ACCEPTANCE OF DEPOSITS BY COMPANIES

NO COMPNY shall

Invite, Accept, Renew deposits under this Act form the Public except manner provide under this chapter.

As per Rule (1) sub rule (3) these rules **shall not apply** to following companies:

1. Banking Company
2. NBFC**
3. Housing Finance Company registered with NHBA-1987
4. CG may after consultation with RBI will specify

<u>NBFC Mean:</u>** A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act, 1956 engaged in the business of loans and advances, acquisition of shares/stocks/bonds/debentures/securities issued by Government or local authority or other marketable securities of a like nature, leasing, hire-purchase, insurance business, chit business but does not include any institution whose principal business is that of agriculture activity, industrial activity, purchase or sale of any goods (other than securities) or providing any services and sale/purchase/construction of immovable property. A non-banking institution which is a company and has principal business of receiving deposits under any scheme or arrangement in one lump sum or in installments by way of contributions or in any other manner, is also a non-banking financial company

<u>Definition:</u>

<u>Eligible Company</u>: <u>Public</u> Company having:

Net worth of not less than Rs. 100 crore

Turnover of not less than Rs. 500 crore

- Need to obtain approval in General Meeting by Special Resolution
- Filed such SR with ROC before making any invitation to public for acceptance of deposit

Provided that: If Eligible company accepting deposit in limit prescribe under section 180 (1) (c) of Companies act 2013, may accept deposit by Ordinary Resolution.

Trustee: As per section 3 of Indian Trust Act 1882

> Trustee means a person in whom either alone or in association with other persons, the trust property is vested and includes a manager. One who has accepted trusteeship and undertaken to administer the trust, should know what is expected of him. He must in the first instance

examine and study the instrument of trust. A trust is created by a Deed of trust, or by a Will or by a Scheme framed by a Court or by a written constitution. It is also essential that the trust must be accepted by the trustee. He will be presumed to have accepted the trust, unless the intended trustee disclaims it within a reasonable period and such disclaimer prevents the property from vesting in him. Where the number of trustee is more, a disclaimer by one or more of them vests the property in the remaining trustee or trustees from the date of possession of the trust.

DEPOSIT: As per rule 2(1) (c) and section 2 (31) deposit means any receipt of money bay way of "Loan, Deposit or in any other form by a company"

But does not Include:

i. Any amount received from:
   a) The Central Government or a State Government,
   b) Any other source whose repayment is guaranteed by the Central Government or a State Government,
   c) Local authority or a statutory authority constituted under an Act of Parliament or a State Legislature
ii. Any amount received from:
   a) Foreign Governments
   b) Foreign or international banks
   c) Multilateral financial institutions (including, but not limited to, International Finance Corporation, Asian Development Bank, Commonwealth Development 3 Corporation and International Bank for Industrial and Financial Reconstruction)
   d) Foreign Governments owned development financial institutions
   e) Foreign export credit agencies, foreign collaborators
   f) Foreign bodies corporate and foreign citizens
   g) Foreign authorities or persons resident outside India subject to the provisions of Foreign Exchange Management Act, 1999 (42 of 1999) and rules and regulations made there under

iii. Any amount received as a loan or facility from:
   a) Any banking company or from the State Bank of India or any of its subsidiary banks
   b) From a banking institution notified by the Central Government under section 51 of the Banking Regulation Act, 1949 (10 of 1949)\
iv. Any amount received as a loan or financial assistance from:
   a) Public Financial Institutions notified by the Central Government in this behalf in consultation with the Reserve Bank of India
   b) any regional financial institutions or Insurance Companies or Scheduled Banks as defined in the Reserve Bank of India Act, 1934

v. Any amount received against issue of :
   a) Commercial paper
   b) Any other Instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India

vi. Any amount received by a company from any other company.

vii. Any amount received and held pursuant to an offer made in accordance with the provisions of the Act
   a) Towards subscription to any securities, including share application money
   b) or advance towards allotment of securities pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for

Explanation:

(a) if the securities for which application money or advance for such securities was received **cannot be allotted within sixty days** from the date of receipt of the application money or advance for such securities and such application money or advance is **not refunded to the subscribers within fifteen days from the date of completion of sixty days**, such amount **shall be treated as a deposit** under these rules

(b) any adjustment of the amount for any other purpose shall not be treated as Refund

viii. Any amount received from a person who, **at the time of the receipt of the amount, was a director** of the company:

Provided that the director from whom money is received, **furnishes** to the company at the time of giving the money, **a declaration in writing to** the effect that the amount is **not being given out of funds acquired by him by borrowing or accepting loans or deposits from others**

ix. Any amount raised by the issue of:
   a) Bonds
   b) Debentures
   Secured by a charge on any assets referred to in Schedule III of the Act excluding intangible assets of the company
   c) Bonds or debentures **compulsorily convertible** into shares of the company within five years:

Provided that if such bonds or debentures are secured by the charge of any assets the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer

x. Any amount received **from an employee** of the company **not exceeding his annual salary** under a contract of employment with the company in the nature of non-interest bearing security deposit

xi. Any non-interest bearing amount received or held <u>in trust.</u>

xii. Any amount received in the <u>general course or for the purposes</u> of, the business of the company

a) as an **advance for the**

   i. Supply of goods or

   ii. provision of services accounted for in any manner whatsoever

Provided that such advance is appropriated within a period of 365 days from the date of acceptance of such advance:

Provided that in case of any advance which is **subject matter of any legal proceedings before any court of law**, the said time limit of 365 days shall **not apply**

b) as advance, accounted for in any manner whatsoever, received in connection with **consideration for property under an agreement or arrangement ,**
Provided that such advance is adjusted against the property in accordance with the terms of agreement or arrangement

c) as **security** deposit for the **performance of the contract** for supply of goods or provision of services

d) as **advance received under long term projects** for supply of capital goods except those covered under item (b) above

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

Explanation.- For the purposes of this sub-clause the amount referred to in the first proviso shall be **deemed to be deposits on the expiry of fifteen days from the date they become due for refund**.

xiii. Any amount **brought in by the promoters** of the company <u>by way of unsecured loan</u> in **<u>pursuance of the stipulation of</u>** any lending financial institution or a bank subject to fulfillment of the following conditions, namely:

a) Loan is brought in **pursuance** of the stipulation imposed by the lending institutions on the promoters to contribute such finance;
b) the loan is provided by the promoters themselves or by their relatives or by both
c) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter

xiv. Any amount accepted by a Nidhi company in accordance with the rules made under **section 406** of the Act

Explanation:- For the purposes of this clause, any amount.-

(a) received by the company, whether in the form of installments or otherwise, from a person with **promise or offer to give returns**, in cash or in kind, on **completion of the period** specified in the promise or offer, or earlier, accounted for in any manner whatsoever,
Or
(b) **any additional contributions**, over and above the amount under item (a) above, made by the company as part of such promise or offer, **shall be treated as a deposit;**

Section: 73 Prohibition on acceptance of deposits from public:

A company may subject to:

Passing of Ordinary Resolution /Special Resolution

Rules may be prescribed in consultation with RBI

Accept deposit from its members on terms and conditions and repayment of such deposit as may be agreed between company and members, **subject to fulfillment of following conditions:

TERMS & CONDITIONS OF ACCEPTANCE OF DEPOSIT: As per Rule- 3

2) No Company (include eligible company) shall

Accept or renew any deposit, whether secured or unsecured,

Which is repayable on demand **or** upon receiving a notice within a period of less than (6) six months or more than (36) 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 of funds**, accept or renew such deposits for repayment earlier than six months from the date of deposit or renewal, but repayable at least after three month from the date of such deposits and renewal as the case may be, subject to the condition that:

- Such deposits shall not exceed **10% ten per cent.** of the aggregate of the paid **up share capital and free reserves** of the company,

3) Acceptance & Renewal of deposits by Company **Other Than Eligible Company**:

From the Members: shall not exceed **25% per cent** of the aggregate of the paid **up share capital and free reserves** of the company. The amount of 25% limit is to be computed considering such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits.

4) Acceptance & Renewal of deposits by Eligible Company:

From the Members: shall not exceed **10% per cent** of the aggregate of the paid **up share capital and free reserves** of the company. The amount of 10% limit is to be computed considering such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits.

From the Public: shall not exceed **25% per cent** of the aggregate of the paid **up share capital and free reserves** of the company. The amount of 25% limit is to be computed considering such deposit together with the amount outstanding from the public on the date of acceptance or renewal of such deposits.

5) Acceptance & Renewal of deposits by Government Company:

From the Public: shall not exceed **35% per cent** of the aggregate of the paid **up share capital and free reserves** of the company. The amount of 35% limit is to be computed considering such deposit together with the amount outstanding from the public on the date of acceptance or renewal of such deposits.

6) Interest on Deposit and payment of brokerage to authorize person shall not exceed the maximum rate prescribed by RBI.
Company (include Eligible Company) can't pay interest and brokerage exceeding the maximum limit prescribed by RBI.

7) The company **shall not reserve right to alter** any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract after circular or circular in the form of advertisement is issued and deposits are accepted

****Section 73 (2) (a) (b):** For acceptance of deposits from members company require to issue a circular to its members showing the following;

- Financial positions of Company
- **The credit Rating Obtained**
- Total Number of Depositors
- The **amount due toward any previous deposits** accepted by the company
- Such other condition mentioning below:

FORM AND PARTICULARS OF ADVERTISEMENTS/CIRCULARS: As per Rule 4 Deposits shall be accepted by issue of Circulars/Advertisements.

1. **Every Company (including Eligible Company)** intending to invite deposit from its **members** shall issue a **circular** to all its members by **registered post** with acknowledgement due or **speed post** or by **electronic mode** or may publish the circular in the form of an advertisement in Form **No. DPT- 1 (English and Vernacular).**

2. Every **Eligible** Company intending to invite deposits from **public shall** issue a circular in the form of **advertisement** in Form No. DPT-1 (English and Vernacular) in the state where registered office of company is situated.

3. **Every** Company inviting deposits from the **public** shall upload a copy of the circular on its website, if any.

4. Before issue of Circular/Form of Advertisement the same should be issued on the authority and in the name of the Board of directors of the Company. In other words the draft Circular/Form of Advertisement should be approved by Board and must be signed by majority of the directors of the Company.

5. At least 30 days before issue of Circular/Form of Advertisement , deliver a copy of Circular/Form of Advertisement approved by Board to the Registrar of Companies (ROC) for registration.

6. The Circulars/ Form of Advertisement shall be valid until
   Expiry of six months from the date of closure of the financial year in which it is issued

   or

   The date on which the financial statement is laid before the Company in general meeting or, where the annual general meeting for any year has not been held, the day on which that meeting should have been held in accordance with the provisions of the Act 2013

   Whichever is Earlier

   And a fresh circular or circular in the form of advertisement shall be issued, in each succeeding financial year, for inviting deposits during that financial year.

* Effective date of issue of circular shall be the date of dispatch of the circular but not from the Date of Advertisement in news paper.

Section 73 (2) (c): <u>Maintenance of liquid assets and creation of deposit repayment reserve account.-</u>

Deposit such some which shall be **at least 15% of the amount** of its **deposit maturing the during the financial year and the financial year next following,** and kept in scheduled bank account to be called as **deposit repayment reserve account**. The amount so deposited shall not be utilized for any purpose other than for the repayment of deposits.

Provided that The amount deposited shall not at any time fall below 15% of the amount of deposits maturing until the current financial year and the next financial year.

Section 73 (2) (d): <u>MANNER AND EXTENT OF DEPOSIT INSURANCE:</u>

1. Every Company (Including Eligible Company) shall at least 30 days before issue of Circular/Form of Advertisement or 30 days before renewal as the case may be **enter into a contract providing for deposit insurance** to cover both principal and interest thereon.

2. The deposit insurance contract shall specifically provide that i**n case the company defaults** in repayment of principal amount and interest thereon, the depositor <u>shall be entitled to the repayment</u> of principal amount of deposits and the interest thereon **<u>by the insurer up to the aggregate monetary ceiling</u>** as specified in the contract:

   - If the deposit amount is less than Rs.25000/- the insurance coverage will be full amount of deposit amount and
   - if the deposit amount is more than Rs.25000/- then minimum coverage is not less than Rs.25000/- .

3. The amount of insurance premium paid on the insurance of such deposits shall be <u>borne by the company itself.</u>
4. If any <u>default is made by the company</u> in complying with the terms and conditions of the deposit insurance contract which makes the <u>insurance cover ineffective</u>, the company shall either rectify the default immediately or enter into a fresh contract within 30 days:
   - In case of non-compliance, the amount of deposits covered under the deposit insurance contract and interest payable thereon shall be repaid within the next 15 days
   - If such a company does not repay the amount of deposits within said 15 days it shall pay 15%. interest per annum for the period of delay
   - It shall be treated as having defaulted and shall be liable to be punished in accordance with the provisions of the Act.

Section 73 (2) (e): CREATION OF SECURITY:

1. Every Company (Including Eligible Company) inviting secured deposits shall provide for **security by way of a charge** on its assets as referred to in Schedule III of the Act excluding intangible assets of the Company and the market value of assets charged must be assessed by a registered valuer.

   Provided that in the case of deposits along with interest which are secured by the charge on the assets shall not exceed the market value of such assets as assessed by a registered valuer.

***Explanation:** It is clarified that the company shall ensure that the **total value of the security** either by way of deposit insurance or by way of charge or by both on company's assets **shall not be less than the amount of deposits accepted and the interest payable thereon**.

2. The security for deposits as specified in sub-rule (1) shall be **created in favour of a Trustee for** the depositors.

APPOINTMENT OF TRUSTEE FOR DEPOSITORS:

1. Before issue of Circular/Form of Advertisement, appoint one or more deposit trustees for creating security for the deposits.
2. The Circular/Form of Advertisement should contain a statement that the Deposit Trustee(s) have given t heir consent to act as Deposit Trustee.
3. The company shall execute a deposit trust deed in Form **DPT-2** at least seven days before issuing the circular or circular in the form of advertisement.
4. The Deposit trustee (s) shall not be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board.

Provided that in case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

Meeting of depositors: The trustee for depositors **shall call a meeting of all the depositors** on-

(a) Requisition in writing signed by **at least 1/10th of the depositors** in value **for the time being outstanding**;

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

FORM OF APPLICATION FOR DEPOSITS:

- Deposit to be accepted only in the prescribed form.
- The application shall contain a declaration from the depositor to the effect that the deposit is not being made out of any money borrowed by him from any other person.
- A depositor may, at anytime, make a nomination.
- Deposit receipt shall be issued in the prescribed format within a period of 21 days from the date of receipt of money or realization of cheques and shall be signed by an officer duly authorized by Board, and shall state the:
  - Date of deposit
  - Name and address of the depositor
  - Amount received by the company as deposit
  - Rate of interest payable thereon
  - Date on which the deposit is repayable

REGISTERS OF DEPOSITS:

- Make entries in the register **within 7 days** from the date of issuance of the deposit receipt and such entries shall be authenticated by a director or secretary of the Company or by any other officer authorized by the Board for this purpose.
- The registers shall be preserved in good order for a period of not less than 8 years from the financial year in which the latest entry is made in the register.

GENERAL PROVISIONS REGARDING PREMATURE REPAYMENT OF DEPOSITS:

1. If at any time the Depositor **request for repayment** after expiry of a period of six months from the date of deposit but before the maturity period, the **rate of interest** payable by the Company on such deposit shall **be reduced by 1%** from the contracted rate.
2. Where a Company permits a deposit or to renew his deposit, before t he expiry of the contract period, for availing of a higher rate of interest, the Company shall pay interest to such depositor at the higher rate if 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 .

Explanation: For the purposes 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 6 months, it shall be excluded and if such part is 6 months or more, it shall be reckoned as one year.

3. A penal rate of interest of 18% per annum shall be payable for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.

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 Form DPT-3** along with the fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and furnish the **information contained therein as on the 31st day of March** of that year duly audited by the auditor of the company.

Forms:

DPT-1- Circular in the form of Advertisement Inviting Deposits
DPT-2- Deposit Trust Deed (At least 7 days before issue of circular)
DPT-3- Return of Deposit (Before 30th June Every Year)
DPT-4- Statement Regarding Deposits existing on the commencement of Act {Section 74 (1)}