ACCEPTANCE OF DEPOSITS BY COMPANIES

Deposits

- Deposit means receipt of money by deposit or loan or any other form but does not include the following (as per Companies(Acceptance of Deposits) Rules,2014
    - Amount received from Central or State Government or source repayment guaranteed by the Central or the State Government or Local Authority or Statutory Authority
    - Amount from Foreign Governments, Foreign International Banks, Multilateral Financial Institutions subject to FEMA
    - Amount Received as loan or facility from Banking Company
    - Loan or Financial Assistance received from Financial Institutions
    - Received against issue of commercial paper
    - Received by the company from another company
    - Amount received in pursuance of the issue of securities –if cannot be allotted within 60 days from the date of receipt –refund to subscribers within 15 days else treat the same as deposit
    - Amount received from the Director of the Company-declaration to be given that the same is not out of borrowed funds
    - Raised by issue of bonds or debentures
    - Raised by issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a stock exchange
    - Amount received from employee not exceeding his annual salary
    - Non-Interest bearing amount held in trust
    - Received as advance for the supply of the goods or provision of services-accounted as advance
    - Amount introduced as promoter's contribution as loan as a stipulation of lending financial institution or bank
    - Received by Nidhi Company
    - Subscription by Chit under Chit fund act
    - Received under the collective Investment scheme framed by the SEBI
    - 25 Lakh Rupees or more received by Start- up Company by way of convertible note(Convertible into Equity shares or repayable within 5 years from date of issue) in a single tranche from a person
        - Start up company means a private company incorporated under the act and recognised as such in accordance with notification Issued by Department of Industrial Policy and Promotion
        - Convertible note –Instrument evidencing receipt of money –repayable at the option of the holder or Convertible into shares of the company
    - Amount received by the company from Alternative Investment Funds

Depositor

- Person who has made a deposit with the company

Eligible Company

- Public Company
    - Net worth of Not less than –Rs. 100 Crore
    - Turnover of Not less than – Rs. 500 Crore
    - Obtained consent of the Company in General Meeting by ways of special resolution and filed the same with ROC

Prohibition on Acceptance of Deposits

- No company shall invite, accept or renew deposits under this act from the public except in a manner as provided in the act
- Provisions not apply to
    - Banking Company
    - Non -Banking Finance Company
    - Housing Finance Company
    - Companies Specified by the Central Government after consultation with RBI
- Company may accept deposits from the members subject to the fulfilment of the following conditions
    - Issuance of circular to its members –showing the financial position, credit rating obtained, total number of depositors and amount due
    - Filing a copy of the circular along with statement with Registrar within 30 days before issue of circular
    - Depositing not less than 15% of the deposits maturing during the financial year –kept in a scheduled bank in separate bank account –to be called as deposit repayment reserve account
    - Providing deposit insurance in the manner prescribed
    - Certification that company has not committed any default in the repayment of deposits accepted or interest on the same
    - Providing security for the repayment of deposit or interest thereon including creation of charge on the property or assets of the company
        - The first five points shall not apply to a Private companies accepting less than 100% of paid up capital and free reserves
- Deposit accepted by the company shall be repaid with interest in accordance with agreement terms
- Company fails to repay the deposit –Depositor may apply to Tribunal for an order to pay the sum due or loss or damage incurred by person
- Amount in Deposit Repayment Reserve Account-to be used only for the repayment of deposits

Companies (Acceptance of Deposits) Rules 2014

- No company shall accept or renew any deposits , whether secured or unsecured
    - Repayable on demand , OR

  - Upon receiving notice less than 6 month or more than 36 months from the date of acceptance or renewal of such deposit
  - Company may accept or renew for repayment earlier than 6 months from the date of deposit or renewal subject to condition that
    - Deposits not exceed -10% of aggregate paid up capital and free reserves
    - Deposits are not repayable earlier than 3 months from the date of such deposit
- No public company to accept or renew deposits from the members –if amount of deposits with other deposit outstanding exceeds
  - 35% of the aggregate paid up share capital, reserves or securities premium
    - Private company may accept upto 100% of the aggregate paid up share capital, reserves or securities premium following the manner prescribed
- Eligible Company –not to accept or renew deposits from the members-if amount of deposits with other deposit outstanding exceeds
  - 10% of the aggregate paid up share capital, reserves or securities premium
  - Other deposit --if amount of deposits with other deposit outstanding exceeds
    - 25% of the aggregate paid up share capital, reserves or securities premium
- Government Company - not to accept or renew deposits from the members-if amount of deposits with other deposit outstanding exceeds
  - 35% of the aggregate paid up share capital, reserves or securities premium
- No Public Company or eligible company shall invite or accept or renew any deposit in any form, carrying rate of interest or brokerage thereon at rate more than maximum rate of interest or brokerage prescribed by RBI for acceptance of deposits by NBFC
- Company –not to reserve right to alter- to the prejudice or disadvantage of depositor –terms and conditions of deposit , after circular is issued and deposit is accepted
- Eligible Company-to obtain Credit Rating for the Deposits accepted by it

<u>Rule 6</u>

- Company to provide for security by way of charge on the assets excluding intangible assets of the company for the due repayment of the amount –not less than amount remaining unsecured by deposit insurance
- Security shall be created in favour of the trustee for the depositors on
  - Specific immovable property

<u>Appointment of trustees for deposits</u>

- Company to appoint trustees for deposits before issuing circular or advertisement for the invitation of secured deposits
- Execute a deposit trust deed
- No Person/Company to be appointed as trustee if

  - Trustee is director/KMP or officer or employee of the Company/holding or subsidiary or associate
  - Indebted to company/holding/subsidiary/associate
  - Material pecuniary relationship with the company
  - Entered into guarantee agreement in respect of principal debts secured by interest/deposits secured thereon
  - Related to Director/KMP/officer or employee of the company
- No Trustee to be removed from office after the issue of notice and before the expiry of the term except with the consent of all directors present at board meeting

Register of Deposits

- Every Company –accepting deposits shall maintain at its registered office –registers for the deposits accepted or renewed containing the following particulars
  - Name and address of the PAN of the depositors
  - Particulars of guardian
  - Particulars of Nominee
  - Deposit Receipt Number
  - Date and Amount of each deposit
  - Duration of Deposit and the date on which each deposit is repayable
  - Rate of interest on deposits payable
  - Due date for the payment of interest
  - Mandate and instructions for the payment of interest and non-deduction of TDS
  - Dates on which payment of interest shall be made
  - Details of deposit insurance
  - Any other relevant particulars
- Entries in the register to be made within 7 days of the date of issuance of receipt
- Register to be preserved for the 8 years from the financial year in which the latest entry is passed in the Register

Return of Deposits

- Every Company to file return of deposits on or before the 30th day of June every year, file with Registrar, a return in form DPT-3 along with prescribed fee

Rules 16A-Disclosures in the Financial Statement

- Other than the Private Company-to disclose in the Financial Statement-by way of notes-about the money received from the director
- Private company- disclose in FS –money received from directors or relatives

Rule 17-Penal Rate of Interest

- Company to pay a penal rate of interest-18% p.a. for the overdue period in the case of deposits

Acceptance of Deposits from Public by Certain Companies(Section 76)

- Public Company
    - Net Worth of not less than –Rs.100 Crores or
    - Turnover not less than- Rs. 500 Crores
        - Subject to compliance with rules –may accept deposits from persons other than its members
- Company will be required to obtain rating from recognised credit rating agency for informing the public the rating given to the company
- Company accepting secured deposits shall within 30 days of acceptance –create a charge on the assets

Punishment for Contravention

- A Company
    - accepting /causes another to accept or invite on behalf of it –any deposit in contravention of the provisions of the act , OR
    - Fails to repay or the deposit or part thereof or any interest due thereon within the time specified
        - Company shall be punishable with –addition to the amount of deposit or part thereof and interest –fine not less than Rs. 1 Crore which may extend to Rs.10 Crores
        - Officer of Company-Imprisonment -7 Years and Fine –not less than 25 Lakhs but may extend to Rs.2 Crores or both

REGISTRATION OF CHARGES

Charge

- Interest or lien
- created on the property or assets
- of the company

Duty to Register Charges

- Company to Register the particulars of the charge within 30 days of its creation on its property or assets –in or outside India
- Registrar-shall on application extend the period to 300 days –on payment of additional fees
- Copy of Instrument of charge –to be verified
    - Property outside India-Under the seal or director or CS or authorised officer or hand of some person not interested in the charge
    - Property in India:- Verified by a certificate issued under the hand of director or company secretary or authorised officer of charge holder

- When the charge is registered-certificate of Registration shall be issued in the form and manner as may be prescribed
- No charge to be considered by the liquidator Unless
    - It is registered
    - Certificate of Registration of Charge is given by the Registrar

Application of Registration of Charge

- Company fails to create the charge within 30 days, person in whose favour charge is to be created, may apply to ROC within 14 days after giving notice to the company
- The person can recover the charges from the company

Modification of Charge

- Variation in the terms and conditions of the existing charge
- Modification in pursuance of increasing/decreasing the limits
- Modification is for pari-passu charge
- Change in rate of interest
- Partial release of charge on particular asset or property
- Change in repayment schedule of loan

Provisions of Registration of Charge shall apply to

- Company acquiring a property under charge
- Modification in terms and conditions of charge

Date of Notice of Charge

- Charge on the property or the assets of the company is registered, any person acquiring such property or assets shall be deemed to have notice of such charge

Register of Charges

- Shall be kept by the register for each company