Chapter 5 – Acceptance of Deposits by Company

[Section 73, 74, ~~75~~, 76 and 76A]

Form	Section	Purpose
DPT 1	73 & 76	Circular or advertisement in a newspaper inviting deposits
DPT 2	76	Deposit trust deed
DPT 3	73 & 76	Return of deposits
DPT 4	74	Statement on existing deposits as on the date of commencement of the companies act

Overview of the chapter:

Acceptance of Deposits	Prohibition on Acceptance of Deposits	Repayment of Deposits	Acceptance of deposits from public	Punishment for Non-Compliance / Contravention
↳ Definition of Deposits ↳ Terms related to deposits	↳ Section 73	↳ Section 74	↳ Section 76	↳ Section 76A

Let's understand what's Deposit:

Deposits *[Sec 2(31)]* - "Deposit":

- includes any receipt of money by way of deposit or loan or in any other form by a co.,
- but does not include such categories of amt. as may be prescribed in consultation with the RBI

Note:

1. Repayment of 'deposit' is **time-bound**.
2. It can be secured (by creating charge on tangible asset) or unsecured (no security).
3. **Private co.** can accept deposits from its **members only**.
4. **Public co.** can accept deposits from **members and public** subject to certain **parameters**

Rule 2 of the Companies (Acceptance of Deposit by Company) Rules, 2014:

Deposits shall not include the following:

SN	From	Amount received from:
1	Government	• CG/SG/Local Authority • Stat. Auth. constituted under any Act of Parliament or State Leg. • Any other source where repayment is guaranteed by CG/SG
2	Foreign Source (subject to FEMA)	• Foreign Govt., • Foreign or international banks, • Multilateral financial institutions
3	Banks and PFIs	Amt. received as a loan or facility from • any banking company or SBI or subsidiary or co-operative bank • PFIs
4	Issue of CPs	Amt. received against issue of CPs or other Instruments as per RBI Guidelines
5	Inter-corporate	Any amount received by a company from any other company;

6	Application Money	Any amount received pursuant to an offer made towards subscription to any securities, including share application money or advance towards allotment of securities pending allotment. <u>Explanation</u> – If securities for which appln. money was received is not allotted within 60 days from receipt thereof or is not refunded within 15 days from completion of 60 days, such amount to be treated as a deposit as per these rules. Any adjustment, other than what is allowed of such application money, will NOT be considered as refund.
7	Director	Amount received from person – who at the time of such receipt, was: a. Director of the co. (public or private), or b. Relative of the director of the co. (only in case of private co.) Following conditions are to be met: • At the time of giving such money, director or relative to furnish a declaration to co. that such amt. is not being given out of loans/borrowings from others • Co. to disclose money so accepted – In Board's Report.
8	Bonds or Debentures	Amount raised by issue of: • Bonds/Debentures secured by a first charge or Pari Passu with first charge on any assets referred to in Sch III, excluding intangible asset (provided, amount of such bond/debt <= Market value of such asset as assessed by RV) • Bonds/Debentures compulsorily convertible into shares of co. within 10 years • Non-convertible ~~bond/~~debenture unsecured and listed on RSE as per SEBI
9	Sec. Deposit from Employee	Amt. received from Employee of co. <= Annual Salary in nature of non-interest bearing security deposit.
10	Trust	Any non-interest bearing amount received and held in trust
11	In course of business	Any amount received in course of business of co: a. As an advance for supply of goods/services provided that such advance is appropriated against supply of goods/services within 365 days of acceptance of such advance (except where advance is subject matter of any legal proceeding) b. as advance received towards consideration for an immovable property as per an agreement provided that such advance is adjusted against such property as per the terms of agreement c. as security deposit for performance of contract for supply of goods/services d. as advance received under long term projects for supply of capital goods except those covered under item (b) above e. as an advance towards consideration for providing future services in form of a warranty/maintenance contract as per written agreement, provided that period for providing such services is not > 5 years or period as per common business practice whichever is less; f. as advance received and as allowed by sectoral regulator or as per CG/SG g. as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications; Provided that if amount received under (a), (b) and (d) above becomes refundable (with or w/o interest) due to reasons that the co. does not have necessary permission to deal in goods or properties or services for which advance is

		received → On expiry of 15 days from date they become due for refund, it shall be deemed to be a deposit.
12	Promotors	Any amount brought in by promoters of Co. by way of unsecured loan subject to following conditions: a. the loan is brought in pursuance of stipulation imposed by lending institutions/banks on promoters to contribute such finance b. the loan is provided by promoters themselves or their relatives or both; and c. the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter
13	By a Nidhi Co. or subscription to Chit	Amt. accepted by a Nidhi company as per Section 406 and Rules made thereunder or amt received by way of subscription in respect of a chit under the Chit Fund Act, 1982.
14	CIS	any amount received under any collective investment scheme as per SEBI
15	Start-Up Convertible Note	An amount of >= Rs. 25 lakhs received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within period < 10 years from date of issue in a single tranche) from a person. Explanation: For this sub-clause: a. Start-up co. means a Pvt. co. and recognized as per notification issued by Department for Promotion of Industry and Internal Trade (DPIIT); b. Convertible Note means an instrument: • evidencing receipt of money initially as a debt, • which is repayable at the option of holder, or • which is convertible into such number of Eq. shares of start-up company upon occurrence of specified events and as per the other T&C agreed to and indicated in the instrument.
16	Amt. received from AIF	Any amount received by a company from: • Alternate Investment Funds, • Domestic Venture Capital Funds, • Infrastructure Investment Trusts • Real Estate Investment Trusts and • Mutual Funds registered with SEBI

"Depositor" means:

i. any member of company (public or private) who has made a deposit as per Sec 73(2), or
ii. any person who has made a deposit with a public company as per Sec 76;

"Eligible Company" means a public co. as referred u/s 76 (1), having

i. a net worth of not less than Rs. 100 crores or
ii. a turnover of not less than Rs. 500 crores and
iii. which has obtained the prior consent in general meeting by means of a SR* and
iv. filed the said resolution with RoC before any invitation to public for acceptance of deposits

*Eligible co. accepting deposits within limits u/s 180 (1) (c), may accept it by means of an OR (instead of SR)

Section 73: Prohibition on Acceptance of Deposits from Public

1. On and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter:

Provided that nothing in this sub-section shall apply to:

- Banking company and NBFC as per RBI Act and
- Such other company as CG + RBI may specify in this behalf.

2. A company may, subject to passing a resolution (ordinary) in GM, accept deposit from its members after complying with the following conditions:

   a. Issuance of a circular to members (Form DPT -1) authorized by BoD including statement showing:

Fin. position	Credit Rating Obtained	Total no. of depositors	Amt. due towards previously accepted deposit	Other particulars

Rules relating to Circulars:	
Manner of issuance	• Issue to all members by RPAD or Speed post or e-mode • Publish in newspaper – English + Vernacular. • Place on website of the co.
Attachments to Form DPT-1	Certificate from Stat. Auditor stating that: • Co. has not defaulted in repayment of deposit + interest or • Default, if any, has been made good and 5 years have lapsed from the date such default was made good.
Register with RoC	Co. to send to RoC – Copy of circular signed by majority of the directors - At least 30 days prior to issue → for registration
Validity of Circular in form of Advt.–	Earliest of: • Until 6m from date of closure of FY in which it is issued, or • Date on which Fin. Statement is laid in AGM • If AGM not held – Last date for holding AGM
Fresh Circulars	To be issued, in each succeeding FY for inviting deposits during that FY.

   b. Filing copy of circular + Such Statement with RoC within 30 days before date of issue of the circular;

   c. Co. to deposit, on or before 30th April each year, sum >= 20% of amt. of deposit maturing during following FY & keep in a scheduled bank in separated bank a/c called - Deposit Repayment Reserve A/C
   Purpose - The amount so deposited shall not be utilized for purpose other than repayment of deposit.
   Minimum Balance – 20% of amount maturing during the (Current) FY

   d. Co. to certify that no default in repayment of deposits + Interest and where default had occurred, it was made good and 5 years have lapsed since date of making the default good.

   e. Providing security, if any, for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.

   Provided that in case where a co. does not secure the deposits or secures partially, then, the deposits shall be termed as "unsecured deposits" and shall be so quoted in every circular, form, advertisement or in any doc. related to invitation or acceptance of deposits.

   Note – Partly secured deposits are termed as unsecured.

Exemption to Private Companies:

The above provision of Sec 73(2) clause (b) to (e) shall not apply to a Pvt. co. which:

a. accepts from its members monies not > 100% of PUSC + FR + SPA; or
b. is a start-up → For 5 years from the date of its incorporation; or

c. Fulfils ALL the following conditions:
   - Not an associate or subsidiary of any other co.
   - Borrowings from banks/FI or BC is < Lower of - 2x PUSC or Rs. 50 crores, AND
   - Co. has no subsisting default in repayment of borrowing at time of accepting deposit.

However, the above cos. will have to file details of deposit accepted with RoC (Form DPT-3).

3. Every deposit accepted by a co. u/ss (2) shall be repaid with interest as per the T&C of agreement.

4. Where co. fails to repay the deposit or part thereof or any interest thereon - Depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

Other provisions relating to Deposits (from Rules):

1. Tenure of deposit – A company cannot accept deposit which is:
   - Repayable on demand
   - Repayable within 6m (see exception below)
   - Max. period > 36 months (3 years)

   Exception to min. period of 6 months: Co. may accept deposit repayable within 6m subject to:
   - Deposit <= 10% of PUSC + FR + SPA, AND
   - Deposit repayable on or after 3m from date of such deposit.

2. Max. amount of deposit from Members (existing + new): 35% of (PUSC + FR + SPA)
   Exception – Specified IFSC Public Co. or Private Companies – 100% of (PUSC + FR + SPA)

   The above maximum limit will not apply to a Private co. which is:
   a. is a Start-up → For 10 years from the date of its incorporation; or
   b. Fulfils ALL the following conditions:
      - Not an associate or subsidiary of any other co.
      - Borrowings from banks/FI or BC is < Lower of - 2x PUSC or Rs. 50 crores, AND
      - Co. has no subsisting default in repayment of borrowing at time of accepting deposit

   However, the above cos. will have to file details of deposit accepted with RoC (Form DPT-3).

3. Ceiling on Rate of Interest and Brokerage Payable on Deposits – Maximum – As prescribed by RBI in case of NBFC for acceptance of deposit.
   Brokerage payable on to those who are auth. by co. to solicit deposit and actually procure deposit.

4. Depositor to file application form and declaration:
   Co. can accept deposit only when application is submitted by intending depositor
   Along with application – Declaration that money is not borrowed from any other person.

5. Deposit in Joint Names – Not > 3.
   A joint deposit may be accepted with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor". These clauses operate on maturity.

6. Depositor may nominate a person at any time.

7. Deposit Receipt: Within 21 days from date of receipt of money/realization of cheque/date of renewal → Co. to furnish receipt to depositor/agent.

DR to be signed by duly auth. officer and state date, name & address, amount, rate of intt. & maturity date.

8. Premature Payment – Same as Public Deposit provision. Refer Sec 76

9. Filing of Return of Deposit with RoC – A duly audited return in Form DPT-3 containing info upto 31st March of that year to be filed on or before 30th June
   It is clarified by way of Explanation that DPT-3 shall be used to include particulars of deposits or particulars of transactions not considered as deposits or both by every company (other than a Government company).

10. No right to alter T&C of Deposit – Co. has no right to alter any T&C of deposit, deposit trust deed & deposit insurance contract which may prove detrimental to interest of depositors after circular is issued and deposits are accepted.

11. Disclosure in FS by way of a note –
    - Public co. shall disclose about money received from its directors/~~relatives~~
    - Pvt. company shall disclose about the money received from directors/relatives thereof

12. Penal Rate of Interest: In case co. fails to repay deposits (both secured and unsecured) on maturity, after they are claimed, it shall pay penal rate of interest of 18% per annum for the overdue period.

13. Punishment for Contravention: If co. inviting deposits or any other person contravenes any of the 'deposit rules' for which no punishment is provided in the Act, the co. and OID shall be punishable as under:
    - with fine extendable to Rs. 5,000; and
    - Continuing one - Further fine up to Rs. 500 /day during which the contravention continues.

Section 76: Acceptance of Deposits from Public by Certain Companies

1. Notwithstanding section 73, ELIGIBLE COMPANIES may accept deposits from persons other than its members subject to compliance with Sec 73(2) and rules CG + RBI may prescribe.
   Eligible Company = Public company having Net worth of >= Rs. 100 crores OR Turnover of >=Rs. 500 crores

2. Conditions to be satisfied for accepting such deposits:
   a. Prior consent of members by SR in GM [Ordinary Resolution if deposit is within limit u/s 180(1)(c)]
   b. File such consent (SR) with RoC prior to invitation for deposits
   c. Obtain credit rating from recognised credit rating agency (as approved for NBFCs). This credit rating has to be informed to public at time of invitation of deposit.

      As per Rule 3:
      - Rating shall be obtained every year during the tenure of deposits.
      - Copy of credit rating → RoC along with Return of Deposits in Form DPT-3.
      - Rating shall not be below min. investment grade rating or other specified rating for fixed deposits.

   d. Creating of Charge in case of Secured Deposits:
      - Within 30 days of acceptance.
      - In favor of deposit holders or trustee for the depositor as per prescribed rules
      - Amt. of charge (value of security) shall >= Amt. of deposits accepted (and interest payable thereon).
      - Market value of such asset to be determined by RV.
      - Charge to be created only on its tangible assets. (Rule 6)

   e. Tenure:
      Tenure of deposit – A company cannot accept deposit which is:

- Repayable on demand
- Repayable within 6m (see exception below)
- Max. period > 36 months (3 years)

Exception to min. period of 6 months: Co. may accept deposit repayable within 6m subject to:
- Deposit <= 10% of PUSC + FR + SPA, AND
- Deposit repayable on or after 3m from date of such deposit.

f. Appointment of Trustee for Depositors:
- One/more trustees for depositors to be appointed by the company for creating security for deposits.
- A written consent shall be obtained from the trustees before their appointment.
- A statement shall appear in the circular with reasonable prominence to the effect that the trustees for depositors have given their consent to the company for such appointment.
- Co. to execute a deposit trust deed in Form DPT-2 at least 7 days before issuing circular.

Can a company be appointed as Trustee? – Yes. Law says "Person".

Qualification of Trustee:
Person (incl. a company) shall NOT be appointed as a trustee if such person is:
a. is a director, KMP or any other officer/employee of CASH or a depositor in the company;
b. is indebted to CASH or a subsidiary of such holding company;
c. has any material pecuniary relationship with the company;
d. has entered into any guarantee arrangement w.r.t, principal debts secured by the deposits or interest thereon;
e. is related to any person specified in clause (a) above.

Removal of Trustee:
- General Rule - Can't remove after issue of circular and before expiry of his term
- Procedure to remove:
  - Consent of all the directors present at a meeting of the board.
  - In case the Co. is required to have Independent Dir. - At least 1 ID present in such meeting

g. Maximum amount of Deposit:
Eligible companies other than Eligible Govt co.:
From Members – 10% of PUSC + FR + SPA
From person other than Members – 25% of PUSC + FR + SPA
Eligible Govt. co. – 35% of PUSC + FR + SPA

h. Issuance of a circular (in Form DPT -1) in the name of BoD of co. to the members including:

Statement showing Fin. position	Credit Rating Obtained	Total no. of depositors	Ant. due towards previously accepted deposits	Other particulars

As per Rules relating to Circulars:	
Manner of issuance	• ~~Issue to all members by RPAD or Speed post or e-mode~~ • Publish in newspaper – English + Vernacular. • Place on website of the co.
Circular to be signed and Registered	Co. to send to RoC – Copy of circular signed by majority of the directors - At least 30 days prior to issue → for registration
Validity of Circular in form of Advt.–	Earliest of: • Until 6m from date of closure of FY in which it is issued, or • Date on which Fin. Statement is laid in AGM

	• If AGM not held – Last date for holding AGM
Fresh Circulars	To be issued, in each succeeding FY for inviting deposits during that FY.
Effective Date	Date of issue of advertisement = Date on which Advt. appeared in newspaper Date of issue of circular = Date on which the circular was dispatched.

i. DRR A/C:
Co. to deposit, on or before 30th April each year, sum >= 20% of amt. of deposit maturing during following FY & keep in a scheduled bank in separated bank a/c called - Deposit Repayment Reserve A/C
Purpose - The amount so deposited shall not be utilised for purpose other than repayment of deposit.
Minimum Balance – 20% of amount maturing in CURRENT FY

j. Rate of Interest and Brokerage Payable on Deposits – Maximum – As prescribed by RBI in case of NBFC for acceptance of deposit.
Brokerage payable on to those who are auth. by co. to solicit deposit and actually procure deposit.

k. Depositor to file application form and declaration:
Co. can accept deposit only when application is submitted by intending depositor
Along with application – Declaration that money is not borrowed from any other person.

l. Deposit in Joint Names – Not > 3.
A joint deposit may be accepted with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor". These clauses operate on maturity.

m. Depositor may nominate a person at any time.

n. Deposit Receipt: Within 21 days from date of receipt of money/realization of cheque/date of renewal → Co. to furnish receipt to depositor/agent.
DR to be signed by Auth. officer and state date, name & address, amount, rate of intt. & maturity date

o. Register of Deposits: Co. accepting deposits shall maintain one/more separate registers for deposits accepted or renewed at its RO. Following particulars shall be entered in the case of each depositor:

name, address & PAN	particulars of the guardian (In case of minor)	particulars of the nominee;	deposit receipt number;	date & amt of each deposit;	duration & Repayment date	rate of interest

due date for payt. of interest;	mandate & instructions for payment of interest and for non- deduction of tax at source	date on which the payment of interest shall be made;	charge created for repayment of deposits	any other relevant particulars

Entries in Register to be made within 7 days from issuance of receipt + Authenticated by dir./CS.
Preserve in good order for >= 8 years from FY in which the latest entry is made in the register.

p. Premature Repayment of Deposits:
- After 6m but before expiry of actual date of maturity,
- if depositor requests for premature repayment
- the RoI shall be 1% less than what would be payable for period for which deposit has actually run

Note – If period is less than 6m, exclude that. Else, include full year.

Reduction of rate of interest (i.e., 1%) is not applicable in the following cases: Where the deposit is prematurely repaid in order to:
- Comply with Rule 3 i.e., to reduce the total amt. of deposits to bring it within permissible limits; or

- provide for war risk or other related benefits to the personnel of naval, military or air forces or to their families during the period of emergency declared under Article 352 of the constitution.

q. Premature Closure of Deposit by Holder to Earn Higher Rate of Interest:
In case a depositor desires to avail higher rate of interest by renewing the deposit before its actual maturity date, the company shall pay him the higher rate of interest only if the deposit is renewed for a period longer than the unexpired period of deposit.

r. Filing of Return of Deposit with RoC – A duly audited return in Form DPT-3 containing info upto 31/3 to be filed on or before 30th June
It is clarified by way of Explanation that DPT-3 shall be used to include particulars of deposits or particulars of transactions not considered as deposits or both by every company (other than a Govt. co).

s. No right to alter T&C of Deposit – Co. has no right to alter any T&C of deposit, deposit trust deed & deposit insurance contract which may prove detrimental to interest of depositors after circular is issued and deposits are accepted.

t. Disclosure in FS by way of a note – Public co. shall disclose about money received from its directors.

u. Penal Rate of Interest: In case co. fails to repay deposits (both secured and unsecured) on maturity, after they are claimed, it shall pay penal rate of interest of 18% per annum for the overdue period.

v. Punishment for Contravention: If co. inviting deposits or any other person contravenes any of the 'deposit rules' for which no punishment is provided in the Act, the co. and OID shall be punishable as under:
   - with fine extendable to Rs. 5,000; and
   - Continuing one - Further fine up to Rs. 500 /day during which the contravention continues.

Section 76A - Punishment for Contravention of Section 73 or Section 76

- Where co., accepts or invites or causes any other person to accept any deposit in contravention of prov,
- if co. fails to repay deposit or any interest due thereon within the time specified u/s 73 or 76:

Penalty:

a. Co. shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine – From (Rs. 1 crore or 2x Amt. of deposit whichever is lower) to Rs. 10 crores; and
b. OID – Jail upto 7 years AND with fine – Rs. 25 lakhs to Rs. 2 crores.

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

Section 74: Repayment of Deposits, etc., Accepted Before Commencement of this Act

1. Filing of Statement of Deposits with RoC and Repayment thereafter:
   Where deposit was accepted before commencement of this Act (i.e. before 1.4.2014), and remains unpaid as on 1.4.2014 or becomes due at any time thereafter, the company shall take the following steps:
   a. file, within 3 months from such commencement, with RoC - Statement of all deposits accepted by co. & sums remaining unpaid on such amt. with interest
   b. Repay within 3 years from such commencement or maturity date, whichever is earlier.

   Note – If co. has been repaying such deposits and interest thereon without any default on due dates for the remaining period of such deposit as per the T&C, point (b) above shall be deemed to have been complied with.

2. Extension of time for repayment by Tribunal:
   Tribunal may, on an application made by the company, after considering the financial condition of the co., amt. of deposit and interest payable thereon & such other matters, allow further time as considered reasonable to the company to repay the deposit.

3. Punishment for Non-Repayment of Deposits:
   Company - Fine Min. of Rs. 1 crores and Max. of Rs. 10 crore; and
   OID - Jail upto 7 years or with fine Rs. 25 lakhs to Rs. 2 crores or with both.