rs. 67.21 Lacs
Other deposit from general public upto 25%	Rs. 168.04 Lacs.
Deposits held as on 31-3-2006	Rs. 30.60 Lacs

9. As on the date of statement of advertisement the company has no overdue or unclaimed deposits.

10. The total number of small depositors and amount due to them in respect of which default has been made: NIL

11. Fact of waiver of interest accrued on deposits of the small depositors: NIL

IT IS HEREBY DECLARED THAT

(1) The company has complied with the provisions of the Companies (Acceptance of Deposits) Rules, 1975 as amended from time to time;

(2) The compliance with the said Rules does not imply that the repayment of deposits is guaranteed by the Central Government; and

(3) The deposits accepted by the company are unsecured and rank *pari passu* with the other unsecured liabilities.

(4) The company is not in default in the repayment of any deposit or part thereof and any interest thereupon in accordance with terms and conditions of such deposits.

The text of advertisement has been approved by the Board of directors of the company at its meeting held on 27th May, 2006.

A copy of this statement signed by the majority of the directors of the company so constituted at the time of the Board meeting approved the text has been delivered to the Registrar of Companies, Madhya Pradesh, at Gwalior for registration. This Statement is in lieu of Advertisement is being issued under the authority and in the name of the Board of directors of the company.

BY ORDER OF THE BOARD
For, NPL LIMITED
S/D
J.P. AGRAWAL
MANAGING DIRECTOR

SIGNED BY THE MAJORITY OF DIRECTORS:

SHRI DR. SURENDRA SINGH ARORA
SHRI J.P. AGRAWAL
SHRI K.C. SHARMA
SHRI K.V. IYER
SHRI M.R. AGRAWAL

Itarsi
Dated: 27th May, 2006

Appendix 5

Specimen of Board resolution for maintenance of liquid assets

RESOLVED THAT pursuant to rule 3A of the Companies (Acceptance of Deposits) Rules, 1975, consent of the Board of directors of the Company be and is hereby accorded for maintaining liquid assets representing at least 15% of the public deposits maturing between 1st April 2006 and 31st March, 2007, as liquid assets in the form of unencumbered Government specified securities and that the said amount shall not be utilised for any purpose other than the repayment of deposits.

RESOLVED FURTHER THAT Mr. JP, the Director of the Company be and is hereby authorized to do all such acts, deeds and things as may be required to be done for giving effect tot his resolution.

Appendix 6

Form 2B

[*See* rules 4CCC and 5D]

Nomination Form

[to be filled in by individual(s) applying singly or jointly]

I/We ….. and …................................... and …........................... the holders of shares/Debentures/Deposit Receipt bearing number(s) …... of M/s. …......................…... wish to make a nomination and do hereby nominate the following person(s) in whom all rights of transfer and/or amount payable in respect of shares or debentures or deposits shall vest in the event of my or our death.

Name(s) and Address(es) of Nominee(s)
Name: …..
Address: …...
…...
Date of Birth* …..
*(to be furnished in case the nominee is a minor)
**The Nominee is a minor whose guardian is …..........................., Name and Address …...
(**To be deleted if not applicable)
Signature …..
Name …..
Address: …..
…..
Date: …...
Signature …..
Name …..
Address: …..
…..
Date: …...
Signature …......................................

Name …..
Address: …...
…..
Date: …..
Address, Name and Signature of witnesses:

…..	…..
Name and Address	Signature with date
…..	…..

1.
2.

Instructions:

1. The Nomination can be made by individuals only applying/ holding shares/debentures on their own behalf singly or jointly. Non-individual including society, trust, body corporate, partnership firm, Karta of Hindu Undivided Family, holder of power of attorney cannot nominate. If the shares are held jointly, all joint holders will sign the nomination form. Space is provided as a specimen, if there are more joint holders more sheets can be added for signatures of holders of shares/debentures and witness.
2. A minor can be nominated by a holder of shares/debentures/ deposits and in that event the name and address of the Guardian shall be given by the holder.
3. The nominee shall not be a trust, society, body corporate, partnership firm, Karta of Hindu Undivided Family or a power of attorney holder. A non-resident Indian can be a nominee on repatriable basis.
4. Nomination stand rescinded upon transfer of share/debenture or repayment/renewal of deposits made.
5. Transfer of share/debenture in favour of a nominee and repayment of amount of deposit to nominee shall be a valid discharge by a company against the legal heir.
6. The intimation regarding Nomination/Nomination Form shall be filed in duplicate with Company/ Registrar and Share Transfer Agents of the Company who will return one copy thereof to the share or debenture or deposits holder.

Appendix 7

Specimen of Board resolution for seeking extension of time for repayment of deposits

RESOLVED THAT an application be made to the Central Government seeking extension of time for a period of two years for repayment of deposits maturing on 31st March 2006.

RESOLVED FURTHER THAT Shri SM, the Managing Director and Ms. AJ, the Company Secretary, be and are hereby severally authorized to submit the application to the Central Government, arrange for publication of notice in newspapers and comply with all other requirements in this regard.

Companies (Application for Extension of time or exemption under sub-section (8) of section 58A) Rules, 1979

[*Notification No. GSR 244*(*E*), *dated 12-4-1979*]

In exercise of the powers conferred by sub-section (*8*) *of section 58A read with sub-section* (*1*) *of section 642 of the Companies Act, 1956* (*1 of 1956*) *the Central Government hereby makes the following rules, namely*:—

1. Short title and commencement.—(1) These Rules may be called the Companies (Application for Extension of Time or Exemption under sub-section (8) of section 58A) Rules, 1979.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Form of application for grant of extension of time or exemption under sub-section (8) of section 58A.—Every company seeking extension of time or exemption under sub-section (8) of section 58A of the Companies Act, 1956 (1 of 1956) shall apply in Form 1 appended to these Rules and furnish the particulars specified therein.

3. Fee to be paid along with the application.—Every application made under rule 2 shall be accompanied by a demand draft drawn in favour of the Pay and Accounts Officer, Department of Company Affairs, New Delhi towards payment of requisite fee as specified in the Companies (Fees on Applications) Rules, 1968.

4. Publication of notice in newspapers before making application.—Before making an application under rule 2, the company shall publish a general notice to the members of the public at least once in an English daily newspaper and at least once in a newspaper published in the language of the region having wide circulation in the region in which the registered office of the company is situate, in the manner specified in Form 2 appended to these rules.

FORM 1

[*See* rule 2]

Information required in respect of application for extension of time or for exemption under sub-section (8) of section 58A of the Companies Act, 1956

Part 'A'

(*Basic Data*)

(1) Name of the company and the address of the registered office.

(2) Date of incorporation.

(3) Date of commencement of business.

(4) Financial year of the company.

(5) Name and address of statutory auditors of the company.

(6) Name(s) and address(es) of directors of the company, indicating executive position held, if any, in other companies and in case of nominee directors, the names of institutions which they represent.

(7) Whether the company is registered under the MRTP Act.

(8) The main business in which the company is engaged indicating the location of factories, etc.

(9) The date on which the last annual general meeting was held and whether the audited accounts were placed in the annual general meeting.

(10) Names, designations and addresses of the officers of the company to whom powers have been delegated for acceptance/repayment of deposits.

(11) Equity/preference shares held by each of the following indicating separately the percentage, the same bears to the total equity/preference share capital of the company.

(*a*) Controlling block:

(*i*) Shares held by directors and their relatives.

(*ii*) Other companies in the same management.

(*b*) Central/State Government(s).

(*c*) Financial institutions (by individual name(s)).

(*d*) Nationalised banks (by individual name(s)).

(*e*) Non-residents:

(*i*) Companies not incorporated in India.

(*ii*) Foreign nationals.

(*f*) Shareholders not covered in (*a*) to (*e*) above holding one per cent or more of the equity shares.

(*g*) Others:

(*i*) Companies.

(*ii*) Individuals.

(12) Names and addresses of brokers/agents appointed by the company for procurement of deposits, together with terms of appointment, the rate of commission paid and copies of agreement, if any.

(13) Names and addresses of the financial institutions from which the company has accepted long-term loans, the amounts of such loans, and the names of the leading financial institutions, if any.

Part 'B'

(*Financial Data*)

(14) Effective capital employed by the company on the closing date of last balance sheet (please indicate the date)

Amount Rs.

(*i*) Paid up capital

(*ii*) Share premium

(*iii*) Reserves and surpluses

(*iv*) (*a*) Free reserves

(*b*) Other than free reserves

(*v*) Long-term loans

(*a*) Secured

(*b*) Unsecured

Total:

Less

Accumulated loss, preliminary expenses or other intangible assets.

Net effective capital employed

(15) Working results of the company for the last 3 years	Year ending on Rs.	Year ending on Rs.	Year ending on Rs.
(*i*) Paid-up capital.			
(*ii*) Effective capital employed (*see* item No. 14).			
(*iii*) turnover.			
(*iv*) Net profits under section 198 of the Act.			
(*v*) Dividend declared (Rate and quantum).			

(16) Net worth and liquidity position of the company during the last 3 years as in Annexure I

(17) A cash-flow statement indicating information (as in Annexure II) in respect of:

(*a*) preceding 3 years

(*b*) current financial year

(*c*) the next 3 years,

indicating in particular how the company proposes to generate surplus for payment of deposits.

(18) Please indicate the outstanding liability as on the date of application towards repayment of loans and interest to each of the financial institutions from

which money has been borrowed and also the amounts repayable towards principal and interest to each of them in the current financial year and during each of the next 3 financial years.

(19) Please furnish the following information relating to the position of deposits as on the date of application or as near thereto as circumstances may permit, but not earlier than 60 days from the date of application. (The date as on which information is furnished should be indicated.)

(A) Information as per Part 'A' and Part 'B' of Form prescribed under rule 10 of the Companies (Acceptance of Deposits) Rules, 1975.

(B) (1) Total number of outstanding deposits.

(2) The amount of outstanding deposits.

(3) The break-up of outstanding deposits as per following Tables.

	No.	Amount
(*i*) Amount of deposits which are overdue		
(*a*) for 2 years and more		
(*b*) for one year and more but less than 2 years		
(*c*) for 6 months and more but less than 1 year		
(*d*) for 3 months and more but less than 6 months		
(*e*) for less than 3 months		
Total Overdue deposits		
(*ii*) Break-up of overdue deposits as follows:—		
Particulars		
Less than Rs. 1,000		
More than Rs. 1,000 but less than Rs. 5,000		
Rs. 5000 or more		
(*iii*) Deposits which are not overdue		
(*a*) Amounts of deposits which will become repayable by 31st March next.		
(*b*) Amounts of deposits which will become repayable in each of the next half years from April to September and October to March during next 3 years.		
(*c*) Amounts of deposits which will become due for repayment after the third year mentioned in (*b*) above.		
Total deposits (overdue and not overdue).		

(20) Please furnish the following information about payment of interest on deposits as on the date for which information is furnished against item 19.

(*a*) Amounts of interest already due for payment but remaining unpaid—

(*i*) for 2 years and more

(*ii*) for one year and more but less than 2 years

(*iii*) for 6 months and more but less than 1 year

(*iv*) for 3 months and more but less than 6 months

(*v*) for less than 3 months

(*b*) Amounts of interest on deposits, payment of which will become due

(*i*) by 31st March next,

(*ii*) in each of the next half years from April to September and October to March during the next three years.

(21) Please furnish one copy each of the return filed with the Registrar of Companies under rule 10 of the Companies (Acceptance of Deposits) Rules, 1975 as on 31st March, 1975 onwards.

(22) Reasons for reduction in turnover, if any, during the last 3 years, and losses, if any, during the last 3 years. The anticipated turnover and net profits (pre-tax/post-tax) during the next 3 years may be furnished.

Notes

(*i*) The company should give up-to-date information in respect of all questions in this part.

(*ii*) In case the last date of the financial year for which the audited accounts are available is more than 12 months prior to the filing of this Form, the information as on the next financial year on the basis of the proforma accounts of the company may be furnished even though they may not be audited.

(*iii*) In case the company has prepared quarterly or half-yearly balance sheet/profit and loss accounts, the information should be furnished as on the latest available date in the current financial year as per such accounts.

Part 'C'

Proposal(s) and reasons

(23) Proposal(s) for exemption/extension:

(*a*) Please indicate in detail exemption from what and/or extension for which is/are sought quoting the relevant provisions of the Companies Act, 1956 and Companies (Acceptance of Deposits) Rules, 1975.

(*b*) Please indicate the period for which exemption/extension is sought.

(*c*) Please furnish a detailed time-bound scheme of repayment of deposits during the period for which exemption/extension is sought.

(*d*) Please give detailed justification for seeking exemption/extension.

(*e*) If the question of granting exemption/extension is considered, is the company agreeable to pay the entire amount of interest already due, as indicated in item 20(*a*) within 3 months from the date of granting, if any, of the exemption/extension?

(*f*) If exemption/extension is granted will the company agree to give an undertaking for repayment of interest in future on due dates?

(24) Has the proposal for exemption/extension been approved by the board of directors? If so, please furnish a copy of the resolution. (If not, the company should take immediate steps to obtain such approval. It is suggested that this Form duly filled in draft may be placed before the board of directors for consideration).

(25) If extension is sought for repayment of deposits accepted before 1-2-1975, *i.e.* the repayment of deposits mentioned in sub-section 3(*a*) of section 58A, please furnish the following details:—

	No.	Amount Rs.
(*i*) Amounts of such deposits repayment of which has become overdue as on the date of application.		
(*a*) for 3 years and more		
(*b*) for 2 years and more but less than 3 years		
(*c*) for 1 year and more but less than 2 years		
(*d*) for 6 months and more but less than 1 year		
(*e*) for 3 months and more but less than 6 months		
(*f*) for less than 3 months		
Total:—		

(*ii*) Deposits which are not overdue

(*a*) Amount of deposits which will become payable by 31st March next.

(*b*) Amount of deposits which will become repayable in each of the next half years from April to September and October to March during the next three years.

(*c*) Amount of deposits which will become due for repayment after the 3rd year mentioned in (*b*) above.

(*iii*) Amount of interest which has already become repayable on such deposits and has remained unpaid on the date of application:

(*a*) for 3 years and more

(*b*) for 2 years and more but less than 3 years

(*c*) for 1 year and more but less than 2 years

(*d*) for 6 months and more but less than 1 year

(*e*) for 3 months and more but less than 6 months

(*f*) for less than 3 months

(*iv*) Reasons for which the deposits and interest thereon, if any, could not be repaid

(26) If extension is sought for repayment of deposit accepted before 1-2-1975, in contravention of directions issued by the Reserve Bank of India which became repayable by 1st April, 1975 under sub-section 3(*c*) of section 58A, please furnish the following information:—

(*i*) Period in which such deposit was taken and the total amount of deposits, which was accepted initially in contravention of the directions issued by the Reserve Bank of India.

(*ii*) Number and amount of such deposits, repayment of which is outstanding as on the date of application.

(*iii*) Amount of interest, if any, due on such deposits but remaining unpaid as on the date of application

(27) If extension is sought for repayment of deposits accepted after 1-2-1975 in contravention of the Companies (Acceptance of Deposits) Rules, 1975, which became repayable under sub-section (4) of section 58A. Please furnish the following information.

Please indicate which particular rule has been contravened and when, the circumstances in which the rules has been contravened and the amount involved.

(*ii*) If deposits have been accepted in excess of prescribed limits please furnish the following details:

Period in which excess deposits were taken

(*a*) Deposits taken initially in excess of the limit prescribed in rule 3(2)(*i*) of the Companies (Acceptance of Deposits) Rules, 1975.

(*b*) Amount of such deposits outstanding as on the date of application.

(*c*) Amount of interest, if any, due on such deposits but remaining unpaid as on the date of application.

(*iii*) (*a*) Deposits taken in excess of the limit prescribed in rule 3(2)(*ii*) of the Companies (Acceptance of Deposits) Rules, 1975

Period in which excess deposits were taken

(*b*) Amount of such deposits outstanding as on the date of application.

(*c*) Amount of interest, if any, due on such deposits but remaining unpaid as on the date of application.

(*iv*) Reasons for which excess occurred and why the excess and the interest thereon, if any, could not be repaid.

(28) Whether the company has accepted or renewed any deposits even after the excess mentioned in item 27 above was known? If so, please indicate:—

(*i*) The number of deposits since accepted/renewed.

(*ii*) The number and amount accepted/renewed in each month after the excess was known.

(*iii*) The reasons for accepting/renewing deposits in contravention of the Rules.

(29) Whether the company is presently accepting/renewing such deposits.

(30) Whether the company had approached the RBI in the past for any exemption from its directions? If so, whether such exemption was allowed? Please give copies of relevant correspondence.

(31) Full details of the investment made by the company in the shares and debentures of other bodies corporate.

(32) Is there any scope for disinvestment of such shares, if any?

(33) Full details of the loans granted by the company to other bodies corporate.

(34) Why were the loans mentioned in item 33 above not withdrawn for repayment of deposits?

(35) Full details of the cash and bank balances and easily realisable securities and investments according to the latest balance sheet of the company.

(36) Why can't the surplus funds available as per cash-flow statement be utilised for repayment of deposits?

(37) Is there any liquidation proceedings against the company filed by any depositor pending before any High Court? If so, please furnish the details.

(38) Is there any civil suit against the company filed by any depositor for recovery of deposits pending before any court? If so, please furnish the details.

(39) Is there any scheme of repayment approved by the High Court? If so, please furnish the details.

(40) Is there any scheme of rehabilitation of the company approved by the financial institutions/bankers? If so, please furnish the details.

(41) Has any show cause notice been received by any of the directors for contravention of the provisions of section 58A of the Act? If so, please furnish details thereof.

(42) Is there any suit pending against the company and/or its directors for contravention of any one or more of the provisions of the Companies Act, 1956? If so, please furnish details thereof.

(43) Please indicate licensed capacity, the installed capacity and production during each of the last 2 years and estimate or production during the current year and next two financial years.

(44) Whether the undertaking owned by the company is in full production at present? If not, please give details and reasons thereof.

(45) Details of interruption in production during the last 3 years such as strikes/lock-outs, etc. and reasons thereof.

(46) Details of expansion plan/investment plan of the company during the next 3 years. Please indicate whether the company has obtained any letters of intent, etc.

(47) Full details of the mortgages and other encumbrances of the assets of the company.

(48) Details of the difficulties experienced by the company in achieving the full production and sales and how the company proposes to overcome these difficulties.

(49) Details of contracts in which directors are interested.

(50) Details of selling agency arrangements, if any, in which the directors are interested.

(51) Details of office/place of profits held by the relatives of directors, if any,

(52) What are the conditions which the company is prepared to undertake if exemption/extension is granted, in particular in respect of the following items:—

(*i*) Composition of the board of directors by taking the nominees of depositors or financial institutions

(*ii*) Restriction on repayment of deposits held by directors and their relatives (give details)

(*iii*) Give protection or security to depositors for repayment of deposits.

(*iv*) Non-acceptance and non-renewal of further deposits.

(*v*) Professionalisation of management.

(*vi*) Any scheme of reorganisation subject to the supervision of the court.

(*vii*) Restriction on declaration of dividend to shareholders during the period of extension, if any, granted.

(*viii*) Immediate payment of interest already due and assurance for payment of interest in future on due dates.

(*ix*) In any other manner.

(53) Any other information which the company wants to furnish.

(54) Please furnish the following enclosures:—

(*i*) One copy each of the Articles of Association of the company.

(*ii*) One copy of each of the audited accounts of the company together with directors report and auditors report for the last 3 years of the company.

(*iii*) A copy of the resolution of the board of directors in support of the proposal

(*iv*) One copy of each quarterly, half-yearly or other proforma accounts of the company subsequent to the latest audited accounts.

(*v*) One copy each of the advertisement issued in newspapers pursuant to rule 4 of the Companies (Acceptance of Deposits) Rules, 1975.

(*vi*) Application fees prescribed (please furnish a crossed demand draft in favour of Pay and Accounts Officer, Department of Company Affairs, New Delhi drawn at Punjab National Bank, Barakhamba Road, New Delhi).

(55) The newspapers in which the company has published notices regarding the intention to apply to Central Government for exemption as in Annexure III and date of publication (press cutting should be attached).

Signature
Name of person(s)
Designation
Date:

Annexure I

Financial and liquidity position of the company according to the balance sheets of the last three years

	Year ended on ______ Rs.	Year ended on ______ Rs.	Year ended on ______ Rs.
1	2	3	4

Current assets
(including investments other than trade investments in subsidiary and/or managed companies)
Less
Current liabilities (including short-term loans and liabilities).
(A) Liquid surplus
Add
(*a*) Fixed assets
(*b*) Trade investments and investments in subsidiary and/ or managed companies.
Less
Long-term loans and liabilities.
(B) Net worth as on
(Date of balancesheet)

Note I

In making the above computation of net worth, adjustments in respect of the following items shall be made—

(*i*) Intangible assets, *e.g.* goodwill etc.
(*ii*) Doubtful assets, *e.g.* doubtful and bad debts, etc.
(*iii*) Deferred revenue expenditure.
(*iv*) Accumulated losses.
(*v*) Arrears of depreciation.
(*vi*) Arrears of preference shares dividend.
(*vii*) Any other amount, appearing in the balance sheet, required to be deducted in accordance with accounting practices.

Total ______

Reconciliation of net worth paid up capital.
Add
Reserves
(Please specify details)
Less
Intangible assets and any other amount required to be deducted (*vide* Note above)
Net worth as on
(Date of balance sheet)

Note II

If the net worth of the company as indicated in column 4 is less than its paid up capital, please indicate in details what steps are proposed to be taken to improve the net worth.

Annexure II

Cash flow statements

	Three previous years			*Current year*	*Next three years*		
	Year ended on	*Year ended on*	*Year ended on*	*Year ended on*	*Year ended on*	*Year ended on*	*Year ended on.*
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*

A. Source of funds

Sales and other income
Less cost of sales and other expenditure (excluding depreciation)
Net profit before tax and depreciation.
Opening balance of cash
Additional capital raised.
Increase in secured loans.
Increase in other loans (other than deposits).
Increase in deposits received.
Decrease in current assets (other than cash).
Increase in current liabilities.
Any other item to be specified.

Total

B. Use of funds

Increase in capital assets.
Increase in investments.
Secured loans repaid.
Other loans repaid (other than deposits).
Deposits repaid.
Increase in current assets (other than cash). Decrease in current liabilities.
Tax payments.
Dividends.
Any other item (to be specified)
Closing balance of cash.

Total

Appendix 8

FORM 2

(*See* rule 4)

Name of the Company ....
Registered Office ....

Notice is hereby given that the above named company proposes to apply to the Central Government for extension of time to comply with, or for exemption from all or any of the provisions of section 58A of the Companies Act, 1956 relating to deposits from public. A copy of the application made is available for inspection at the registered office of the company during the working hours. Any interested person may send his objections, if any, to the Central Government by means of letter addressed to the Secretary, Ministry of Company Affairs, 5th Floor, 'A' Wing, Shastri Bhavan, New Delhi, within thirty days from the date of publication of this notice.

Appendix 9

Specimen of representation before Company Law Board/Tribunal against depositor's complaint

RESOLVED THAT the Company do make a representation before the Company Law Board/Tribunal against the complaint filed by a depositor due to Company's failure to repay the matured deposits and that the prayer made for the following—

(*a*) Company be allowed to repay the matured deposits within next years in equal quarterly installments.

(*b*) Company be allowed to arrange temporary unsecured loan from other sources for repayment of matured deposits.

(*c*) Company be allowed to renew deposits of depositors who voluntarily accept renewal proposal from the company.

RESOLVED FURTHER THAT Ms**.** AJ, the Company Secretary of the Company be and is hereby authorised to represent before the Company Law Board/Tribunal and to do all such acts and deeds as may be required for giving effect to this resolution.

RESOLVED FURTHER THAT the Company Secretary be and is hereby also authorised to accept such conditions as may be imposed by the Company Law Board/Tribunal while the aforesaid prayer of the Company.

Appendix 10

Government Notifications/Clarifications

I. Section 58A: Applicability of section 58A of Companies Act, 1956, and the Companies (Acceptance of Deposits) Rules, 1975

Secured loans

(*a*) If secured loans are taken from banks or other financial institutions referred to in sub-clauses (*ii*) and (*iii*) of clause (*b*) of rule 2 of the Companies (Acceptance of Deposits) Rules, 1975, they would not be regarded as "Deposits" within the meaning of the said Rules.

(*b*) On the other hand if the whole or part of the secured loans have been taken from other sources on the security of the assets of the company, they would be regarded as 'Deposits' except that loans which do not exceed 25% of the market value of the assets which constitute security for the loan would not be taken into account for the purpose of the limits mentioned in rule 3. In this connection, attention is invited to *Explanation* I below the said rule 3.

(*c*) Any loans which are not covered under (*a*) and (*b*) above would be 'deposits' and will be taken into account for the purposes of the limits laid down in rule 3.

Deposits from shareholders and directors

The deposits from shareholders and others laid down in rule 3(2)(*i*), together with the short-term deposits provided in rule 3(1), should not exceed 15% of the paid up capital and free reserves of the company.

Deposits from others

These deposits would be governed by section 58A(3)(*a*) and section 58A(3)(*c*) of the Companies Act, 1956. According to these provisions, if the deposits have been accepted in accordance with the provisions of the Non-Banking Companies (Reserve Bank) Directions, 1966, as amended from time to time, then they are to be repaid in accordance with the terms on which they were accepted. On the other hand, if these deposits had been accepted in contravention of the said directions, then they were required to be repaid by 1st April, 1975.

Source: *Letter No. 1/11/75-CL-XIV, dated 17 May, 1975.*

II. Section 58B: Scope and extent of application of section 58B — Clarification regarding

Section 58B of the Act runs as follows: "The provisions of this Act relating to a prospectus shall, so far as may be, apply to an advertisement referred to in section 58A".

The advertisement referred to in the above section is the one required to be issued by the companies for inviting or accepting deposits. Such an advertisement is covered under the definition of "prospectus" laid down in section 2(36) of the Act, as amended recently. Accordingly, an advertisement for inviting or accepting deposits is a prospectus and ordinarily all the provisions of the Act relating to prospectus automatically became applicable in relation to such an advertisement. However, the words "so far as may be" appearing in section 58B of the Act are significant in this context. Having regard to these words, the Central Government is of the opinion that wherever in respect of certain matters relating to advertisement specific provisions has been made in section 58A or in the Companies (Acceptance of Deposits) Rules, 1975, the corresponding provisions of the Act relating to the prospectus would not apply to the advertisement. To illustrate, according to section 56(1) of the Act, every prospectus is required to contain information on the matters specified in Schedule II. This requirement will not apply to an advertisement for deposits because rule 4 of the Companies (Acceptance of Deposits) Rules, 1975 prescribes the form in which such an advertisement is required to be issued. The other provision, governing the prospectus, including those relating to civil and criminal liabilities for mis-statements (sections 62 and 63), penalty for fraudulently inducing persons to make deposits with any company (section 68) etc., will *mutatis mutandis* apply to the advertisement for deposits.

Source: *Circular No. 9 of 1975, dated 7 June, 1975.*

III. Rules 4(2)(*f*) and (*g*): Financial data to be given in advertisement

Query: A company's accounts close on June 30, 1975. If it advertises for deposits before this date, can it continue to receive deposits from July 1, 1975 onwards till the balance sheet for the year ended June 30, 1975 is audited? Further, if the above company has not advertised for deposits prior to June 30, 1975, which is its accounts closing date, can it advertise subsequent to July 1, 1975 giving the audited figures up to June 1, 1974 only?

Answer: According to the existing provisions of the Rules, an advertisement issued during the course of the financial year of a company remains valid up to the close of that very financial year. The figures of the profits and dividends of the company for the three financial years immediately preceding the date of an advertisement are to be given in the advertisement as required under clauses (*f*) and (*g*) of sub-rule (2) of rule 4.

Source: *Letter No. 1/24/75-CL-XIV, dated 2 July, 1975.*

IV. Section 58A: The Companies (Acceptance of Deposits) Rules, 1975 — Clarification in respect of sub-rule (4) of rule 4

19.4 Under sub-rule (4) of rule 4 of the Companies (Acceptance of Deposits) Rules, 1975, it has been stipulated that no advertisement shall be issued by or on behalf of a company unless, on or before the date of its issue, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director. It may be noted that it would be treated as sufficient compliance with the aforesaid provisions of the Companies (Acceptance of Deposits) Rules, 1975, if the advertisement is signed by every director or by his agent authorised in writing.

Source: *Circular No. 23/75, dated 25 September, 1975.*

V. The Companies (Acceptance of Deposits) Rules, 1975 — Clarification in respect of sub-rule (5) of rule 4

A question has arisen whether any filing fee should be charged from the companies for notifying the changes in the particulars contained in the advertisement. It has been decided that while in view of the provision contained in section 58B of the Act payment of fee should be insisted upon in respect of an advertisement which is required to be filed under sub-rule (4) of rule 4, no fee will be required to be paid when changes are notified under sub-rule (5) of rule 4.

Source: *Circular No. 26 of 1975, dated 18 October, 1975.*

VI. Rule 10: Whether 'nil return' is required to be filed

Query: In terms of rule 10, every company to which these Rules apply is required to submit a return in the prescribed form. Under rule (3), all companies which are not banking companies and not financial companies are covered by the said rules. However, it is not clear whether in the case of a non-financial company, which does not accept any deposits within the meaning of the rules, a *nil* return has to be filed. It can be stated, unless a company accepts a deposit within the meaning of the rules, the rules do not become applicable to that particular company and consequently there is no need to submit a nil return.

Answer: A *nil* return under rule 10 is not required to be submitted to the Registrar of Companies.

Source: *Letter No. 4/1/76-CL-XIV, dated 5 February, 1976.*

VII. Companies (Acceptance of Deposits) Rules, 1975 — Meaning of invitation — Clarification regarding

A question has been raised as to whether an intimation to a depositor on the eve of maturity of his deposit indicating the date of maturity coupled with a statement, that the depositor may renew his deposit if deemed necessary would amount to an invitation and hence call for issue of an advertisement. This Department has considered the matter and is of the view that such an intimation would amount to an invitation and hence the company should comply with the requirements of sub-rule (1) of rule 4. In short, there must be a valid advertisement in force which would permit such an invitation.

Source: *Circular No. 5(4/3/76-CL-XVI), dated 10 March, 1976.*

VIII. Rule 2(*b*)(*ix*): Deposits accepted by a private company from its shareholders and directors, whether rule 3 should be complied with

Query: As per rule 2(*b*)(*ix*), any amount received from a person who, at the time of receipt of the amount, was a director of the company or any amount received by a private company from its shareholders, shall not be treated as deposits for the purpose of section 58A. In view of doubts as to the exact scope and application of rule 3(2)(*i*), it may be clarified as to whether a private company which accepts deposits only from its directors and shareholders would have to comply with the limit of 15 per cent laid down in rule 3.

Answer: The amounts received by a private company from its directors and shareholders are not deposits within the meaning of rule 2(*b*)(*ix*) and hence not subject to the limits specified in rule 3.

Source: *Letter No. 1/101/75-CL-XIV, dated 21 October, 1976.*

IX. Section 58A(3): Deposits under the Non-banking Non-financial Companies (Reserve Bank) Directions, 1966

Query: What treatment should be given in respect of repayment of loans secured by mortgage of assets which were earlier excluded from the definition of "deposit" under the Non-banking Non-financial Companies (Reserve Bank) Directions, 1966, but which now under the rules are included within the definition of "deposit".

Answer: The amounts referred to in the first proviso to sub-para (2) of para 3 of the Directions, were "deposits" within the meaning of para 2(*f*) though allowed to be accepted beyond the limits specified in sub-para (2) of para 3. Hence, acceptance of such amounts when the Directions were in force, was acceptance of deposits in accordance with the Directions and hence their repayment is governed by the provision of section 58A(3)(*a*).

Source: *Letter No. 1/101/75-CL-XIV, dated 11 November, 1976.*

X. Rule 2(*d*): Whether capital redemption reserve is free reserve

Capital Redemption Reserve is to be treated as "free reserve" for the purpose of rule 2(*d*).

Source: *Letter No. 4/18/76-CL-XIV, dated 29 December, 1976.*

XI. The Companies (Acceptance of Deposits) Rules, 1975 — Inclusion of amount of share premium in free reserves/paid-up share capital

Rule 3 of the Companies (Acceptance of Deposits) Rules, 1975 provides that for the purpose of calculating the net-owned funds of a company, the aggregate of its paid-up capital and free reserves of the company shall be taken into account to enable the company to take deposits within the ceiling laid down therein. It has been represented to the Department that the amount shown in the Share Premium Account in the balance sheet of a company should form part of its "Free Reserves" for the purpose of the said rules. This question has been examined and it is clarified that the balance shown in "Share Premium Account" will be treated as part of the company's "paid-up share capital" and not its "Free Reserves" having regard to the provisions of section 78(1) of the Companies Act, 1956.

Source: *Circular No. 3 of 1977, dated 15 April, 1977.*

XII. Rule 4(4): Signing of text of advertisement by agent

Circular No. 23/75, dated 25-9-1975 [printed at No. 4] does not necessarily envisage an agent being authorised by a director through a power of attorney. The authorisation may well be in the form of a letter signed by the director.

Source: *Letter No. 4/3/77-CL-XIV, dated 22 July, 1977.*

XIII. Rule 4(1): Whether text of advertisement in vernacular should be approved and filed

Query: Whether the text of advertisement in English as approved by the board of directors which is translated in the regional language for publication in the regional language newspaper should also be approved by the board of directors and for that matter the text of the advertisement as translated in the regional language shall also be filed with the Registrar of Companies before its publication in the regional newspaper.

Answer: Rule 4(1) does not make any distinction in treatment between English and regional language texts of advertisement. So both the texts should be given equal treatment.

Source: *Letter No. 4/1/77-CL-XIV/XI, dated 31 March, 1978.*

XIV. Rule 10: Return of deposits

Query: Whether the return of deposits for the year ending March 31, 1978, should be submitted in revised form.

Answer: The amendments in the form of return of deposits are related to other amendments in the Companies (Acceptance of Deposits) Amendment Rules, 1978 which are effective from 1-4-1978. In view of this, return of deposits for the year ending March 31, 1978, will have to be submitted in the old form which was effective up to 31-3-1978.

Source: *Letter No. 4/12/78-CL-XI, dated 19 May, 1978.*

XV. Rule 10: Return of Deposits — Certification by auditors

Query: Whether the return of deposits for the year ending March 31, 1978, is required to be certified by the auditor of the company before submission to the Registrar of Companies.

Answer: The return of deposits for the year ending March 31, 1978 is due for submission between 1-4-1978 and 30-6-1978. As the requirement regarding certification by the auditor is effective from 1-4-1978, the return of deposits for the year ending March 31, 1978, will have to be got certified by the auditor of the company before submission to the Registrar of Companies.

Source: *4/12/78-CL-XI, dated 19 May, 1978.*

XVI. Rule 4(1): Whether advertisement in vernacular newspaper should be published in vernacular

A question has been raised as to whether the advertisements in vernacular newspaper in language other than the vernacular one is in compliance of rule 4(1). The question has been examined in consultation with the Reserve Bank of India and this Department is of the opinion that the intention behind rule 4(1) is that the advertisement to be published in the vernacular newspaper should be in the language of that paper, otherwise the very purpose of publication of the advertisement in the vernacular newspaper will be defeated. The advertisement as required in rule 4(1) should, therefore, be in the language of the vernacular newspaper.

Source: *Circular Nos. 1/79* [*1/1/79-CL-V and 4/1/77-CL-XIV/XI/X*], *dated 5 February, 1979.*

XVII. Rule 3(1)(*b*): Whether retention of balance payment of deposit amounts to renewal

Query: The constituent company has incurred losses in the last year and its paid up capital and reserves have depleted. As a result, the deposits already accepted by the company have crossed the maximum permissible limit prescribed under the rules. The deposits accepted by the company are for a period exceeding six months. There is no specific provision either under the rules governing acceptance of deposits or in the terms and conditions under which deposits have been accepted by the company prohibiting a part payment by the company against the deposit amount to those who are willing to accept the same. The question that arises for consideration is whether the company concerned can in such a case resort to part payments, both to satisfy the depositors willing to accept such part payments as also to bring down the deposits remaining with it within the limits prescribed by law. Incidentally, a question would also arise whether by making such part payments and keeping the balance amount of deposits, the company would have by implication renewed the balance amount of deposits?

Answer: If the deposits were accepted at a point of time when they were within limits, they are to be repaid according to the date of maturity. If due to subsequent losses, etc., the deposits already accepted exceed the limit, which has become reduced due to losses, there is no contravention of the provisions of the rules.

Source: *Letter No. 3/17/79-CL-X, dated 30 June, 1979.*

XVIII. Rule 8: Reduction in the rate of interest, not applicable in the event of conversion of deposit into secured debentures

Rule 8 provides for reduction in the rates of interest payable on deposits by 2 per cent in case such deposits are repaid prematurely after the expiry of six months from the date of its acceptance but before the expiry of the period for which such deposits were accepted by a non-banking non-financial company. This rule, however, is not applicable if repayment of deposits is made solely for the purpose of complying with provisions of (*a*) the Non-banking Non-financial Companies (Reserve Bank) Directions, or (*b*) rule 3.

With a view to protect the interests of depositors, the Central Government has decided that the provision regarding reduction in the rates of interest as mentioned in rule 8 shall also not be applicable in the event of conversion of deposits into secured debentures, with the consent of the depositors, in accordance wit the guidelines issued by the Government of India from time to time regarding issue of "rights" debentures.

Source: *Press Note, issued by the Department of Company Affairs, dated 22 March, 1980*.

XIX. Companies (Acceptance of Deposits) Rules, 1975 — Clarification regarding

It has come to the notice of the Government that several companies which had accepted and/or invited deposits by issuing advertisement under section 58A(2) of the Companies Act, 1956 with the particular prescribed in rule 4(2) of the Companies (Acceptance of Deposits) Rules, 1975 had subsequently, during the last few months of the financial year ending 31st March, 1980 made announcements in various newspapers altering the terms and conditions of the deposits already accepted or invited e.g. by offering higher rates of interest, etc. While making announcements about alterations in terms and conditions of deposits, some of these companies had also invited deposits, *inter alia*, by indicating that deposits were continued to be accepted, that the higher rates would be applicable in case the existing deposits were renewed or in case fresh deposits were made and that necessary application forms for accepting deposits were available with the company and/or its agents. Such announcements tantamount to invitation of deposits and as these are not in conformity with the provisions of section 58A(2) of the Companies Act, 1956 read with rule 4(2) of the Companies (Acceptance of Deposits) Rules, 1975 the penal provision of section 58A(6)(*a*)(*ii*) read with section 58A(6)(*b*) of the Companies Act, 1956 become attracted.

2. The Chambers of Commerce, etc. may suitably advise their constituents to refrain from making any announcements of the aforesaid nature which would render the company and every officer of the company in default liable to prosecution for violation of the provisions of section 58A(2) read with rule 4(2) of the Companies (Acceptance of Deposits) Rules, 1975.

Source: *Circular No. 4/26/79-CL-X, dated 7 April, 1980*.

XX. Companies (Acceptance of Deposits) Rules, 1975 — Deposits from firm, etc.—Rule 2(*b*)(*ix*)

In suppression of this Department's Circular No. 32/76 issued *vide* Letter Nos. 4/20/76-CL-XIV and No. 1/1/76-CL-V, dated the 28th September, 1976 it is hereby clarified that the amount received by a company in the joint names of a director and a non-director or in the case of a private company in the joint names of shareholder and a non-shareholder will not fall within the purview of rule 2(*b*)(*ix*) of the Companies (Acceptance of Deposits) Rules, 1975. It is also clarified that if all the partners of a lending firm are not directors on the board of directors of the borrowing company, the deposits accepted from such firms will not fall within the purview of rule 2(*b*)(*ix*) of the Companies (Acceptance of Deposits) Rules, 1975.

Source: *Circular Nos. 1/1/80-CL-V and 7/33/78-CLX, dated 3 May, 1980.*

XXI. Rule 3A: Maintenance of liquid assets — Requirement of depositing or investing 10% of deposits maturing during the year ending 31st March next following

Query: Under rule 3A, a company is required to make deposit/investment, etc., within one month namely upto April 30 each year of 10 per cent of the deposits as on March 31 each year, maturing within a year. However, if any deposits are maturing within the following month of April itself, the entire amount of deposit would be repaid before April 30. In such case, a view is expressed that the deposit of 10 per cent of the amount outstanding on March 31 and repayable within a year should not be required to be deposited in a separate current account or invested in the manner stipulated in the said rule since the deposit itself would be repaid within the following month itself namely, by April 30, 1980.

Answer: Rule 3A requires a company to deposit 10 per cent of the deposits maturing during the year. This amount can be utilised only for repayment of deposits and the amount is to be kept at the level of 10 per cent of the deposits maturing. Accordingly, there does not appear to be any question of company not required to keep deposits if they have to pay some deposits in April itself. However, in case of doubt details of the particular case under reference with full facts may be sent to the Department for consideration.

Source: *Letter No. 3/13/80-CL-X, dated 20 May, 1980.*

XXII. Companies (Acceptance of Deposits) Rules, 1975 — Free reserve — Clarification regarding

Query

"We shall be grateful to receive the Department's views and clarifications as to whether the amount of surplus in profit and loss account carried forward under the heading 'Reserves and Surplus' appearing in the balance sheet of a company forms part of the 'Free Reserves', as defined under the Companies (Acceptance of Deposits) Rules, 1975.

Divergent views have been expressed in different professional circles. One such view is that apart from the definition of 'Free Reserves' given in the Rules, the balance of profit and loss account is surplus, and therefore, not a reserve although shown under the heading 'Reserves and Surplus'.

On the contrary, some are of the opinion that *Explanation* under sub-rule (3) of rule 3 states that the amount of debit balance in the profit and loss account of a company should be deducted to arrive at the figures of aggregate paid-up share capital *plus* free reserves of a company, to arrive at the limits upto which the company can borrow deposits. Accordingly, it is maintained that the surplus carried forward should also be added to arrive at the aggregate of the 'paid-up share capital *plus* free reserves'."

Reply of the Department

I am directed to say that the question whether the amount of 'Surplus' in profit and loss account carried forward under the heading "Reserves and Surplus" appearing in the balance sheet of a company forms part of the "Free Reserves" as defined under the Companies (Acceptance of Deposits) Rules, 1975, was examined in the Department. It is clarified that the answer to the aforesaid query is in the negative.

Source: *Letter No. 3/1/80-CL-X, dated 29 May, 1980 addressed to the Institute of Company Secretaries of India.*

XXIII. Section 58A(8): Whether promoter's contribution is to be excluded from deposits

Blanket exemption to exclude the promoter's contribution (*i.e.* unsecured loans received by a company in fulfillment of the obligation of the promoters as per stipulation of the financial institutions) from the definition of deposit cannot be accorded. However, the Government can consider giving exemption in individual cases on merit in exercise of powers vested in it under section 58A(8).

Source: *Letter No. 4/6/81-CL-X, dated 20 June, 1980.*

XXIV. Rule 10: Return of deposits — need to submit to the Registrar and Reserve Bank of India

Under rule 10 each non-banking non-financial company holding deposits is required to file with the Registrar of Companies, a return of deposits as on March 31 of a year in the prescribed form, on or before June 30 of that year. A copy of this return of deposits is required to be sent simultaneously to the Reserve Bank of India, Department of Non-Banking Companies, Kolkata.

The returns of deposits are used by the Reserve Bank of India for compiling annual surveys of deposits with the non-banking corporate sector. The Reserve Bank of India has reported to the Government that most of the companies do not furnish copies of returns to the Reserve Bank of India within the prescribed time. According to the Reserve Bank, it receives approximately 25 per cent of the returns before June 30 and another 25 per cent after a delay of 9-12 months. Up to 30-6-1980, the Reserve Bank of India is reported to have received only 8-12 such returns as against about 4,000 returns expected to be received. Delays in submission of the returns of deposits to the Reserve Bank resulted in inordinate delay in the publication of the findings of the surveys in the Bank's Bulletin. Thus the surveys as on 31-3-1975 and 1976 were published in October 1978 and December 1979, respectively, i.e., after a gap of three years and this delay did attract criticism for the Bank.

In view of the position stated above, the Chambers of Commerce are requested to direct their constituents to submit the returns of deposits as on 31st March each year to the Registrar of Companies concerned and the Reserve Bank of India well in time so as to reach them by 30th June of that year. It may be noted that non-submission of return of deposits by June 30 attracts penal provisions of rule 11.

Source: *Circular No. 4/14/80-CL-X, dated 5 August, 1980*.

XXV. Rule 4(2): Announcements as to alteration of terms and conditions, whether amounts to 'invitation'

Notice/advertisement notifying merely alterations in the terms and conditions of deposits including change in the rates of interest from a particular date is an amendment to the statutory advertisement issued earlier and does not require to be in form prescribed in rule 4(2). While making announcement about alteration in the terms and conditions including the change in the rates of interest on deposits, if the company, *inter alia,* invites deposits by indicating, for example, that deposits were continued to be accepted, that the higher rates would be applicable in case the existing deposits were renewed or in case fresh deposits were made, that necessary application forms for accepting deposits were available with the company and/or its agents and so on, such announcement tantamounts to invitation of deposits and requires advertisement in the form prescribed in rule 4(2), failing which the advertisement is construed to be not in conformity with the provisions of section 58A(2) and penal provisions of section 58A(6)(*a*)(*ii*) read with section 58A(6)(*b*) become attracted.

Source: *Letter No. 4/26/79-CL-X, dated 20 February, 1981*.

XXVI. Clarification regarding rule 2(*b*)(*x*) of the Companies (Acceptance of Deposits) Rules, 1975

With reference to your Letter No. F 11668/Com/10(89), dated the 28th October, 1980 on the subject mentioned above, I am directed to say that unsecured debentures with an option to convert a part of them into shares of the company concerned are not covered in rule 2(*b*)(*x*) of the Companies (Acceptance of Deposits) Rules, 1975. I am further to say that only so long as option to convert unsecured debentures into shares remains in force such unsecured debentures shall not be subject to discipline of section 58A of the Companies Act, 1956 and the rules made thereunder.

Source: *File No. 4/12/81-CL-X, dated 10 March, 1981*.

XXVII. Deposit acceptance activities of non-banking financial companies and miscellaneous non-banking companies

It has been brought to the notice of the Department by the Reserve Bank of India that the object clause in the memorandum of association of some of the financial companies reads as under:—

"To accept deposits and/or borrow money at interest or otherwise from any person or persons, company, local authority or Government, any advance, lend or deposit any such money or other moneys of the company for the time being as such securities or otherwise as the company may deem expedient, subject to the provisions of section 58A of the Act and the Rules made thereunder."

You are aware, the acceptance of deposits by the companies as have been referred is mainly governed by the directions issued by the Reserve Bank of India under Chapter IIIB of the Reserve Bank of India Act, 1934 and the provisions of section 58A of the Companies Act, 1956 are applicable to them to a limited extent *i.e.* insofar as the issue of advertisements for solicitations of deposits is concerned. It is considered necessary in order to keep the matter beyond any doubt, that the reference to legal requirements should also include the directions issued by the Reserve Bank on the subject.

You are advised that while getting memorandum of association of the companies concerned at the time of incorporation, it may be ensured that the object clause of the company should invariably stipulate that the acceptance of deposits shall be subject to the provisions of section 58A of the Companies Act, 1956 and the Rules framed thereunder and the directions issued by the Reserve Bank, as may be applicable.

Source: *Issued by Department of Company Affairs, to all the Registrars of Companies vide their F. No. 4/24/81-CL-X, dated 18 July, 1981*.

XXVIII. Companies (Acceptance of Deposits) Rules, 1975 — Ceiling on deposits — Clarification regarding

Query

Rules 3 and 4 of the Companies (Acceptance of Deposits) Rules, 1975 respectively deal with ceiling on deposits i.e. twenty-five per cent or as the case may be, ten per cent of the paid-up capital and free reserves; and advertisements inviting deposits. The rules, however, do not specify the date relevant for the purposes of determining the maximum amount that can be raised by companies as deposits, having regard to the deposits' ceilings. It is not clear as to whether the deposits' ceilings would be calculated as on the last day of the previous financial year or the date of release of the advertisement or the date of acceptance of the deposits. The question assumes importance where a company issues capital after quite a long time of the expiry of the last financial year but before the completion of the current financial year during which the aggregate amount of paid-up capital and free reserves has been significantly altered and the same is not indicated as such in the last balance sheet of the company. A view has been expressed that the ceiling should be calculated on the basis of the position obtaining on the date of the acceptance of deposits. Although, all the elements that go into calculation of the figures cannot be ascertained on the date of acceptance of deposits with accuracy, for transfer to reserves, etc. are done only once in a year at the time of finalisation of the annual accounts; yet share capital, share premium, etc. are accounted for as and when they are raised and as such these should present no difficulty for calculation of the ceilings on deposits on the increased base. They are also susceptible to verification by any body.

As the position is not clearly spelt out in the relevant rules, we would be grateful if you please issue a suitable clarification on the query raised above as the matter would be of general interest to the corporate sector and others.

Reply

I am directed to say that the limit upto which a non-financial company can accept deposits are to be computed with reference to aggregate of paid-up capital and free reserves as appearing in the latest audited balance sheet of the company and any change arising thereafter is to be disregarded.

Source: *Letter No. 3/18/81-CL-X, dated 27 July, 1981 addressed to the Institute of Company Secretaries of India*.

XXIX. Companies (Acceptance of Deposits) Rules, 1975 — Limits of deposits — Clarification regarding

As you are aware, rule 3(2) of the Companies (Acceptance of Deposits) Rules, 1975 prescribes the limits upto which a non-banking non-financial company can accept deposits. The limits of deposits are to be computed with reference to aggregate of paid-up share capital and free reserves. *Explanation* below rule 3 of Rules, *ibid* provides that in arriving at the aggregate of paid-up share capital and free reserves of a company, there shall be deducted from the aggregate of paid-up share capital and free reserves as appearing in the latest audited balance sheet of the company, the amount of accumulated balance of loss, balance of deferred revenue expenditure and other intangible assets, if any, as disclosed in the said balance sheet.

While it is obvious that the term "accumulated loss" should also include amount of un provided for depreciation, yet it has come to the notice of the Department that in a couple of cases companies have not deducted the amount of un provided depreciation while computing the permissible limits of deposits. You are, therefore, requested to impress upon your constituents that it is essential to deduct the amount of un provided depreciation from the aggregate of paid-up share capital and free reserves for determining the limits upto which deposits can be accepted by them.

Source: *Letter No. 4/28/81-CL-X, dated 3 September, 1981*.

XXX. Clarification as to whether amount of surplus in the profit and loss account forms part of "Free Reserve" as defined in the Companies (Acceptance of Deposits) Rules, 1975

In suppression of the Department's letter of even number dated the 29th May, 1980. I am directed to say that after re-examination of the matter in detail it has since been decided that the amount of 'Surplus' shown in the profit and loss account carried forward under the heading 'Reserve and Surplus' appearing in the balance sheet of a company, may be treated as part of "free reserve" as defined under the Companies (Acceptance of Deposits) Rules, 1975.

Source: *Letter No. 3/1/80-CL-X, dated 16 February, 1982 addressed to the Institute of Company Secretaries of India*.

XXXI. Ceiling on rate of interest on deposit — Payment of interest on compound basis

I am directed to refer to your Letter, dated the 19th March, 1982 on the subject cited above and to say that it has been decided in consultation with the Department of Legal Affairs that the payment of compound interest or payment of interest on cumulative time deposit scheme does not contravene the ceiling on the interest prescribed in the Companies (Acceptance of Deposits) Rules, 1975. The Rules provide that no company shall accept/renew any deposit at a rate of interest exceeding 15 per cent per annum. The restriction is that at the time of acceptance of deposits no company shall offer interest of more than 15 per cent. Moreover, the rules do not specify whether the interest should be simple or compound. The term 'interest' is a generic term which may be simple or compound.

Source: *Letter No. 417/81-CL-X, dated 12 April, 1982, addressed to the Institute of Company Secretaries of India*.

XXXII. Filing of returns of deposits with Reserve Bank of India

I am directed to say that in pursuance of rule 10 of the Companies (Acceptance of Deposits) Rules, 1975, non-banking non-financial companies are required to file with the Registrar of Companies a return of deposits in the prescribed format made up as on 31st March of the year duly certified by the auditors. Sub-rule (2) of rule 10 of the Rules aforesaid, provides that the copy of such return of deposits shall be forwarded by the companies to the Reserve Bank of India, Department of Non-Banking Companies, Calcutta. The information contained in these returns is utilised by the RBI for compilation of statistical data as also for conducting their annual surveys of the deposits with non-banking non-financial companies. With a view to facilitate the compilation of statistical data, the Reserve Bank of India has transferred this work to their Bombay Office where the facilities of computer are available. The Reserve Bank of India has, therefore, desired that copies of returns of deposits of non-banking non-financial companies made up as on 31st March, 1983 and for subsequent years may be forwarded to the Joint Chief Officer, Reserve Bank of India, Department of Non-banking Companies, Central Office Cell, New Central Office Building, Shahid Bhagat Singh Road, Post Box No. 10007, Bombay-400023. I am to request you to advise all your constituents accordingly.

Source: *Circular No. 4/5/83-CL-X, dated 19 May, 1983*

XXXIII. Companies (Acceptance of Deposits) Rules, 1975 — Amounts raised by issue of unsecured bonds or debentures which have an option to convert them into shares

I am directed to refer to the provisions of clause (*x*) of rule 2(*b*) of the Companies (Acceptance of Deposits) Rules, 1975. In terms of which the amounts raised by issue of bonds or debentures which have an option to convert them into shares are exempted from the purview of deposits as defined in sub-rule (*b*) of rule 2 of the aforesaid Deposit Rules. The following questions have been raised in regard to the true scope of exemption contained in clause (*x*) of rule 2(*b*) of the Deposit Rules referred to above, namely:—

(*a*) whether debentures which are partly convertible into shares should be treated as fully exempt from the Deposit Rules or only such portion thereof as is convertible should be exempted;

(*b*) whether on the expiry of the option for conversion, the convertible portion of the debentures in respect of which no option has been exercised for conversion by the debentureholders and which continue to retain the character of unsecured debentures, should continue to fall within the purview of deposits as defined in the Deposit Rules.

2. The matter has been examined and this department is advised that in the case of debentures which are partly convertible into shares only the convertible portion of the debenture is exempt, in terms of the provisions of rule 2(*b*)(*x*) of the Companies (Acceptance of Deposits) Rules. Even in regard to the convertible portion of debentures, once the period of conversion is over, the unconverted portion of debentures would acquire a character of loan and would fall within the definition of deposits like other loans provided they are not secured by mortgage of immovable property of the company in terms of clause (*x*) of rule 2(*b*) of the Deposit Rules. Similarly, where the period for the exercise of option for conversion has expired, the convertible portion of the debentures in respect of which no option has been exercised for conversion by the debentureholders, will acquire the character of loan and will fall within the purview of deposits as defined in the Companies (Acceptance of Deposits) Rules, if these debentures are not secured in the manner mentioned above.

Source: *Issued by Department of Company Affairs, vide their File No. 4/12/81-CL-X, dated 30 March, 1984*.

XXXIV. The Companies (Acceptance of Deposits) Rules, 1975 — Determination of paid-up share capital

I am directed to refer to your Letter No. 1001/3:DR, dated 3-5-1984 on the subject noted above and to say that the matter has been carefully examined by this Department.

2. According to *Explanation* under rule 3 of the Companies (Acceptance of Deposits) Rules, the permissible limit for acceptance of deposits under rule 3(2)(*i*) and 3(2)(*ii*) of the said Rules are required to be computed with reference to the aggregate of the paid-up share capital and free reserves appearing in the latest audited balance sheet of the company as reduced by the amount of accumulated balance of loss, balance of deferred revenue expenditure and other intangible assets, if any, as disclosed in the said balance sheets. This position was reiterated in the Department's Letter No. 3/18/81-CL-X, dated 27 July, 1981 addressed to the Institute of Company Secretaries of India wherein it was also clarified that any change arising after the date of the relevant balance sheet has to be disregarded.

The question whether any change in the paid-up share capital of the company occurring after the close of the financial year of the company should or should not be taken into account for the purpose of reckoning the limits under rule 3 of the Deposit Rules has again been examined. There are several elements, other than the paid-up share capital, which go into computation of net worth on the basis of which the limits laid down under rule 3 of the Companies (Acceptance of Deposits) Rules for acceptance of deposits are worked out. By taking into account only the increase in the share capital of the company and at the same time ignoring the other components of the net worth, the position would get distorted.

In view of the position set out above no change in the provisions of *Explanation* below rule 3 of the Companies (Acceptance of Deposits) Rules, 1975 which have been reiterated in the Department's Letter No. 3/18/81-CL-X, dated 27 July, 1981 is considered necessary.

Source: *Letter No. 4/2/84-CL-X, dated 25 July, 1984.*

XXXV. Filing of return of deposits

I am directed to refer to this Department's Letter of even number dated 19 May, 1983 wherein you were requested to advise all your constituents to forward copies of Returns of Deposits as on 31 March, 1983 and onward required to be filed by non-banking non-financial companies under rule 10 of the

Companies (Acceptance of Deposits) Rules, 1975, to Joint Chief Officer, Reserve Bank of India, New Central Office Building, Shahid Bhagat Singh Road, Post Box No. 10007, Mumbai-400023, and not to Kolkata Office of Reserve Bank of India. It has been brought to our notice by the Reserve Bank of India that certain companies continue to forward the copies of Returns of Deposits to their Kolkata Office thereby causing delay in the compilation and publication of statistics.

2. I am, therefore, to request you to draw the attention of your constituents to the contents of this Department's letter of even number dated 19 May, 1983 and to advise them again to forward the copies of Returns of Deposits to Reserve Bank of India only its Mumbai address given above.

Source: *Issued by Department of Company Affairs vide their F No. 4/5/83-CL-X, dated 2 August, 1984*.

XXXVI. Nil return when not required

I am directed to refer to your Letter No. BNG: 5515/84, dated 27 September, 1984 on the subject noted above and to say that if the amounts received and/or outstanding at the beginning and end of the year fall under the categories mentioned in clauses (*i*) to (*x*) of rule 2(*b*) of the Companies (Acceptance of Deposits) Rules, 1975, it is not necessary to file a 'NIL' Return of Deposits with the Registrar of Companies under rule 10 of the said Rules.

2. If, however, deposits of kinds other than those referred to in clauses (*i*) to (*x*) of rule 2(*b*) of the Deposit Rules are accepted and/or repaid, during the year, the Return of Deposits is required to be filed in terms of the provisions of rule 10 of the Deposit Rules.

Source: *Clarification No. 3/14/84-CL-X, dated 5 December, 1984 issued to the Bharat Chamber of Commerce*.

XXXVII. Whether Central Government's subsidy could be treated as free reserve

I am directed to refer to your Letter dated 20th March, 1984 on the subject noted above and to say that the matter has been carefully examined in this Department and the view taken is that the subsidy received under the Central Government Outright Grant and Subsidy Scheme can be treated as "Free Reserve" as defined in rule 2(*d*) of the Companies (Acceptance of Deposits) Rules, if all the following conditions are fulfilled:

(*i*) the subsidy under the "Central Government Outright Grant or Subsidy Scheme, 1971 "is received in cash;

(*ii*) the subsidy is utilised for the purpose for which it is received; and

(*iii*) the period of 5 years from the commencement of production has lapsed and the subsidy has not become recoverable in terms of the conditions of the grant.

Source: *Clarification No. 3/5/84-CL-X, dated 5 December, 1984, issued to the Institute of Chartered Accountants of India*.

XXXVIII. Section 58A: Clarification regarding meaning of the word 'Public' occurring in section 58A of the Companies Act, 1956

I am directed to say that it has come to the notice of this Department that some companies are under the mistaken impression that employees and ex-employees are to be regarded as persons not falling within the meaning of the expression 'Public' occurring under section 58A of the Companies Act and the deposits accepted from the aforesaid categories of persons would be outside the scope of the provisions of section 58A of the Companies Act and the rules framed thereunder.

The matter has been examined in great detail and the Department is advised that as per its normal connotation, the expression 'Public' includes a section of the public also. It is, of course, permissible for the legislature to exclude a certain section from the ambit of the expression 'public'. As a matter of fact sub-section (1) of section 58A of the Companies Act, 1956, makes a distinction between the public and members of the company. However, neither sub-section (1) nor sub-section (2) of section 58A of the Act excludes from its ambit the employees of the company. It is, therefore, reiterated that the employees and ex-employees are also to be regarded as those falling in the category of 'public' and the deposits accepted from them would as much attract the provisions of section 58A of the Companies Act and the rules made thereunder as deposits from other categories of 'public'.

Source: *Letter No. 8/48/84-CL-X, dated 18 December, 1984*.

XXXIX. Section 58A: Rule 3(1)(*d*) of the Companies (Acceptance of Deposits) Rules, 1975 — Clarification regarding whether the management charges could be paid in addition to the brokerage

With reference to the above, I am directed to say that the question as to whether the management charges/manager's fee could be paid in addition to brokerage for inviting deposits from the public by the companies with reference to rule 3(1)(*d*) of the Companies (Acceptance of Deposits) Rules, 1975 has been examined by the department and it is felt that the charges paid to agents, whether it is called service charges or manager's fees or any other such names, would amount to payment of brokerage if such a brokerage is in excess of the rates specified in the Companies (Acceptance of Deposits) Rules, 1975, it would be in contravention of rule 3(1)(*d*) of the Rules.

2. However, the companies may reimburse the actual expenses incurred by the agents or managers such as advertising expenses, printing charges, etc, but should not pay additional remuneration to the agents as it would be against the interests of the depositors.

Source: *Circular No. 3/2/86-CL-X, dated 14 October, 1988.*

XL. Section 58A: Repayment of deposits — Application to the Company Law Board under sub-section (9)

As a measure of protecting the interests of depositors, section 58A of the Companies Act, 1956 has been amended by the Companies (Amendment) Act, 1988 to provide for compulsory repayment of deposits, unless renewed in accordance with the prescribed Rules. The amended provisions of sub-section (9) thereof empower the Company Law Board to take cognizance of any case of non-repayment of deposits on maturity and to direct the company to make repayment of such deposits within such time and subject to such conditions, as may be specified in the order. Non-compliance of the orders of the Company Law Board would attract penalty by way of imprisonment, which may extend to three years and shall also be liable to a fine of not less than Rs. 50 for every day till such non-compliance continues. The amended provisions shall come into force w.e.f. 1-9-1989.

2. The aggrieved depositors may make an application (in triplicate) to the Company Law Board in the prescribed form, with an application fee of Rs. 50 at the following address:—

(*i*)	In respect of companies which have their registered offices located in Delhi, Haryana, U.P., Punjab, Rajasthan, Himachal Pradesh and Jammu & Kashmir.	Company Law Board Northern Region Bench, 5th Floor, 'A' Wing, Shastri Bhawan, New Delhi-110 001.
(*ii*)	In respect of companies which have their registered offices located in West Bengal, Orissa, Bihar, Assam, Meghalaya, Tripura, Manipur and Nagaland.	Company Law Board, Eastern Region Bench, 9, Old Post Office Street (6th Floor), Kolkata-700 001.
(*iii*)	In respect of companies which have their registered offices located in Tamil Nadu, Karnataka, Andhra Pradesh, Kerala and Union territory of Pondicherry.	Company Law Board, Southern Region Bench, Block I, V-Floor, Shastri Bhawan, 26, Haddows Road, Chennai-600 001.
(*iv*)	In respect of companies which have their registered offices located in Maharashtra, Gujarat, Madhya Pradesh, Goa, Daman and Diu.	Company Law Board, Western Region Bench, NTC House, 2nd Floor, 16, N.M. Marg, Ballard Estate, Mumbai-400 038.

The Company Law Board (Bench) Rules, 1975 have been amended. A copy of the notification prescribing the application form is enclosed. The application can either be filed personally or may be sent by post.

3. It is clarified for information of the depositors that even the deposits, which had matured before the amended provisions of section 58A of the Companies Act, 1956 came into force but have not been repaid, would be covered by the said amended provisions of law. It may also be stated that the Company Law Board may, if it is satisfied, also pass orders under section 58A(9) of the Companies Act, 1956, on its own motion.

Source: *Press Note, dated 29 August, 1989.*

XLI. Section 58A(9): Applicability of section 58A(9) in the case of a relief undertaking declared by a local Act or Central Act

I am directed to say that several States have promulgated Acts to provide financial assistance to relief undertakings, like, the Bombay Relief Undertakings (Special Provisions) Act, 1958, the Rajasthan Relief Undertakings (Special Provisions) Act, 1961, etc. Under the said enactments, the State Government may, by notification, *inter alia*, direct that in relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such, any right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relating thereto pending before any court, tribunal, officer or authority shall be stayed. The said provisions have come up for judicial scrutiny by different High Courts in *Tiruppur Cotton Spg. and Wvg. Mills Ltd* v *Khimji Poonja and Co* (1888) 64 Comp Cas 349 (Mad), *Jaysynth Dyechem* v *Mewar Textile Mills Ltd* (1988) 64 Comp Cas 334 (Raj); and *Mohan Bai* v *Smt. Jai Kishan* AIR 1988 (Raj) 22. The *ratio decidendi* of these cases is that having regard to the provisions of the said Act, the monetary liabilities of the relief undertakings during the notified period stand suspended and any proceedings, including proceedings under section 58A(9) of the Companies Act, 1956, shall remain stayed. Action under section 58A(9) of the Act can be considered only after the expiry of the period for which the relief undertakings have been so notified.

Source: *Circular No. 3 of 1990, dated 19 February, 1990.*

XLII. Section 58A(9): Repayment of deposits by defaulting companies — Clarification regarding

A number of complaints have been received from the members of the public regarding default by companies in the repayment of deposits (and interest thereon) collected by them. In order to protect the interests of the depositors, section 58A of the Companies Act, 1956, has been amended by the Companies (Amendment) Act, 1988. The provisions of sub-section (9) of this section empower the Company Law Board to direct a company to make repayment of deposits within such time and subject to such conditions, as may be specified in the order, after giving a reasonable opportunity of hearing to the company and the other persons interested in the matter. Non-compliance of the order of the Company Law Board has now been made a punishable offence attracting penalty by way of imprisonment upto three years and fine of not less than Rs. 50 for every day till such non-compliance continues. The amended provisions have come into force with effect from September 1, 1989. The aggrieved depositors, whose deposits had matured before or after September 1, 1989, and who have not been repaid, may make an application (in triplicate) to the Company Law Board Bench (located at Delhi, Kolkata, Mumbai and Chennai depending upon the registered office of the company) in the prescribed Form No. 11, along with an application fee of Rs. 50 by bank draft in favour of the "Pay and Accounts Officer, Department of Company Affairs". The application can either be filed with the concerned Bench office personally or sent by post.

2. It may be clarified that, in the following circumstances, application under section 58A(9) of the Act will not lie:—

(*i*) Deposit made for booking/purchase of scooter, car, etc., is not a deposit for purposes of section 58A of the Act.

(*ii*) Deposits accepted by financial companies like hire-purchase finance company, a housing finance company, an investment company, a loan/mutual benefit financial company, an equipment leasing company, a chit fund company or a company which receives deposits under any scheme or arrangement by way of contributions/subscriptions or by sale of units/certificates.

(*iii*) Deposits accepted by a sick industrial company covered by the Sick Industrial Companies (Special Provisions) Act, 1985, in respect of which the Board for Industrial and Financial Reconstruction (BIFR) has specifically, by order, suspended the operation of any contract, agreement, settlement, etc., under section 22(3) of the said Act.

(*iv*) Deposits accepted by relief undertakings, which are notified as such under the various State laws. Proceedings under section 58A(9) of the Companies Act, 1956, shall remain stayed during the notified period.

3. In addition to the relief available under the Companies Act, 1956, the depositors can also take action against the defaulting companies under the normal civil law of the country.

Source: *Press Note, dated 8 March, 1990*.

XLIII. Section 58A(9): Applicability of section 58A(9) of the Companies Act, 1956 in the case of a relief undertaking declared by a Local Act or Central Act

I am directed to invite your attention to this Department's Letter of even number (Circular No. 3/90), dated 19th February, 1990, on the subject mentioned above whereby it was clarified that the monetary liabilities of relief undertakings declared as such by the concerned State Government during the notified period stand suspended and any proceedings, including proceedings under section 58A(9) of the Companies Act, 1956, shall remain stayed. It was also clarified that action under section 58A(9) of the Act can be considered only after the expiry of the period for which the relief undertakings have been so notified.

2. This Department has reviewed the aforementioned circular in consultation with the Ministry of Law who have opined that as per the Constitution, the Central Act shall always override the provisions of any Act of the State Government which may come in conflict with the provisions of that Act. In view of this position, it has been decided to withdraw the said circular immediately. You are, therefore, requested to treat the said circular as withdrawn and take action accordingly on the applications received under section 58A(9) of the Companies Act, 1956, in respect of companies declared as relief undertakings.

Source: *Circular No. 3/29/89-CL-X, dated 2 May, 1991*.

XLIV. Companies (Acceptance of Deposits) Rules, 1975: Interest rate of non-banking and non-financial companies raised

The Department of Company Affairs have notified on 10th January, 1992, amendments to the Companies (Acceptance of Deposits) Rules, 1975, applicable to non-banking and non-financial companies, to bring about the following changes:

(*a*) *Rate of interest on deposits*

The maximum rate of interest that non-banking and non-financial companies can pay on deposits has been raised from 14 per cent to 15 per cent per annum with effect from 10th January, 1992. This rate will be applied at quarterly rests. Where interest is paid at shorter rests, the amount of interest shall be discounted so as not to exceed the interest calculated at quarterly rests.

(*b*) *Liquidity requirements*

Such companies are at present required to maintain 10 per cent of their deposit liabilities in deposit with scheduled banks and/or in unencumbered Government securities or other approved securities or bonds. This liquidity requirement has been raised to 15 per cent effective from 1st April, 1992.

(*c*) *Renewal of existing deposits for availing of higher interest rate*

A company can extend the benefit of increased interest rate to the unexpired portion of an existing deposit provided the deposit is renewed for a fresh term longer than the unexpired period and there is a reduction of one per cent in the rate actually contracted and paid earlier for the expired period.

Source: *Issued by the Company Law Board, Department of Company Affairs, Ministry of Law and Justice, Government of India, New Delhi, dated 15th January, 1992*.

Appendix 11

Guidelines for filing statutory applications under section 58A(8) of the Companies Act, 1956

An application submitted under section 58A(8) of the Companies Act, 1956 should be in accordance with the Companies (Application for Extension of Time or Exemption under sub-section (8) of section 58A) Rules, 1979 and be accompanied by the following:-

1. Application fee as per details given below:—

(GSR 501, dated 6-7-1999 refers)

Companies with authorized capital	*Amount of fee*
(*a*) Less than Rs. 25,00,000	Rs. 500
(*b*) Rs. 25 lacs or more but less than Rs. 5 crores	Rs. 1,000
(*c*) Rs. 5 crores or more	Rs. 2000

Application fee shall be paid by Demand Draft drawn in favour of Pay & Accounts Officer, Department of Company Affairs, New Delhi.

2. Copies of latest audited accounts and balance sheets of the company

3. A copy of the Memorandum and Articles of Association of the company.

4. Original newspaper clippings of the public Notices published in English and vernacular language of the region in which registered office of the company is situated in the manner specified in Form 2 appended to the Rules.

5. Certified copy of Resolution of the Board of Directors approving the proposal of the company.

6. Copy of previous approval/order, if any, obtained under section 58(A) from the Central Government granting exemption/extension of time during last ten years.

7. Certificates from the Statutory Auditors:

(*a*) to the effect that the company has not contravened any other provisions of section 58A of the Companies Act, 1956 and the Companies (Acceptance of Deposits) Rules, 1975 except those for which the application is submitted.

(*b*) to the effect that the deposits held by the company are within limits and that no contravention of the provisions of section 58A of the Companies Act, 1956 and the Companies (Acceptance of Deposits) Rules, 1975 exists at present.

8. Deposit position of the company as at 31st March during the current year and the past two years showing the details as under:—

Year ended on	*Rule under which accepted*	*B/F*	*Accepted/ Renewed*	*Total*	*Repaid*	*Balance out-standing*	*Net Worth*	*Date on which relevant limits became available*	*Excess, if any*	*Remark*
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*10*	*11*

9. One copy each of the advertisement issued in newspapers pursuant to Rule 4 of the Companies (Acceptance of Deposits) Rules, 1975.

Appendix 12

Amendments to NBFC Regulations — Ceiling on rate of interest[1]

1. It has been decided that/ keeping in view the prevailing interest rates in the entire financial system, the maximum interest rate payable on public deposits of NBFCs should be revised to 11 per cent per annum on and from March 4, 2003. It is clarified that this is the maximum permissible rate an NBFC can pay on its public deposits and they are free to offer lower rates as indeed most of them do. The new rate of interest is applicable to fresh public deposits and renewals of matured public deposits.

2. The above ceiling rate of on interest of 11 per cent per annum is also applicable to the deposits accepted/renewed by Miscellaneous Non-Banking Companies (chit fund companies) as per the Directions prescribed by RBI.

3. You are requested to ensure meticulous compliance with the new ceiling on the rate of interest. Other conditions relating to the rests at which interest can be compounded, rate of brokerage, etc., remain unchanged.

Appendix 13

The Companies (Acceptance of Deposits) Rules, 1975[2]

In exercise of the powers conferred by section 58A, read with section 642 of the Companies Act, 1956 (*1 of 1956*), *the Central Government, in consultation with the Reserve Bank of India, hereby makes the following Rules, namely*:—

1. Short title, commencement and application.—(1) These Rules may be called the Companies (Acceptance of Deposits) Rules, 1975.

(2) They shall come into force on the date of their publication in the Official Gazette.

(3) They shall apply to such companies as are not banking companies and are not also financial companies.

2. Definitions.—In these Rules, unless the context otherwise requires.—

(*a*) "Act" means the Companies Act, 1956 (1 of 1956);

(*b*) "deposit" means any deposit of money with and includes any amount borrowed by, a company, but does not include—

- (*i*) any amount received from the Central Government or a State Government, or any amount received from any other source and whose repayment is guaranteed by the Central Government or a State Government, or any amount received from a local authority or a foreign Government or any other foreign citizen, authority or person;
- (*ii*) any amount received as a loan from any banking company or from the State Bank of India or any of its subsidiary banks or from a banking institution notified by the Central Government under section 51 of the Banking Regulation Act, 1949 (10 of 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 (5 of 1970), or from a co-operative bank as defined in clause (*bii*) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934);
- (*iii*) any amount received as a loan from the Industrial Finance Corporation of India established under the Industrial Finance Corporation Act, 1948 (15 of 1948), or from a State Financial Corporation established under the State Financial Corporations Act, 1951 (63 of 1951), or from the Shipping Development Fund Committee constituted under section 15 of the Merchant Shipping Act, 1958 (44 of 1958) or from the Unit Trust of India established under

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1 Circular No. DNBS (PD) CC. No./02.01/2002-03, dated 3-3-2003 issued by Department of Non-banking Supervision, RBI.

2 Notification No. GSR 43(E) dated 3-2-1975.

the Unit Trust of India Act, 1963 (52 of 1963), or from the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964), or from an Electricity Board constituted under the Electricity (Supply) Act, 1948 (54 of 1948) or from the Life Insurance Corporation of India constituted under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or from the Rehabilitation Industries Corporation of India Limited or the State Trading Corporation of India Limited or the Minerals and Metals Trading Corporation of India Limited or the Rural Electrification Corporation Limited or the Agricultural Finance Corporation Limited or the Industrial Reconstruction Corporation of India Limited or the Industrial Credit and Investment Corporation of India Limited or the National Industrial Development Corporation of India Limited or the Tamil Nadu Industrial and Investment Corporation Limited or the State Industrial and Investment Corporation of Maharashtra Limited or from the General Insurance Corporation of India and its subsidiaries, namely, the National Insurance Company Limited, the New India Assurance Company Limited, the Oriental Fire and General Insurance Company Limited and the United Fire and General Insurance Company Limited or from the Gujarat Industrial Investment Corporation Limited or from any financial company wholly owned by the Central Government or State Government or from the Oil Industry Development Board or Housing Development Finance Corporation Limited, or from any other financial company or public financial institution which may be notified by the Central Government in this behalf in consultation with the Reserve Bank of India;

(*iv*) any amount received by a company from any other company;

(*v*) any amount received from an employee of the company by way of security deposit;

(*vi*) any amount received by way of security or as an advance from any purchasing agent, selling agent or other agents in the course of or for the purposes of the business of the company or any advance received against orders for the supply of goods or properties or for the rendering of any service;

(*vii*) any amount received by way of subscriptions to any shares, stock, bonds or debentures such bonds or debentures as are covered by sub-clause (*x*) pending the allotment of the said shares, stock, bonds or debentures and any amount received by way of calls in advance on shares, in accordance with the Articles of Association of the Company so long as such amount is not repayable to the members under the Articles of Association of the Company;

(*viii*) any amount received in trust or any amount in transit;

(*ix*) any amount received from a person who, at the time of the receipt of the amount, was a director of the company or any amount received from a relative of a director or its member by a private company:

Provided that the director, relative of a Director or member, 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 from others;

(*x*) any amount raised by the issue of bonds or debentures secured by the mortgage of any immovable property of the company or with an option to convert them into shares in the company provided that in the case of such bonds or debentures secured by the mortgage of any immovable property, the amount of such bonds or debentures shall not exceed the market value of such immovable property;

(*xi*) any amount brought in by the promoters by way of unsecured loans in pursuance of stipulations of financial institutions subject to the fulfilment of the following conditions, namely:—

(*a*) the loans are brought in pursuance of the stipulation imposed by the financial institutions in fulfilment of the obligation of the promoters to contribute such finance;

(*b*) the loans are provided by the promoters themselves and/or by their relatives, and not from their friends and business associates; and

(*c*) the exemption under this sub-clause shall be available only till the loans of financial institutions are repaid and not thereafter.

Explanation.—For the purpose of this sub-clause, the term 'financial institution' shall mean:—

(*a*) a public financial institution specified in or under section 4A of the Companies Act, 1956;

(*b*) a State Financial, Industrial or Investment Corporation;

(*c*) the State Bank of India or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

(*d*) a nationalised bank, that is to say, a corresponding new bank as defined in section 2 of:—

(*i*) the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970); or

(*ii*) the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980);

(*e*) the General Insurance Corporation of India established in pursuance of the provisions of section 9 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972);

(*f*) the Industrial Reconstruction Corporation of India;[1] or

(*g*) any other Institution which the Central Government may, by notification, specify in this behalf;

(*xii*) any amount received as loan from the National Dairy Development Board by the companies owned by it directly or through its subsidiaries companies;

(*c*) "depositor" includes any person who has given a loan to a company;

(*cc*) "financial company" means a non-banking company which is a financial institution within the meaning of clause (*c*) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(*d*) "free reserves" includes the balance in the share premium account, capital and debenture redemption reserve and any other reserves shown or published in the balance sheet of the company and created by appropriation out of the profits of the company, but does not include the balance in any reserve created;

(*i*) for repayment of any future liability or for depreciation in assets or for bad debts;

(*ii*) by the revaluation of any assets of the company;

(*e*) "net owned fund" has the same meaning as assigned to it in the Reserve Bank of India Act, 1934 (2 of 1934).

3. Acceptance of deposits by companies.—(1) On and from the commencement of these rules.—

(*a*) no company shall accept or renew any deposit which is repayable on demand or on notice or after a period of less than six months or more than thirty-six months from the date of acceptance or renewal of such deposit:

Provided that a company may for the purpose of meeting any of its short-term requirements for funds, accept or renew, such deposits as are referred to in clause (*i*) of sub-rule (2) for repayment earlier than six months from the date of deposit or renewal, as the case may be, subject to the condition that such deposits—

(*i*) shall not exceed ten per cent of the aggregate of the paid up share capital and free reserves of the company, and

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1 Now Industrial Reconstruction Bank of India.

(*ii*) are repayable not earlier than three months from the date of such deposit or renewal thereof, as the case may be:

Provided further that where a company has before the 1st day of April, 1978, accepted any deposit repayable after a period of more than thirty-six months, such deposits shall unless renewed after the said date, be repaid in accordance with the terms of such deposit;

(*c*) no company shall invite or accept or renew any deposits in any form, on a rate of interest exceeding the maximum rate of interest prescribed by the Reserve Bank of India that the Non-banking Financial Companies can pay on their public deposits per annum at rests which shall not be shorter than monthly rests;

(*d*) no company shall pay brokerage to any broker at a rate, exceeding one per cent of the deposits for a period up to one year, one and half per cent of the deposits for a period of more than one year but up to two years, and two per cent of the deposits for a period exceeding two years, collected by or through such broker, and such payment shall be on one time basis.

Explanation.—Any person who is authorised by a company, in writing, to solicit deposits on its behalf and through whom deposits are procured will only be entitled to brokerage and payment of brokerage to any other person for procuring deposits shall be deemed to be not in conformity with the rules;

(*e*) no company with a net owned fund of less than rupees one crore shall invite public deposits.

(1A) On and from 1st day of March, 1997 no company shall accept or renew any deposits in any form if it is in default in the repayment of any deposit or part thereof and any interest thereupon in accordance with the terms and conditions of such deposit.

(2) No company, other than a Government company, shall accept:

(*i*) any deposit against an unsecured debenture or any deposit from a shareholder (not being a deposit accepted by a private company from its shareholder) or any deposit guaranteed by any person who, at the time of giving such guarantee is a director of the company, if the amount of any such deposit together with the amount of such other deposits of all or any of the kinds of deposits referred to in this clause and outstanding on the date of acceptance or renewal of such deposit exceeds ten per cent [including any deposit accepted under the proviso to sub-rule (1) of rule 3 of the aggregate of the paid up share capital and free reserves of the company:

Provided that for the purpose of calculation of the amount of deposits outstanding on the date of such acceptance or renewal, any deposit guaranteed by a person who, at the time of giving such guarantee was the managing agent or secretary and treasurer of the company and outstanding on such date shall be taken into account.

(*ii*) any other deposit, if the amount of such deposit together with the amount of such other deposit other than any of the deposits referred to in clause (*i*), outstanding on the date of acceptance or renewal exceeds twenty-five per cent of the aggregate of the paid-up share capital and free reserves of the company.

(2A) No Government company shall accept any deposit, if the amount of such deposit exceeds thirty-five per cent including any deposit accepted under the proviso to sub-rule (1) of rule 3 of the aggregate of its, paid up share capital and free reserves.

(3) If, immediately before the commencement of these rules, the aggregate amount of deposits, of the nature referred to in clause (*i*) of sub-rule (2), accepted by a company before such commencement, exceeds the limit specified in the said clause (*i*), the company shall, on or before, the 31st day of March, 1978 bring down the deposits to the limit aforesaid and for this purpose the company shall repay such deposits, as may be necessary.

(4) On and from the 1st day of April, 1978, where a company has any outstanding loans which were excluded from deposits by virtue of *Explanation* 1 as it stood immediately before the said date, then such company shall, before the first day of April, 1981, repay or bring such loans down to an amount, which, along with other outstanding deposits, is within the limits specified in this rule.

Explanation.—For the purpose of this rule in arriving at the aggregate of the paid-up share capital and free reserves of a company, there shall be deducted from the aggregate of the paid-up share capital and free reserves as appearing in the latest audited balance sheet of the company, the amount of accumulated balance of loss, balance of deferred revenue, expenditure and other intangible assets, if any, as disclosed in the said balance sheet;

"Government company" means a company as defined in section 617 of the Companies Act, 1956.

3A. Maintenance of liquid assets.—(1) Every company shall, before the 30th day of April of each year, deposit or invest, as the case may be, a sum which shall not be less than fifteen per cent of the amount of its deposits maturing during the year ending on the 31st day of March next following in any one or more of the following methods, namely:

(*a*) in a current or other deposit account with any scheduled bank, free from charge or lien;

(*b*) in unencumbered securities of the Central Government or of any State Government;

(*c*) in unencumbered securities mentioned in clauses (*a*) to (*d*) and (*ee*) of section 20 of the Indian Trusts Act, 1882 (2 of 1882);

(*d*) in unencumbered bonds issued by the Housing Development Finance Corporation Limited, Bombay, a company incorporated under the Companies Act, 1956 (1 of 1956), and notified under clause (*f*) of section 20 of the Indian Trusts Act, 1882 (2 of 1882):

Provided that with relation to the deposits maturing during the year ending on the 31st day of March, 1979, the sum required to be deposited or invested under this sub-rule shall be deposited or invested before the 30th day of September, 1978.

Explanation.—For the purpose of this sub-rule, the securities referred to in clause (*b*) or clause (*c*) shall be reckoned at their market value.

(2) The amount deposited or invested, as the case may be, under sub-rule (1), shall not be utilised for any purpose other than for the repayment of deposits maturing during the year referred to in that sub-rule, provided that the amount remaining deposited or invested, as the case may be, shall not at any time fall below fifteen per cent of the amount of deposits maturing until the 31st day of March of that year.

4. Form and particulars of advertisements.—(1) Every company intending to invite or allowing or causing any other person to invite deposits shall issue an advertisement for the purpose in a leading English newspaper and in one vernacular newspaper circulating in the State in which the registered office of the company is situated.

(2) No company shall issue or allow any other person to issue or cause to be issued on its behalf, any advertisement, inviting deposits, unless such advertisement is issued on the authority and in the name of the Board of Directors of the company and contains a reference to the conditions subject to which deposits shall be accepted by the company, the date on which the said Board of Directors has approved the text of advertisement, and the following informations, namely:—

(*a*) name of the company;

(*b*) the date of incorporation of the company;

(*c*) the business carried on by the company and its subsidiaries with the details of branches or units, if any;

(*d*) brief particulars of the management of the company;

(*e*) names, addresses and occupations of the Directors;

(*f*) profits of the company, before and after making provision for tax, for the three financial years immediately preceding the date of advertisement;

(*g*) dividends declared by the company in respect of the said years;

(*h*) a summarised financial position of the company as in the two audited balance sheets immediately preceding the date of advertisement in the following form, namely:

Summarised financial position of the company as appearing in the two latest audited balance sheets

Liabilities	*Figures for the latest financial year for which audited accounts are available*	*Figures for the financial year previous to the year referred to in column 2*	*Assets*	*Figures for the latest financial year for which audited accounts are available*	*Figures for the financial year previous to the year referred to in accounts column 5*
1	*2*	*3*	*4*	*5*	*6*
Share Capital			Fixed assets		
Reserves and surplus			Investments		
Secured loans			Current assets		
Unsecured loans			Loans and advances		
Current liabilities and provisions			Miscellaneous expenditure		
			Profit and loss account		
Total			Total		

Note.—Brief particulars of contingent liabilities may be added by way of a footnote.

(*i*) the amount which the company can raise by way of deposits under these rules and the aggregate of deposits actually held on the last day of the immediately preceding financial year;

(*j*) a statement to the effect than on the day of the advertisement, the company has no overdue deposits other than unclaimed deposits, or a statement showing the amount of such overdue deposits, as the case may be;

(*ja*) the total number of small depositors and amount due to them in respect of which default has been made;

(*jb*) the fact of waiver of interest accrued on deposits of the small depositors;

(*k*) a declaration to the effect—

(*i*) that the company has complied with the provisions of these rules;

(*ii*) that compliance with these rules does not imply that repayment of deposits is guaranteed by the Central Government;

(*iii*) that the deposits accepted by the company (other than secured deposits, if any, accepted under the provisions of these rules, the aggregate amount of which may be indicated) are unsecured and ranking *pari passu* with other unsecured liabilities; and

(*iv*) that the company is not in default in the repayment of any deposit or part thereof and any interest thereupon in accordance with terms and conditions of such deposits.

(3) An advertisement issued in accordance with this rule 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 balance sheet 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 and a fresh advertisement shall be made, in each succeeding financial year, for inviting deposits during that financial year.

(4) No advertisement shall be issued by or on behalf of a company unless on or before the date of its issue, there has been delivered to the Registrar for registration a copy thereof signed by a majority of the Directors on the Board of Directors of the company as constituted at the time the Board approved the advertisement, or their agents, duly authorised by them in writing.

Explanation.—For the purpose of this rule, the date of the issue of the newspaper in which the advertisement appears shall be taken as the date of issue of the advertisement.

4A. Statement in lieu of advertisement.—(1) Where a company intends to accept deposits without inviting, or allowing or causing any other person to invite, such deposits, it shall, before accepting deposits deliver to the Registrar for registration a statement in lieu of advertisement containing all the particulars required to be included in the advertisement by virtue of sub-rule (2) of rule 4 and duly signed in the manner provided in sub-rule (4) of that rule.

(2) A statement delivered under sub-rule (1) shall be valid until the expiry of six months from the date of closure of the financial year in which it is so delivered or until the date on which the balance sheet 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.

5. Form of application for deposits.—(1) On and from the commencement of these rules, no company shall accept, or renew any deposit, unless an application is made by the intending depositor for the acceptance of such deposit and such application contains a declaration by such person to the effect that the amount is not being deposited out of the funds acquired by him by borrowing or accepting deposits from any other person.

(2) The application referred to in sub-rule (1) shall be made in the form supplied by the company and such form shall be accompanied by a statement by the company containing all the particulars specified in sub-rule (2) of rule 4 and incorporating therein all changes in relation to such particulars up to the date on which the form is issued by the company.

6. Furnishing of receipts to depositors.—(1) Every company shall, on the acceptance or renewal of a deposit, furnish to the depositor or his agent a receipt for the amount received by the company within a period of eight weeks from the date of receipt of money or realisation of cheques.

(2) The deposit receipt referred to in sub-rule (1) shall be signed by an officer of the company duly authorised by the company in this behalf, and shall state the date of deposit, the name and address of the depositor, the amount received by the company as deposit, the rate of interest payable thereon and the date on which the deposit is repayable.

(3) The company shall not reserve to itself either directly or indirectly a right to alter, to the prejudice or disadvantage of the depositor, the terms and conditions of the deposit after it is accepted.

7. Registers of deposits.—(1) Every company accepting deposits shall keep at its registered office one or more registers in which there shall be entered separately in the case of each depositor the following particulars, namely:—

(*a*) name and address of the depositor;

(*b*) date and amount of each deposit;

(*c*) duration of the deposit and the date on which each deposit is repayable;

(*d*) rate of interest;

(*e*) date or dates on which payment of interest will be made;

(*f*) any other particulars relating to the deposit.

(2) The register or registers referred to in sub-rule (1) shall be preserved in good order for a period of not less than eight calendar years from the financial year in which the latest entry is made in the register.

8. General provisions regarding repayment of deposits.—(1) Where a company makes repayment of a deposit after the expiry of a period of six months from the date of such deposit but before the expiry of the period for which such deposit was accepted by the Company, the rate of interest payable by the company on such deposit, shall be reduced by one per cent from the rate which the company would have paid had the deposit been accepted for the period for which such deposit had run and the company shall not pay interest at any rate higher than the rate as so reduced:

Provided that nothing contained in this rule shall apply to the repayment of any deposit before the expiry of the period for which such deposit was accepted by the company, if such repayment is made solely for the purpose of—

(*a*) complying with the provisions of the Non-Banking Non-financial Companies (Reserve Bank) Directions, 1966; or

(*b*) complying with the provisions of rule 3; or

(*c*) converting, with the consent of the depositors, into secured debentures in accordance with the guidelines, issued by the Government of India from time to time, regarding the issue of "rights" debentures; or

(*d*) providing war risk or other related benefits to the personnel of the naval, military or air forces or to their families, on an application made by the associations or societies formed by such personnel, during the period of emergency declared under Article 352 of the Constitution:

Provided further that where a company permits a depositor to renew his deposit, before the expiry of the period for which such deposit was accepted by the company, for availing of the higher rate of interest, the company shall pay interest to such depositor as higher rate if—

(*i*) such deposit is renewed in accordance with the other provisions of these rules and for a period longer than the unexpired period of the deposit, and

(*ii*) the rate of interest as stipulated at the time of the acceptance or renewal of deposit is reduced by one per cent for the expired period of the deposit and is paid or adjusted or recovered accordingly.

Explanation.—For the purpose of this rule, where the period for which the deposit had run contains any part of a year, then, if such part is less than six months, it shall be excluded and if such part is six months or more, it shall be reckoned as one year.

(2) Where depositors so desire, deposits may be accepted in joint names not exceeding three, with or without any of the clauses, namely, "Either or Survivor", "Number one or Survivor", "Anyone or Survivor".

8A. Penal rate of interest.—A penal rate of interest of eighteen per cent shall be paid for the overdue period in case of public deposits matured and claimed but remaining unpaid. In case of deposit made by a small depositor, the penal rate of interest shall be twenty per cent compoundable on an annual basis.

Explanation.—For the purposes of this rule, the expression "a small depositor" has the same meaning as assigned to it in the explanation to section 58AA of the Act.

9. Power of Central Government to decide certain questions.—If any question arises as to whether these rules are or are not applicable to a particular company, such questions shall be decided by the Central Government in consultation with the Reserve Bank of India.

10. Return of deposits to be filed with the Registrar.—Every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in the form annexed to these rules and furnishing the information contained therein as on the 31st day of March of that year duly certified by the auditor of the company.

(2) A copy of the return shall also be simultaneously furnished to the Reserve Bank of India.

11. Penalty.—If a company or any other person contravenes any provision of these rules for which no punishment is provided in the Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to five hundred rupees and where the contravention is a continuing one, with a further fine which may extend to fifty rupees for every day after the first day, during which the contravention continues.

11A. The Regional Director of the Department of Company Affairs shall be the authorised officer to make complaints under sub-section (2) of section 58AAA of the Act.

12. Repeal and savings.—On the commencement of these rules, all rules, orders or directions in force in relation to any matter for which provision is made in these rules shall stand repealed, except as respects things done or omitted to be done before such repeal.

Appendix 14

Specimen of Investors Complaint Form

(Use separate forms for each company or complaint)

(Please select the appropriate item in the Nature of Complaint)

Note: All fields marked in * are to be mandatorily filled.

Dear Sir,

Kindly take up the matter with the company for immediate redressal of my complaint, particulars of which are as under

1. Name and address of investor

1. (*a*)	*Name of Investor	DILIP KUMAR JAIN
(*b*)	*Address Line I	204, BIJALI NAGAR
	Line II	BICHOLI HAPSI ROAD
(*c*)	*City	INDORE
(*d*)	*State	MADHYA PRADESH
(*e*)	*Country	INDIA
(*f*)	*Pin code	452001
(*g*)	*Phone	0731 xxxxxxxx
(*h*)	*e-mail ID	rajivtuteja@rediffmail.com
(*i*)	*Fax	07312345678

2. (*a*) * Corporate identity number (CIN) of company xxxxxxxxxxxxx

(*b*) Global location number (GLN) of company

(*a*) Name of the company NIRAJ PETRO CHEMICALS LIMITED

(*b*) Address of the registered office of the company 123, INDUSTRIAL AREA, MEHBOOB NAGAR, HYDERABAD (A.P.)

3. *Nature of complaint

□ Shares or dividend

□ Debentures or bond

√ □ Fixed deposits (non-receipt of amount)

□ Miscellaneous non-receipt

□ Others like complaint of serious nature

(*i*) *Complaint on shares or dividend*

□ Non-receipt of certificate □ Transfer

□ Conversion □ Endorsement

□ Splitting □ Dividend warrant

□ Consolidation □ Bonus

□ Duplicate on submission of indemnity bond

(*ii*) *Complaint on debentures or bond*

□ Interest □ Redemption amount

□ Transfer □ Transmission

□ Debenture certificate □ Splitting

□ Exchange of allotment letter □ Endorsement

□ Duplicate on submission of indemnity bond

(*iii*) *Complaint on fixed deposits* (*non-receipt of amount*)

□ Interest □ √ Matured amount

 Prematured payments Payment as per Company Law Board (CLB) order

 Interest on delayed payment

(*iv*) *Miscellaneous non-receipt*

 Annual report Offer for rights

 Interest on delayed refund payment Registration of change in address

 Any other (specify) Interest on delayed payment

 Call money Application money

4 (*a*) *Particulars of shares or debentures or fixed deposit or other security (fill in the details in respect of share certificate or debenture certificate or DEMAT account or fixed deposit receipt (FDR) or application form or other security)

I have make FDR for Rs. 20,000 only on 1st April, 2002 for a period of 3 years, and the amount with interest has become due for repayment on 31st March, 2005. The Company has failed to make repayment of amount of deposit together with interest and interest on delayed payment of deposit and interest thereon.

(*b*) *Period in relation to which the complaint relates 31st March, 2005

(*c*) *Particulars of the complaint Non receipt of matured amount of matured deposit, interest and interest on delayed payment after 1st April, 2005

(*d*) *Other details if any, pertinent to information provided above

5. If complaint is not pertaining to items specified above, or if it is of a serious nature, please give information below along with detailed attachments.

Notes.—1. For Non-banking finance companies (NBFC), complaints are to be lodged with Reserve Bank of India (RBI).

2. For listed or plantation companies, complaints are to be lodged with Securities and Exchange Board of India (SEBI).

Attachments

1.	Optional Attachments, if any.	
	Copy of the allotment advise.	Attach

Appendix 15

Specimen of e-Form 62

Form for submission of documents with the Registrar
For filing of Return of Deposits

[Pursuant to sections 44, 60, 77A, 488, 497, 509, 516, 551 and 555 of the Companies Act, 1956, rules 313,315, 327, 331, 335 of the Companies (Court) Rules, 1959 and rule 10 of the Companies (Acceptance of Deposits) Rules, 1975]

Note: All fields marked in * are to be mandatorily filled.

1. (*a*) *Corporate identity number (CIN) of company	xxxxxxxxxxxxxxxxx
(*b*) Global location number (GLN) of company	
2. (*a*) Name of the company	ABC INDUSTRIES PVT. LTD.
(*b*) Address of the registered office of the company	4TH FLOOR, SILVER ARK PLAZA, 20A, NEW PALASIYA INDORE (M.P.) 452001

3. *Please indicate the document being filed

- ☐ Statement in lieu of prospectus as per Schedule IV
- ☐ Prospectus as per schedule II
- ☐ Form 4A of the Companies (Central Government's) General Rules and Forms, 1956
- ☐ Form 149 of the Companies (Court) Rules, 1959
- ☐ Form 152 of the Companies (Court) Rules, 1959
- ☐ Form 153 of the Companies (Court) Rules, 1959
- ☐ Form 154 of the Companies (Court) Rules, 1959
- ☐ Form 156 of the Companies (Court) Rules, 1959
- ☐ Form 157 of the Companies (Court) Rules, 1959
- ☐ Form 158 of the Companies (Court) Rules, 1959
- ☐ Form 159 of the Companies (Court) Rules, 1959
- ☑ Return of deposits pursuant to rule 10 of the Companies (Acceptance of Deposits) Rules, 1975
- ☐ Others

4. If others, then specify

5. (*a*) Service request number of Form 23

   (*b*) Date of passing special or ordinary resolution (DD/MM/YYYY)

   (*c*) Date of filing Form 23 (DD/MM/YYYY)

6. Section(s) of Companies Act, 1956 under which the document is being filed

   58A of the Companies Act, 1956 read with the Companies (Acceptance of Deposits) Rules, 1975

7.* Details of the documents being filed 31/03/2006

   Return of Deposits.

8. Date of event 31/03/2006 (DD/MM/YYYY)

9. Financial year to which the document relates

   (*a*) From 01/04/2005 (DD/MM/YYYY)

   (*b*) To 31/03/2006 (DD/MM/YYYY)

Attachment

Return of Deposits.

Declaration

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete.

I have been authorised by the Board of directors' resolution dated***** 01/04/2006 (DD/MM/YYYY) to sign and submit this form.

To be digitally signed by

Managing director or director or manager or secretary of the company: ISHAN JAIN

Declaration

To the best of my/our knowledge and belief, the information given in this form and its attachments is correct and complete. I am/ we are duly authorised to sign and submit this form.

To be digitally signed by

Liquidators of the company

For office use only

This e-Form is hereby registered

Digital signature of the authorising officer

Annexure 1 to Appendix 1

[1]**Form**

[*See* rule 10 of the Companies (Acceptance of Deposits) Rules, 1975]

Registration No..........................

Company Code (to be filled by the RBI)

Return of Deposits with Non-Banking Companies, other than Financial Companies as on 31st March, 2006

(Please *see* instruction No. 1)

ZONE	TYPE
1	2

1. Name of the company :ABC INDUSTRIES LTD.

2. Full address of:

(*i*) Registered Office: :404, 4th Floor, Silver Ark Plaza
20A, New Palasiya
Indore (M.P.) 452001
Pin Code................

*(*ii*) Head/Administrative Office ....
....
....
Pin Code................

** 3. Whether a Government Company : Yes......... No. √

***4. State in which the company is having its Registered Office : Madhy Pradesh ....

5. Status: : Public Limited Company

6. Date of closing of the accounts : 31st March 2006

7. Main business: (Agriculture/Plantation/ Manufacturing/Trading/Shipping & other transport/Hotels/Any other) : Manufacturing (Please specify)

1 Form substituted by the Companies (Acceptance of Deposits) (Second Amendment) Rules, 1985, w.e.f. 19-4-1985 *vide* GSR 372(E), dated 19-4-1985.

8. Type of industry:
(Cotton Textiles, Sugar, Engineering etc.): Engineering
(Please specify)

9. Name(s) of the Company's auditors and address(es) : J.P.Saraf & Co.
408, Silver Ark Plaza,
Indore (M.P.)

* If it is a place other than the registered office.

** Tick Yes/No, as applicable.

*** Enter the name of the State in the space provided therefor.

**** Strike off the categories not applicable.

Notes

1. (*a*) Every company to which these rules apply shall, on or before the 30th day of June, of every year, file with the Registrar of Companies, a return in the form annexed to these rules and furnishing the information contained therein as on the 31st day of March of that year (duly certified by the auditors of the company).

(*b*) The return, after completion, should be filed with the Registrar of Companies with a copy to the Joint Chief Officer, Department of Financial Companies (Central Office Cell), Reserve Bank of India, 16th Floor, NCOB, S.B. Road, Bombay-400 023.

2. The submission of the return should not be delayed for any reason such as the finalisation/ completion of the audit of the annual accounts. The return should be completed on the basis of the figures available in the books of account of the company.

3. The number of accounts should be given in actual figures while the amounts of deposits should be given in thousands of rupees. Amount should be rounded off to the nearest thousands, for example, an amount of Rs. 4,560 should be shown as 5 and not as 4.6 or 5,000. Similarly, an amount of Rs. 61,495 is to be shown as 61 and not 61.4 or 61,000.

4. The period-wise classification of deposits should be made against the various heads under item Nos. 2(*a*) and 4(*a*) of Part I of the return according to the periods for which they have been originally received/last renewed and not according to the period they have to run as from the 31st March *i.e.* the date of the return.

5. In case there is nothing to report in any part of the return, it should be marked 'Nil' and the Manager's/Managing Director's/Authorised Official's Certificate appended to the return should be duly signed.

Part 1

Particulars of deposits, etc.

Item No.	*Particulars*	*Item code*	*No. of accounts*	*Amount (in thousands of Rs.)*
(*1*)	(*2*)	(*3*)	(*4*)	(*5*)
1. Deposits of the kind referred to in rule 3(2)(*i*) of the Rules:				
(*i*)	Amount of deposits brought forward from the previous year.	101	10	210
(*ii*)	Amount of deposits accepted or renewed during the year	102	15	290
(*iii*)	Total	103	25	500

(1)	(2)	(3)	(4)	(5)
(*iv*)	Amount of deposits repaid during the year	104	5	100
(*v*)	Balance of deposits outstanding at the end of the year:	105	20	400
(*a*)	Unsecured debentures	111		
(*b*)	Deposits received by a public company from its shareholders [*vide* note (1) below]	112	20	400
(*c*)	Deposits including unsecured loans guaranteed by directors in their personal capacity	113		
(*d*)	Total	110	20	400
2. Of the total deposits at item 1(*v*)(*b*) above those				
(*a*) (*i*)	Repayable on demand or notice or otherwise in less than 6 months	121		
(*ii*)	For a period of 6 months or more but less than 1 year	122		
(*iii*)	For a period of 1 year or more but less than 2 years	123		
(*iv*)	For a period of 2 years or more but less than 3 years	124		
(*v*)	For a period of 3 years	125	20	400
(*vi*)	More than 3 years	126		
(*vii*)	Total	120	20	400
[1][(*b*) (*i*)	Free of interest	831		
(*ii*)	Below 6%	832		
(*iii*)	6% or more but less than 9%	833	20	400
(*iv*)	9% or more but less than 11%	834		
(*v*)	11% or more but less than 12.5%	835		
(*vi*)	at 12.5%	836		
(*vii*)	more than 12.5%	837		
(*viii*)	Total	830]		
(*ix*)	Total	130	20	400
(*c*) (*i*)	Those which have matured but not claimed	141		
(*ii*)	Those which have matured and claimed but not paid	142		
3. Deposits of the kind referred to in rule 3(2) of the rules:				
(*i*)	Amount of deposits brought forward from the previous year	151	10	210
(*ii*)	Amount of deposits accepted or renewed during the year	152	15	290
(*iii*)	Total	153	25	500
(*iv*)	Amount of deposits repaid during the year	154	5	100
(*v*)	Balance of deposits outstanding at the end of the year:	155		
(*a*)	Fixed deposits	161	20	400
(*b*)	Any other deposits	162		
(*c*)	Total	160	20	400
4. Of the total deposits at item 3(*v*)(*c*) above those:				
(*a*) (*i*)	Repayable on demand or on notice or otherwise in less than 6 months	171		

1 Substituted by Notification No. GSR 323(E), dated 9-4-2003, w.e.f. 9-4-2003.

(1)		(2)	(3)	(4)	(5)
	(*ii*)	For a period of 6 months or more but less than 1 year	172		
	(*iii*)	For a period of 1 year or more but less than 2 years	173		
	(*iv*)	For a period of 2 years or more but less than 3 years	174		
	(*v*)	For a period of 3 years	175	20	400
	(*vi*)	For more than 3 years	176		
	(*vii*)	Total	170	20	400
[1][(*b*)	(*i*)	Free of interest	881		
	(*ii*)	Below 6%	882		
	(*iii*)	6% or more but less than 9%	883		
	(*iv*)	9% or more but less than 11%	884	20	400
	(*v*)	11% or more but less than 12.5%	885		
	(*vi*)	at 12.5%	886		
	(*vii*)	more than 12.5%	887		
	(*viii*)	Total	880]	20	400
(*c*)	(*i*)	Those which have matured but not claimed	191		
	(*ii*)	Those which have matured and claimed but not paid	192		

Notes:

(1) Ref: Item 1(*v*)(*b*): If the company is a public company and a declaration as specified in note (1) of Part 3 has not been obtained from its directors such deposits should be shown against this item.

(2) Ref: Item 2: Amount at item 1(*v*)(*d*), item 2(*a*)(*vii*) and item 2(*b*)(*ix*) should tally with each other.

(3) Ref: Item 3: Amount at item 3(*v*)(*c*), 4(*a*)(*vii*) and 4(*b*)(*ix*) should tally with each other.

(4) Ref: Item 3(*v*)(*b*): If the company is a private company and a declaration as specified in Note (1) of Part 3 has not been obtained, such deposits should be shown against this item.

(5) The amounts shown in Part 3 should not be included in Part I.

PART 2
Particulars of liquid assets (rule 3A)

Item No.			*Particulars*	*Item code*	*Amount (in thousands of rupees)*	*Date of investment/ deposit*
(1)			(2)	(3)	(4)	(5)
1.	(*a*)		Amount of deposits maturing before 31st March next.	210	Nil	N.A.
	(*b*)		[2][Fifteen per cent of above]	220	N.A.	N.A.
	(*c*)		Details of liquid assets	230	N.A.	N.A.
		(1)	Amount in current or other deposits account, free from charge or lien, with any scheduled bank.	231		
		(2)	Unencumbered securities of Central/State Government:			
			(*i*) Face value	241		
			(*ii*) Market value	242		

1 Substituted by Notification No. GSR 323(E), dated 9-4-2003, w.e.f. 9-4-2003.

2 Substituted by the Companies (Acceptance of Deposits) Amendment Rules, 1992 w.e.f. 10-1-1992 *vide* GSR 39(E), dated 10-1-1992.

(1)	(2)	(3)	(4)	(5)
	(3) Unencumbered Trust Securities—			
	(*i*) Face value	251		
	(*ii*) Market value	252		
	(4) Total [1 + 2(*ii*) + 3(*ii*)]	260	N.A.	N.A.

2. Particulars of advertisement inviting deposits/statement in lieu of advertisement (rule 4/4A):
   (*a*) Date of the publication of the advertisement inviting deposits from the public/statement in lieu of advertisement: 30th September, 2005
   (*b*) Period of currency of the previous advertisement/statement in lieu of advertisement: 30th September, 2006

PART 3

Particulars of exempted borrowings, etc., not considered as deposits [Rules 2(*b*)(*i*) to 2(*b*)(*x*)]

Item No.	*Particulars*	*Item code*	*No. of accounts*	*Amounts (in thousands of rupees)*
(*1*)	(*2*)	(*3*)	(*4*)	(*5*)
	1. Money received from the Central or State Government(s) or money received from others the repayment of which is guaranteed by the Central or a State Government or money received from a local authority. [Rule 2(*b*)(*i*)]	301		
	2. Money received from a foreign Govt. or any other foreign citizen, authority or persons (*see* also note 3 below) [Rule 2(*b*)(*i*)]	302		
	(*a*) Foreign Government	303		
	(*b*) Foreign citizen, authority or persons.	304		
	3. Borrowings from banks and other specified financial institutions [Rules 2(*b*)(*ii*) & (*iii*)]	305	2	200
	4. Money received from any other company [Rule 2(*b*)(*iv*)]	306	3	50
	5. Money received from directors (*see* note 1 below) [Rule 2(*b*)(*ix*)]	307		
	6. Money received by a private company from the share-holders (*vide* notes (1) and (2) below) [Rule 2(*b*)(*ix*)]	308		
	7. Money received by employees of the company by way of security deposits [Rule 2(*b*)(*v*)]	309	5	15
	8. Money received by way of security or advance from purchasing, selling or other agents in the course of company's business or advance received against orders for supply of goods or properties or for rendering of services [Rule 2(*b*)(*vi*)]	310	6	135
	9. Money received by issue of debentures secured by mortgage of immovable properties or convertible debentures [Rule 2(*b*)(*x*)]	311		

(1)	(2)	(3)	(4)	(5)
10.	Money received by way of subscription to any share or secured debentures pending allotment or money received by way of calls in advance on shares in accordance with the Articles of Association of the Company so long as such amount is not repayable to shareholders under the Articles of Association of the Company [Rule 2(*b*) (*vii*)]	312	2	100
11.	Money received in trust or money, in transit [Rule 2(*b*)(*viii*)]	313		
12.	Total (1 to 11)	320	18	500

Notes: (1) Only money received from such persons on a declaration in writing that the money has not been given by such persons out of funds acquired by him/them by borrowing or accepting deposits from another person should be shown against these items. Otherwise, it should be shown against item No. 1 or 4 of Part 1 as the case may be, as indicated in Notes (1) and (4) of Part 1

(2) Money received from the shareholders of a private company deemed as a public company under section 43A of the Companies Act, 1956 should also be included under this item subject to the obtaining of declaration referred to in Note (1) above.

Manager's Certificate

Certified:

(*i*) that a copy of this Return has been sent/is being sent to the Joint Chief Officer, Department of Financial Companies (Central Office Cell), Reserve Bank of India, Bombay-400 023.

(*ii*) that the figures of deposits, liquid assets and interest rates under Parts 1, 2 and 3 have been verified and found to have been correctly prepared.

(*iii*) that the aggregate of the paid up capital and free reserves, etc., as arrived at on the lines indicated in *Explanation* to rule 3 of the Rules are as follows:—

Item No.	*Particulars*	*Item code*	*Amounts (in thousands of rupees)*
(1)	(2)	(3)	(4)
1.	Net owned funds (figures to be furnished as per the latest audited balance sheet preceding the date of the return) Balance Sheet as audited on. 31st March, 2005 and adopted on 30th September, 2005		
(*i*)	Paid up capital	331	2500
(*ii*)	Free Reserves	332	600
	Total (*i*) + (*ii*)	333	3100
2. (*i*)	Accumulated balance of loss	341	
(*ii*)	Balance of deferred revenue expenditure	342	
(*iii*)	Accumulated unprovided depreciation	343	
(*iv*)	Miscellaneous expenses and preliminary expenses	344	
(*v*)	Other intangible assets (please specify)	345	
	Total (*i*) + (*ii*) + (*iii*) + (*iv*) + (*v*)	340	0
3.	Net owned funds (1 – 2)	350	3100

(*1*)	(*2*)	(*3*)	(*4*)
4.	Deposits of the kinds referred to in rule 3(2)(*i*) of the Rules (*vide* item 1(*v*)(*d*) of Part 1 of the return)	360	400
	(% of paid-up capital and free reserves)		12.90
5.	Deposits of the kinds referred to in rule 3(2)(*ii*) of the Rules (*vide* item 3(*v*)(*c*) of Part 1 of the return.)		
	(% of paid up capital and free reserves.)		12.90

Signature of
Authorised Official ....
Name: Abha Jaiswal

Date: 20th April, 2006 Designation: Director

Auditor's Certificate

THIS IS TO CERTIFY THAT we have verified the Return of Deposit of ABC Industries Limited made as at 31st March, 2006 and the same is found to be corrects as per the relevant records produced before us for our verification.

For, J.P. Saraf & Co.
Chartered Accountants

J.P. Saraf
Partner