

Deposits

1. What is a deposit?

1. Deposit includes —

- Any amount received
- by the company
- in form of Deposit (or) Loan (or) any other amount

2. Deposit do not include —

- Such amounts received by company
- as prescribed in the rules.

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2. what is not a deposit ?

(i) Government & related receipts

Any amount received from

- CN
- SG
- LA
- SA

(ii) Receipts from foreign source

Any amount received from

- Foreign Government
- International Banks
- Multilateral Financial institutions
- Foreign collaboration
- Foreign Body Corporates
- Foreign citizens
- PRI under FEMA.

(iii) Receipts from Banks & F.I

Any amount of money received from

- Banking Company.
- SBI
- Co-operative Bank
- Scheduled Banks
- PFI
- Regional F.I.
- Insurance Companies.

(v) & (vi) Receipts as ST securities

Any amount received from issue of

- Commercial paper
- Inter company deposits.

(vii) Receipts in form of application money

and-1: company accepted application money.
and-2: Allotment is pending.

end-3: Allotment is done with 60 days from date of receipt of application money.

Exception: If allotment is not done within 60 days, then from the expiry of 60 days within 15 days Co shall refund the application money. If not, from expiry of 60 days, it shall be treated as a deposit.

(viii) Receipts from directors & related parties

- (a) Amount received from director of a company
- (b) Amount received from relative of director of private company.

conditions to claim exemption

- (1) Amount must be given by aforesaid persons out of their own sources but not loans/deposits borrowed by them.
- (a) A written declaration to that effect.

(ix) Receipts from issue of debentures

- (a) They are secured debentures (or)
- (b) Convertible debentures with compulsory conversion in 10 years.

Exception :

Listed debentures though non convertible (or) unsecured are not treated as deposits.

Note:

Secured debentures beyond security value is treated as deposit.

(X) Receipts from employee

Any amount received —

- from Employee
- as a security deposit
- $\neq$ Annual salary
- under contract of employment
- it is a non-interest bearing deposit.

(xi) Receipt as a trustee

Any amount received as and kept in trust.

(xii) Receipts in ordinary course of business

a. Advance towards supply of goods

- It is an advance.
- collected towards supply of goods (or) services.
- Advance is appropriated against goods.
- Such appropriation shall be made within 365 days. (extension allowed only in case of court rule)

b. Advance towards immovable property

- Advance is collected by company.
- towards a sale of immovable property.
- Amount is adjusted to sale amount.

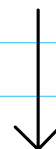
c. Security deposit towards performance of a contract.

d. Advance for long term projects for supply of Capital goods.

e. Advance for future services

- Advance collected for providing future services.

- Future services are in the form of warrants.
- Term of warranty etc should not exceed time which is generally in practice
(or)
5 years



- f. Advance allowed by sectoral regulator/SG/Ch.
- g. Advance in the form subscription to any print/electronic medium.

(xiii)

Amount received from promoters

Any amount received ———

- from promoters / their relatives
- in the form of UNSECURED LOAN.
- As a condition imposed by Bank/FI against giving a loan.
- Term of such unsecured loan $\neq$ Term of bank loan.

(xiv)

Deposits accepted by Nidhi company.

(xv)

Deposits accepted by chit fund company.

(xvi)

Amount accepted under collective investment scheme

(xvii)

Amount accepted under Alternative investment funds, Infrastructure investment trusts etc.

(xviii)

Amount received by startups

- Amount is received by startup
- from a person
- In a single tranche.
- Amount of ₹ 25L/more

- In the form of convertible note/repay-able in 10 years.

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Deposit rules

Sec 73, 76 r/w Rules

3. Sec 73: Prohibition of acceptance of deposits from public

1. A company is prohibited to accept deposits from the public except in the manner provided in sec. 76. r/w rules.

2. Conditions for acceptance of deposits from members.

- a. It can either a public/private company.
- b. Obtain approval of SH + OR (SR in some cases) + GM.
- c. Issue a circular containing details of
 - * financial position of co.
 - * Credit rating obtained.
 - * No. of depositors existing & amount due
- d. file circular with ROC within 30 days prior to issue of circular.
- e. Deposit on/before 30th April a sum & 20% Deposits maturing on 31st March of following year in Deposit repayment reserve a/c as a separate a/c with Scheduled Bank.
- f. If company has committed any default w.r.t. any deposits already accepted it cannot accept money in form of deposits for 5 years from the date of making good the default.
- g. Provision for security if any. If the deposit is unsecured, the circular shall clearly mention as "UNSECURED".

4. Sec. 76: Acceptance of deposits from Public

1. Applicability:

Public company only. Not applicable to a Private company.

2. Conditions of applicability:

- Public company.

- Net worth : ₹ 100 Cr (or) more
OR

- Turn over : ₹ 500 Cr (or) more

- Pass a resolution subject to Sec 180(1)(c)

- a. IF existing borrowing together with proposed borrowing (Public deposit)

EXCEEDS Paid up share capital, free reserve & Securities premium — $SH + SR + GM$

- b. Other cases — $SH + OR + GM$

- IF SR is passed, file copy of SR with ROC in form MAT-14 within 30 days of passing SR.

3. Other Conditions

- Comply with requirements of Sec. 73(2)

- Comply with Rules.

- Credit Rating Conditions:

- * Obtain credit rating only from recognised credit rating agency.

- * Rating given shall be informed to public before accepting deposits.

- * Rating shall be obtained every year during tenure of deposit.

- Where company accepts secured deposits, it shall within 30 days therefrom shall register the charge.

5. Punishment for Contravention of Sec. 73 (or) 76:-

1. When section gets attracted?

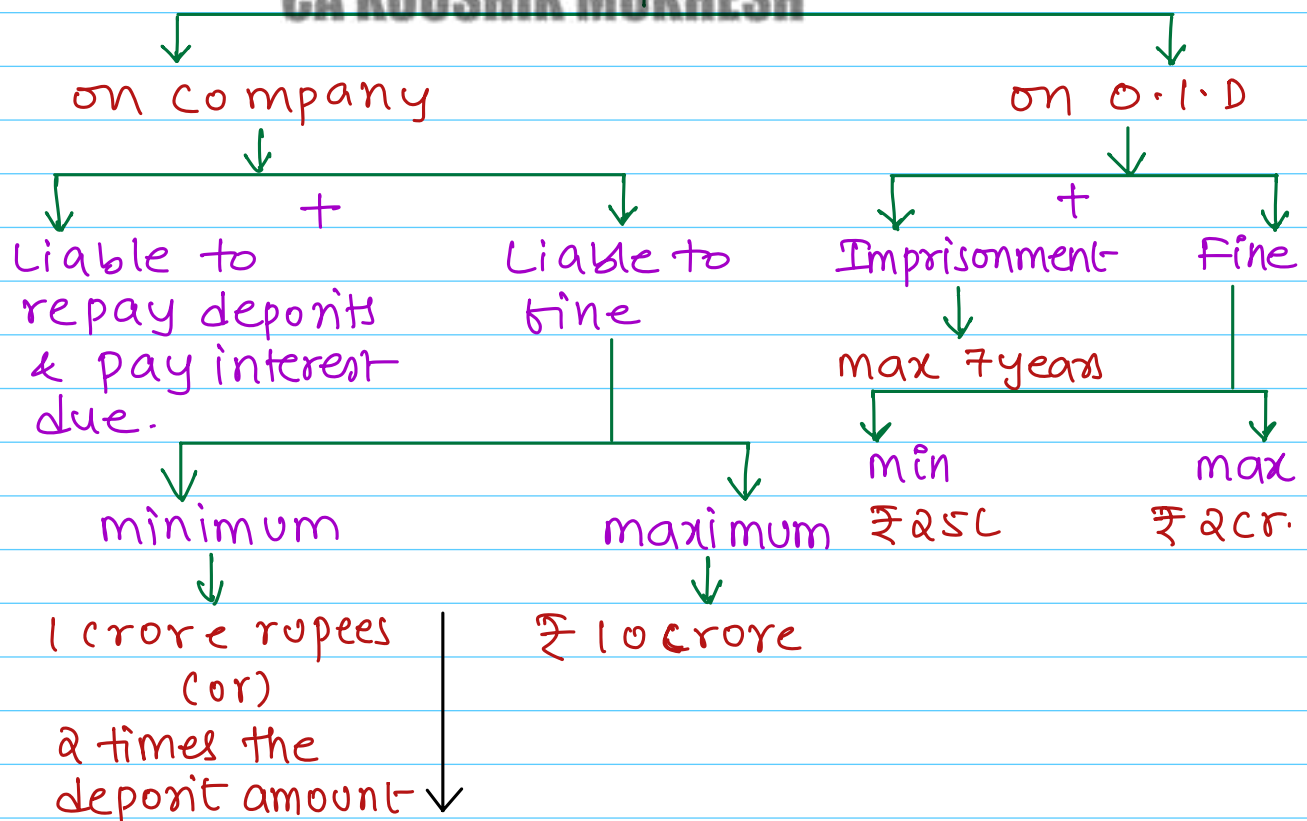
Situation 1: Company invites/accepts the deposits in contravention of Sec. 73 (or) 76.

Situation 2: Company fails to repay deposits either full/part/any interest within time mentioned u/s 73/76.

2. Who is Liable?

Both Company & Officer in default

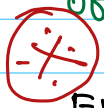
3. What is the Liability?



6. Rules attached Sec. 73 & 76 - Comparison

Particulars	Rules w.r.t. S. 73	Rules w.r.t. S. 76
1. Content-	Acceptance of deposits from the members.	Acceptance of deposits from the public i.e. not being members.
2. Who can accept the deposit?	Both public as well as private company.	only Eligible public company.
3. Issuance of circular (Refer S. 73 in previous pages for other details)	* Circular is mandatory. * It shall be in FORM DPT-1. * Circular shall be then attached with certificate of statutory Auditor w.r.t. NO DEFAULT in deposit/interest.	- Same as S. 73 -
4. Validity period of circular	6ms from close of FY (or) Agm date (if held) (or) Last date as pers. 96 (if not held) <u>whichever is earlier.</u>	- Same as S. 73 -
5. Tenure of deposits.	minimum : 6m maximum : 36m (No demand deposits) (No exception to maximum term) <u>Exception to minimum</u> cnd1: minimum 3m + cnd2: Deposit amt ≠ 10% (PSC + FR + SP)	- Same as S. 73 -

6. maximum amount
of deposits



ED = Existing
outstanding
deposit

PD = Proposed
deposit.

Pvt Co:

$(ED + PD) \nless 100\% (PSC + FR + SP)$

Public Co:

$(ED + PD) \nless 35\% (PSC + FR + SP)$

Pvt Co:

~~PROHIBITED~~

Eligible Public Co:

(i) from members

$(ED + PD) \nless 10\% (PSC + FR + SP)$

(ii) from Public

$(ED + PD) \nless 25\% (PSC + FR + SP)$

Eligible Public Co - Govt Co

$(ED + PD) \nless 35\% (PSC + FR + SP)$

7. Pre-mature
Settlement

- Request should be from the depositor.
- Company cannot voluntarily do.
- Interest will be reduced by 1%.

— Same as S. 73 —

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Interpretation of Statutes

1. Concepts covered:

- * meaning of Statute
- * meaning of interpretation
- * meaning of construction
- * Internal aid for interpretation.
- * External aid for interpretation.
- * Rules of interpretation
 - Literal
 - Reasonable
 - Harmonious
 - Beneficial / Heydon's Rule.
 - Exceptional
 - Ejusdem generis.
 - Noscitur a sociis
 - Contemporanea expositio
 - Expressio unius est exclusio alterius.
- * Interpretation of documents and deeds.
- * miscellaneous.

2. meaning of certain terms

a. Statute

- Generally, statute means all laws and regulations of any kind emanating from any source.
- However, now statute is considered synonymous with an Act of parliament.
- Statute is one which is established by legislature directly.
- Statute is a will of legislature.
- Any thing that originates from legislature is called as "enacted law" (or) "statute".

b. Interpretation :-

- Interpretation is a process by which courts will ascertain meaning of legislature through the medium of words.
- In simple terms, interpretation is a process of giving real meaning to the words and ascertaining intention of the legislature.

c. Construction :

- Construction is a process of ascertaining true meaning (or) intention of framers i.e. law maker.
- It is a concept of going beyond the actual expression.

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3. Internal aid to interpretation

1. Long title & short title

- * short title will recognise the law.
An enactment is called as "short title".
- * A Longtitle will not merely recognise the law but will describe the enactment.
- * Long title will be a part of enactment.

2. Preamble (Imp)

- * Preamble explains the object, scope & purpose of an Act.
- * Preamble explain object of an Act more comprehensively than Longtitle
- * Preamble will express _____
 - Cause of an Act
 - Evil it want to provide remedy.
- * Preamble cannot override plain provision of law.
- * However, when any provision gives rise to ambiguity as to its proper interpretation, one may refer to preamble.

3. Headings / Title of Chapter:-

- * Generally we find grouping of some no. of sections referring to particular context (or) a subject. They are grouped by a pre-fix called as "Chapter" (or) "Headings".
- * One can legitimately use heading to interpret that part of enactment.
- * Heading cannot control the plain meaning in an enactment. However, when there is an ambiguity in its interpretation, one can refer to heading.
- * Heading / Title of a chapter is what a preamble to an Act.

4. marginal notes:

- * marginal notes are summaries found on the sides of the sections.
- * They are used to sum up entire effect of a section.
- * They are not a part of legislation/enactment since they are not present when law is passed.
- * However, marginal notes to C.O.I articles are forming part of enactment since they are present at the time when C.O.I is passed in the constituent assembly.

5. Illustrations:-

- * Though not all, some sections of the Act contains illustrations.
- * Illustrations carry the text of the sections but it doesn't form part of the section.
- * However, Illustrations form part of the Statute.
- * one can refer an illustration to a section for its proper interpretation.
- * Illustration cannot override the main content of section.
- * It cannot curtail (or) expand the ambit of the section.

6. Explanation:

- * Explanations are appended to the section.
- * Explanation will explain the meaning of a term (expression) phrase used in a section.
- * Explanation may used to include something/exclude something from the

Section.

- * Explanation cannot widen overall scope of section.

7. Schedules

- * Schedules form part of an Act.
- * They must be read together with the sections for proper construction.
- * They cannot control/prevail over the content of enactment.
- * If there is any inconsistency between schedule & provision in an enactment, it is always the enactment, that prevail.
- * Schedules often contain forms & formats.

8. Proviso:

- * Proviso is used for 2 purposes
 - to create an exception to what is provided in the enactment.
 - to qualify any thing stated in the enactment.
- * Proviso is embedded within the section and is an integral part of section.
- * Proviso is identified by use of phrase "provided that...".

Note: Difference b/w exception, proviso & saving clause

Exception	Proviso	Saving clause
Exceptions are intended to restrain any provision to a particular case.	Proviso is used to remove special cases from general enactment.	Saving Clause preserves from destruction certain rights, privileges e.t.c.

4. Rules of interpretation:-

A. Rule of Literal construction :-

- * The first and primary rule of construction is that, intention of law shall be understood from the words of law itself.
- * If the words of law are capable of giving only one meaning, then it is not open to courts to ignore its plain meaning and adopting hypothetical construction.
- * The cardinal rule is that statute has to be read literally with its natural/ grammatical meaning.
- * If the meaning is plain, then it is not desirable to make reference to cases.
- * If the language used in the statute is clear and unambiguous and it is capable of only one interpretation, it is not correct to move out of its natural & ordinary meaning.
- * When there is a choice to make between 2 interpretations i.e. narrow & wide, and narrow interpretation fails to achieve the purpose, then one should adopt a wider one.
- * Natural and grammatical meaning:
 - Statute must be read as per
 - Natural • popular & • ordinary meaning
 - It should be construed in its
 - Plain • Literal & • grammatical sense.
 - If plain meaning is giving rise to absurdity, repugnancy/ inconsistency, then one can go beyond grammatical meaning.

B. Rule of Eiusdem Generis:

1. Applicability of Rule:

- * There must be enumeration of specific words.
- * General words follow specific enumeration
- * specific words falls under same class/category.
- * specific words do not exhaust the whole category.
- * There is no other legislative intent.

2. Non-applicability of rule:

- * If the enumeration itself contains general words.
- * Particular/specific words exhaust whole category.
- * Where law intends not to use the rule of "eiusdem generis".

3. Effect of the rule:

General words shall take their meaning from previous specific words.

C. Noscitur a sociis:

- * When two (or) more words are susceptible of analogous to each other, then they must be understood in their Cognate Sense.
- * The general word shall take its colour from previous words used.

D. Contemporanea expositio:

- * This rule is based on concept that a statute (or) a document shall be interpreted on the basis of the exposition it has received under the contemporary situation.
- * Law should be understood in a sense in which it was understood when it is passed.

E. Heydon's Rule / Mischief Rule:

* When the language of a statute is so that it is possible of making two/more interpretations, the most firmly established rule is laid down in Heydon's case.

* Questions to be answered to use Heydon's Rule

- What was the law before making the Act?
- What is the mischief that law has not provided?
- What is the remedy the Act has provided?
- What is the reason for such remedy?

* Hence, courts should always seek to

- Suppress the mischief and
- Advance a remedy.

F. Rule of Beneficial construction

* It is method of interpreting the provision liberally so as to give effect intended purpose of legislature.

* Where a provision is made to provide benefits to people who are underprivileged in past, sections should be read to give extended meaning so as to benefit all.

G. Golden Rule of interpretation / Rule of Reasonable construction

- * Generally words of a statute should be given a sensible meaning i.e. their ordinary meaning.
- * It is only when there is a scope for 2/more interpretations, construction comes in place.
- * So, that interpretation which furthers the object of the Act should be preferred to one which defeats it.
- * Similarly, when the grammatical interpretation is leading to absurdity, courts will resort to reasonable construction.
- * Thus, if court finds that giving plain meaning will not be fair / reasonable construction, it becomes duty of court to depart from dictionary meaning and adopt such construction which will suppress the mischief and advance a remedy.

H. Rule of Exceptional construction:-

- * Generally words of law should be read in such a way to give its sensible meaning.
- * Ignoring the general rule, if the ordinary meaning is not sensible (or) is defeating the intent/object of the law, it should be eliminated.

Interpretation of 'AND' and 'OR'

- * 'And' is conjunctive particle
- * 'OR' is disjunctive particle.
- * 'And' is an expression to join / connect 2 provisions / conditions.
- * 'OR' is used as an 'alternative'.
- * Generally 'AND' is conjunctive and 'OR' is disjunctive. But sometimes 'AND' is read

as 'OR' & 'OR' is read as 'AND' to give full effect to the intent of legislature.

Interpretation of 'MAY' and 'SHALL'.

- * 'MAY' is a directory provision.
- * 'SHALL' is a mandatory provision.
- * Where enactment / provision prescribes any action to be taken without any option / discretion, it is regarded as 'mandatory' & is associated by the word 'SHALL'.
- * Where the acting authority is having an option / discretion to do something, it is regarded as 'directory' and is associated by the word 'MAY'.
- * 'MAY' signifies permission and the authority is having discretion. on the other hand shall is a word of COMMAND.
- * In case where normal significance & interpretation as permissive gives rise to absurdity, inconsistency, then it shall be disregarded.
- * Sometimes, though MAY is permissive and directory it shall be read as if it is mandatory and is therefore read as 'SHALL'.

I. Rule of Harmonious Construction :-

- * It is a recognised rule of interpretation that expressions used in a statute must be interpreted sensibly that harmonizes with the object of the statute.
- * Opposite of harmony is **Conflict**.
- * This rule will be applied when there is a conflict between provisions.
- * If it is possible to avoid a conflict between two provisions on a proper construction, the courts should interpret in such a way that it should bring harmony between each other.
- * Generally, a statute shall be read as a whole. Every provision in the statute must be read in reference to another section and give effect to both of them.
- * However, if it is not possible to avoid/resolve the conflict - "**Specific rule shall override general rule**".