Companies Rules 2014 - Acceptance of Deposits

1. Short title, commencement and application

1. W.E.F – 1st April 2014
2. Rules applicable to a company **other than**
   a. *Banking* Company
   b. *NBFC's* defined and registered with RBI
   c. *Housing Finance Company* registered with National Housing Bank established under National Housing bank act 1987.
   d. *Company specified by Central govt* under Section 73(1) of Co Act 2013.

2. Deposits

- ***Includes*** – Any receipt of money by way of
  - Deposit or
  - Loan or
  - *In any other form*

- ***Excludes***

Rule	Received from
2 (c)(i)	• Central/State Govt • Any other source and *repayment is guaranteed by CG or SG* • Local Authority • Statutory Authority constituted under an Act of Parliament or State Legistlature
2 (c) (ii)	• Foreign Govts • Foreign or International Banks (HSBC, CITI bank etc) • *Multilateral Financial Institutions* • *Foreign govt owned development financial institutions* • *Foreign export credit agencies* • *Foreign Collaborators* • *Foreign bodies Corporate and Foreign citizens* • *Foreign Authorities or Persons resident outside India as per FEMA Act 1999*
2 (c) (iii)	• Received as a Loan or *Facility* from ✓ any banking company

	✓ SBI ✓ Any of its subsidiaries ✓ Banking institution notified by CG under Section 51 of Banking regulation act 1949 ✓ *Any bank defined in Section 2 clause (d) of Banking Companies (Acquisition and Transfer of Undertakings) Act 1970* ***or*** *Section 2 clause (b) of Banking Companies (Acquisition and Transfer of Undertakings) Act 1980* ✓ *Co-Operative banks defined in Section 2 clause (b-ii) of RBI Act 1934*
2 (c) (iv)	• Amount received as a loan / financial assistance from Public financial institutions notified by CG in consultation with RBI • Any regional financial institutions • Insurance Companies • *Scheduled Banks defined in RBI Act 1934*
2 (c) (v)	• Amount received against Issue of *Commercial paper* • Any other instruments issued in accordance with guidelines or notification issued by RBI
2 (c) (vi)	• Other Companies
2 (c) (vii)	• Towards subscription to any securities, including ✓ Share application money ✓ *Advance towards allotment of Securities pending allotment* **Note:** ✓ If Amount for which securities cannot be allotted within sixty days from the date of receipt of application money or advance for securities, ✓ should be refunded **within 15 days** from the expiry of 60 days. ✓ If not refund, it will be treated as Deposits. ✓ Any adjustment of the above amount against any other purpose shall not be treated as Refund. **Eg:** Amount Due to Creditor who has been applied for shares of the company cannot be adjusted for the purpose of refund.

2 (c) (viii)	• Amount received from director **Note:** ✓ Person should be director of the company at the time of Company accepting deposits. ✓ Director should give the money from his own funds. ✓ Should not give the money by acquiring from any other person by way of borrowing, accepting loans or deposits.
2 (c) (ix)	• Amount received by way of issue of ✓ bonds ✓ debentures **Note:** Amount should be ✓ Either secured with charge on assets of the company **excluding Intangible assets,** or ✓ Compulsorily convertible into shares of the company ***within five years*** ** If it is on charge on assets value of bonds or debentures shall not exceed the market value of such assets assessed by registered valuer.
2 (c) (x)	• Employee of the company not exceeding his annual salary. • Amount should be in the nature of Non – interest bearing security deposit.
2 (c) (xi)	• Non-interest bearing amount received or held in trust.
2 (c) (xii) (a)	• Amount received in the course of business ► Advance for supply of goods or services. ► Provided goods been supplied or service been done within 365 days. ► If more than 365 days company holds the money means then the company has to refund the money within 15days on the expiry of 365, or else it will be treated as deposit.
(b)	► In case, if an advance is for any legal proceedings in the court of law then the concept of 365days shall not apply

(c) (d)	▶ Any advance received in connection with consideration for property under an agreement, provided such advance is adjusted against the property as per the terms of agreement. ▶ Security deposit for the performance of contract for supply of goods or services ▶ Advance received under long term projects for supply of **capital goods (except point (b) above)**
2 (c) (xiii)	• Amount brought in by promoters by way of unsecured loans. • Promoters can bring the amount ✓ on his own **or** ✓ ***from his relatives*** **or** ✓ by both. • Amount can also be brought in by the promoters as per the conditions of the banks. • Amount will not be treated as deposit only till the loans of the financial institutions or banks are repaid.
2 (c) (xiv)	• Amount accepted by the Nidhi Company under section 406 of the act

A. Eligible Company:

Public Company defined under section 76(1) of the act with the following conditions:

- Net Worth > 100 Crores **(OR)**
- Turnover > 500 Crores **(AND)**
- Prior consent of the company in general meeting passing ***SPECIAL RESOLUTION*** and filing the resolution with **ROC in MGT – 14**, before making any invitation to the Public for acceptance of deposits

- Provided an eligible company is accepting the deposits within the limits under section 180(1)(c) by means of ordinary resolution.

3. Terms and Conditions of Acceptance of deposits by Companies

Tenure:

As per the provisions of the Act, Eligible Company (referred in Section 73(2)), can;

1.
   - ✓ **A**ccept or renew deposit
   - ✓ Whether secured or unsecured
   - ✓ repayable on demand or on receiving a notice,
   - ✓ within a period of 6months to 36months
   - ✓ from the date of accept or renew deposits
   - ✓ for repayment
   - ✓ to meet its short – term requirements of funds,
   - ✓ earlier than 6months
   - ✓ from the date of acceptance or renewal,

Provided following conditions are satisfied,

- ✓ Deposits amount should nce or renewal of deposit.

- ✓ **C**ompany can also accept

a. be maximum 10% of paid up capital and the free reserves

AND

b. Deposits amount should not be repayable within 3months from the date of acceptance or renewal of deposits.

2. Deposits can be accepted in joint names and maximum **3.**

3.
   - ✓ Company cannot accept or renew deposits
   - ✓ from its members,
   - ✓ if the amount of deposits
   - ✓ **along with the other deposits amount**
   - ✓ already outstanding in the company
   - ✓ as on the date of acceptance or renewal,
   - ✓ exceeds **25% of Paid-Up Share capital + Free Reserves** of the Company.

4. *Quantum of Deposit*

Members

10% of Paid up share Capital + Free Reserves

Public

Non-Govt.Company

25% of Paid up share Capital + Free Reserves

Govt. Company

35% of Paid up share Capital + Free Reserves (Sec

In Short,

1. Only from members – Maximum 10% PUP + FR.
2. Non – Govt /-Govt :
   a. Only from Public – Maximum 25% / 35% PUP + FR.
   b. Members and Public - Maximum 25% / 35% PUP + FR.

5.

- ✓ Company cannot invite,accept or renew deposit
- ✓ at a rate of interest or brokerage
- ✓ at a rate more than the rate prescribed by RBI
- ✓ for acceptance of deposits by NBFCs.

6.

- ✓ Once Company has given advertisement and deposits been accepted,
- ✓ company does not have any right to alter
- ✓ any terms and conditions of the deposit, deposit trust deed and deposit insurance contract
- ✓ to the disadvantage of the depostior.

4. *Form and Particulars of advertisements or circulars*:

1.

→ Company referred in Section 73(2) which invites deposits from its members
→ Issue a circular to all its members
→ By registered post or speed post or electronic mode, in **Form DPT – 1**
→ In addition to that circular to the member,
→ such circular shall also be published in English language in an English newspaper and In vernacular paper when issuing to members/public.

2. Company inviting deposits shall upload the copy of circular in its website (if any).

3. Company is not allowed to issue circular to other person and get issued on behalf of it, unless such circular / circular in the form of advertisement, to invite deposits, is issued on the authority and in the name of Board of directors of the Company.

4. → Such circular / circular in the form of advertisement issued
→ shall be valid until the expiry of months
→ from the end of the financial year in which it is issued OR
→ until the date on which financial statement is laid before AGM
→ Incase AGM not been held, then the latest day on which the meeting could have been held as per the provisions
(WHICHEVER IS EARLIER).

5. *Manner and extent of deposit insurance*:

1.

- ❖ Every eligible company (Section 73(2)), and every other eligible company inviting deposits,
- ❖ shall enter into a contract for providing deposit insurance **within 30days,**
- ❖ before the issue of circular or circular in the form of advertisement

OR

- ❖ before the date of renewal as the case may be.

- Amount mentioned in the deposit insurance contract shall be deemed to be the amount including **Principal + Interest** due thereon.

2.

- Deposit insurance contract provides,
  - ✓ Incase any company
  - ✓ Defaults in repayment
  - ✓ Of Principal and Interest
  - ✓ Depositor is eligible for the amount inclusive of Principal + Interest maximum to the ceiling limit specified in the contract.

Provided,

Deposit amount	Eligible amount for the depositor
<= Rs. 20000	Actual amount of deposit.
`> Rs.20000	Not less than Rs.20000 for each depositor.

3. Since it about Deposit **"Insurance",** if any amount of insurance premium paid for such deposits, it shall be borne by the company and cannot get reimbursed / recovered from the amount payable as Principal + Interest to the depositors.

4.

- **In case any default** been made by the Company
- with the terms & conditions
- of the deposit insurance contract,
- due to that the insurance cover becomes ineffective,
- then Company should rectify the default **or**
- by entering in to a fresh contract
- within **30days .**
- In case of **Non-Compliance**
- Amount of deposit including interest
- Shall be re-paid within 15days.
- **If fails** to repay within 15 days then,
- Company has to pay the amount(Principal+Interest)
- along with interest(Penalty) amount @ 15% p.a. for the period of delay.

6. *Creation of Security*:

- Company inviting **Secured deposits**
- provide for security
- by way of Charge on it assets
- referred in **Schedule III** of the Act
- excluding intangible assets of the company
- for the repayment of the amount of deposit and interest
- for an amount which is not be less than the amount
- remaining unsecured by the deposit insurance

Provided

- ✓ amount of such deposits and
- ✓ interest payable
- ✓ shall not exceed
- ✓ market value of such assets which are secured
- ✓ assessed by a registered valuer.

- **Explanation. I**
  - ✓ For the purposes of this sub-rule it is clarified
  - ✓ that the company shall ensure
  - ✓ 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 interest payable.

- **Explanation. II**
  - ✓ For the purposes of proviso to sub-clause (ix) of clause (c) of sub-rule (1) of rule 2 and this sub-rule,
  - ✓ it is hereby clarified that pending notification of **sub-section(1)** of section 247 of the Act and
  - ✓ finalisation of qualifications and
  - ✓ experience of valuers, valuation of stocks, shares, debentures, securities etc.
  - ✓ shall be conducted by an independent merchant banker

- ✓ who is registered with the Securities and Exchange Board of India
- ✓ or an independent chartered accountant in practice
- ✓ having a minimum experience of ten years.

(2)

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

  (a) specific movable property of the company, or

  (b) specific immovable property of the company wherever situated, or any interest therein.

7. Appointment of trustee for depositors.-

(1)

- ✓ Eligible Company in section 73(2) or any eligible company
- ✓ shall issue a circular or advertisement
- ✓ inviting secured deposits
- ✓ only when the company
- ✓ has appointed one or more trustees
- ✓ for depositors for creating security for the deposits

Provided,

- ✓ a written consent shall be obtained
- ✓ from the trustee for depositors
- ✓ before their appointment and
- ✓ a such consent shall appear
- ✓ in the circular or circular in the form of advertisement
- ✓ that the trustees for depositors have given their consent to the company to be so appointed.

(2)

- ✓ The company shall execute a
- ✓ ***deposit trust deed in Form DPT-2***
- ✓ at least **7days** before issuing the circular or circular in the form of advertisement.

(3) (a)

- ✓ Deposit trustee **cannot** be any person including a Company
- ✓ Doing business of providing trusteeship services
- ✓ shall be appointed as a trustee for the depositors,
- ✓ **if the proposed trustee** –

  i. is a director,
  ii. key managerial personnel or
  iii. any other officer or
  iv. an employee of the company or
  v. holding, subsidiary or
  vi. associate company or
  vii. a depositor in the company;

(b)

- ✓ is indebted to the company, or
- ✓ its subsidiary or its holding or
- ✓ associate company or
- ✓ a subsidiary of such holding company;

(c) has any financial relationship with the company;

(d)

- ✓ has entered into any guarantee arrangement
- ✓ in respect of principal debts
- ✓ secured by the deposits or interest.

(e) Any related party to any person specified in clause (a) above.

(4)

- ✓ Trustee for depositors
- ✓ Cannot 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 Board meeting.

- ✓ **I**n case the company is required to have
- ✓ independent directors,
- ✓ **at least one independent director** shall be
- ✓ present in such meeting of the Board.

8. Duties of trustees.-

It shall be the duty of every trustee for depositors to-

(a)

- ✓ ensure assets of the company
- ✓ on which charge is created
- ✓ along with the amount of deposit insurance
- ✓ are sufficient to repay the principal amount of secured deposits outstanding and interest accrued thereon;

(b)

- ✓ satisfy himself that the circular or
- ✓ advertisement inviting deposits
- ✓ does not contain any information
- ✓ which is inconsistent
- ✓ **with the terms of the deposit scheme or**
- ✓ **with the trust deed(Form DPT – 2) and**
- ✓ in compliance with the rules and provisions of the Act;

(c)

- ✓ ensure that the company
- ✓ does not commit any breach of contract and
- ✓ provisions of the trust deed;

(d)

- ✓ take necessary steps to procure a remedy
- ✓ for any breach of contract of the trust deed or
- ✓ the terms of invitation of deposits;

(e)

- ✓ take steps to call a meeting of the
- ✓ deposit holders as and when required to be held;

(f)

- ✓ Supervise the implementation of the conditions
- ✓ regarding creation of security for deposits and
- ✓ the terms of deposit insurance.

(g) Act accordingly as are necessary in the event the security becomes enforceable.

(h) Act accordingly for the protection of the interest of depositors and to resolve their grievance.

9. *Meeting of depositors*:

The Deposit trustee shall call a meeting of all the depositors on-

(a)

- ✓ requisition in writing signed
- ✓ by at least one-tenth 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.

10. *Form of application for deposits*

(1)

- ✓ W.e.f 01-April-2014, (Commencement of these rules),
- ✓ company can accept, or renew any deposit,
- ✓ whether secured or unsecured,
- ✓ only if an application,
- ✓ as specified by the company,
- ✓ is submitted by the intending depositor
- ✓ for the acceptance of such deposit.

(2)

- ✓ The form of application
- ✓ contains a declaration by the intending depositor
- ✓ that the deposit is not being made out of any money
- ✓ borrowed by him from any other person.

11. *Power to nominate a person in case of death :*

- ✓ Depositor at any time, can nominate
- ✓ any person to whom his deposits
- ✓ shall vest in the event of his death and
- ✓ the provisions of **section 72(Power to Nominate as per Co Act 2013)**
- ✓ apply to the nomination made under this rule.

12. *Furnishing of deposit receipts to depositors:*

1.

- ✓ Every company on acceptance or renewal of a deposit,
- ✓ furnish a receipt for the amount received
- ✓ by the company
- ✓ to the depositor or his agent
- ✓ within a period of **21 days**
- ✓ from the date of receipt of money or
- ✓ realisation of cheque or
- ✓ date of renewal.

2.

- ✓ The receipt referred to in **sub-rule (1)** above
- ✓ Shall be signed by an officer
- ✓ of the company
- ✓ duly authorized by the Board and
- ✓ receipt shall state the date of deposit,
- ✓ name and address of the depositor,
- ✓ amount received by the company as deposit,
- ✓ rate of interest payable and
- ✓ date on which the deposit is repayable.

13. Maintenance of liquid assets and creation of Deposit Repayment Reserve(DRR)

- ✓ Every company referred in section 73(2) and every eligible company
- ✓ shall on or before the **30th day of April of each year**
- ✓ deposit amount in any scheduled bank and
- ✓ the amount so deposited shall not be utilized for any purpose
- ✓ other than for the repayment of deposits.

Provided,

- ✓ amount deposited
- ✓ shall not at any time
- ✓ fall below 15% of the amount of deposits maturing,
- ✓ until the end of
- ✓ current financial year and the next financial year.

14. Registers of deposits

1.

- ✓ Every company accepting deposits
- ✓ maintain at its registered office
- ✓ registers for deposits accepted or renewed,
- ✓ in which separately in the case of each depositor the following particulars, namely:-
  - (a) name, address and PAN of the depositor/s;
  - (b) Particulars of guardian, in case of a minor;
  - (c) Particulars of the nominee;
  - (d) Deposit receipt number;
  - (e) Date and the amount of each deposit;
  - (f) Duration of the deposit and the date on which each deposit is repayable;
  - (g) Rate of interest or such deposits to be payable to the depositor;
  - (h) due date for payment of interest;
  - (i) mandate and instructions for payment of interest and for non-deduction of tax at source, if any;
  - (j) date or dates on which the payment of interest shall be made;
  - (k) details of deposit insurance including extent of deposit insurance;

(l) particulars of security or charge created for repayment of deposits;

(m) any other relevant particulars.

2.

- ✓ List given in above sub-rule (1)
- ✓ shall be made within **7days**
- ✓ from the date of issuance of the receipt
- ✓ duly authenticated by a director or
- ✓ secretary of the company or
- ✓ by any other officer authorised by the Board for this purpose.

3.

- ✓ The register in above sub-rule (1)
- ✓ shall be preserved in good order for a period
- ✓ not less than **eight years** from the financial year
- ✓ in which the latest entry is made in the register.

15. General provisions regarding premature repayment of deposits.-

- ✓ Where a company makes a **repayment** of deposits,
- ✓ on the **request** of the **depositor**,
- ✓ after the **expiry** of a period of **six months**
- ✓ from the date of such deposit
- ✓ but **before the expiry** of the period
- ✓ rate of **interest** payable 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 actually been kept and
- ✓ the company shall not pay interest
- ✓ at any rate higher than the rate so reduced

Provided

- ✓ 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 rule 3; or
(b) 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

that where a company referred to in under sub- section (2) of section 73 or any eligible 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 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 six months,
- ✓ it shall be excluded and
- ✓ if such part is six months or more,
- ✓ it shall be reckoned as one year.

16. 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 &
- ✓ furnish the information contained
- ✓ as on the 31st day of March of that year
- ✓ duly audited by the auditor of the company.

17. Penal rate of interest:

- ✓ Every company
- ✓ shall pay a penal rate of interest of **18%p.a.**
- ✓ for the overdue period in case of deposits,
- ✓ whether secured or unsecured,
- ✓ matured and claimed **but remaining unpaid.**

18. Power of Central Government to decide certain questions:

- ✓ If any question arises
- ✓ to the applicability of these rules
- ✓ to a particular company,
- ✓ such question shall be decided by the Central Government
- ✓ in consultation with the Reserve Bank of India.

19. Applicability of sections 73 and 74 to eligible companies:

- ✓ Pursuant to provisions of section 76(2) of the Act, the provisions of sections 73 and 74 shall, ***mutatis mutandis (the necessary changes having been made***), apply to acceptance of deposits from public by eligible companies.

Explanation

For the purposes of this rule,

- ✓ it is clarified that incase of a company
- ✓ which had accepted or invited public deposits
- ✓ under the relevant provisions of the Companies Act, 1956 and rules
- ✓ made under that Act **(hereinafter known as "Earlier Deposits")** and
- ✓ has been repaying such deposits and interest
- ✓ in accordance with such provisions,
- ✓ the provisions of Section 74(1)(b)
- ✓ shall be deemed to have been complied with
- ✓ if the company complies with requirements under the Act and
- ✓ these rules and continues to repay such deposits and interest due

- on due dates
- for the remaining period of such deposit
- with the terms and conditions and
- period of such Earlier Deposits and
- in compliance with the requirements under the Act and these rules;

Provided

- the fresh deposits by every eligible company shall have to be in accordance with the **provisions of Chapter V of the Act** and these rules.

20. Statement regarding deposits existing as on the date of commencement of the Act :

For the purposes of clause (a) of sub- section (1) of section 74, the statement shall be in Form DPT-4.

21. Punishment for contravention:

- Company under Section 73(2) or any eligible company
- inviting deposits or any other person
- breach 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** shall be punishable
- with **fine** which may extend to **5000 rupees** and
- where the contravention is a continuing one,
- further fine which may extend to **5000 rupees for every day**
- after the first day during which the contravention continues.