

DEPOSITS

* Meaning of Deposits :

1. As per Section 2(31), Deposit means any money received by company in the manner of deposits. But does not include amount specified by RBI.
2. In other words, any money received on repayment basis shall be deposit because money received and not liable for refund cannot be called deposits.
3. It defines that :
 - a) Money taken by Company on repayment basis shall be deposit.
 - b) Deposit taken by Company is not against shares or debentures, it is just a money taken with a promise of repayment.
 - c) People who deposit money with Company are called Depositors.
 - d) However, all money received by Company are not deposit.

RBI has given a list of 17 items in which Company receives money but the same is not deposit.

e) If some money received by Company is not considered deposit, it means section 73 to 76 A do not apply on such money.

* [Section - 73] Prohibition on acceptance of deposits from Public.:

1. This section simply says that the deposits cannot be accepted from the general public. If the Company is not eligible under section 76.
2. It means even if a Company is a public Company but it does not fulfill criteria of section 76, it cannot accept deposits from public, other than its members.

* [Section - 74] Repayment of Deposits accepted before commencement of this Act.:

1. Any Company which carry deposits as on 01-04-2014 in its Balance Sheet, which were accepted under old Company law must repay all of them and accept fresh deposits under Companies Act, 2013.
2. Time limit for repayment is 3 years from 01-04-2013 or due date of repayment, whichever is earlier.

3. However, 3 years from 01-04-2014 already expired on 31-03-2017. So, this section has become redundant for future.

* [Section-75] Damages of Fraud:

1. If Company did not pay deposits u/s 74, and it is proved that company intend to defraud the depositories, Section 447 will apply on Company and its officers. ↓

Refer offences and Penalties

2. Apart from section 447, Company officers will also be liable for damages to be paid to them who suffered because of such non-payment.

* [Section-76] Acceptance of Deposits from Public by certain Companies:

1. Eligible company u/s 76 means a public company whose net worth minimum ₹ 100 crores or whose turnover is minimum ₹ 500 crores and had passed special resolution to accept deposits.

2. Deposits from members may be secured or unsecured but Deposits from public must be secured.

3. Company must create charge in favour of Depositors within 30 days of receiving deposits of an amount equals to or more than the amount of deposits.

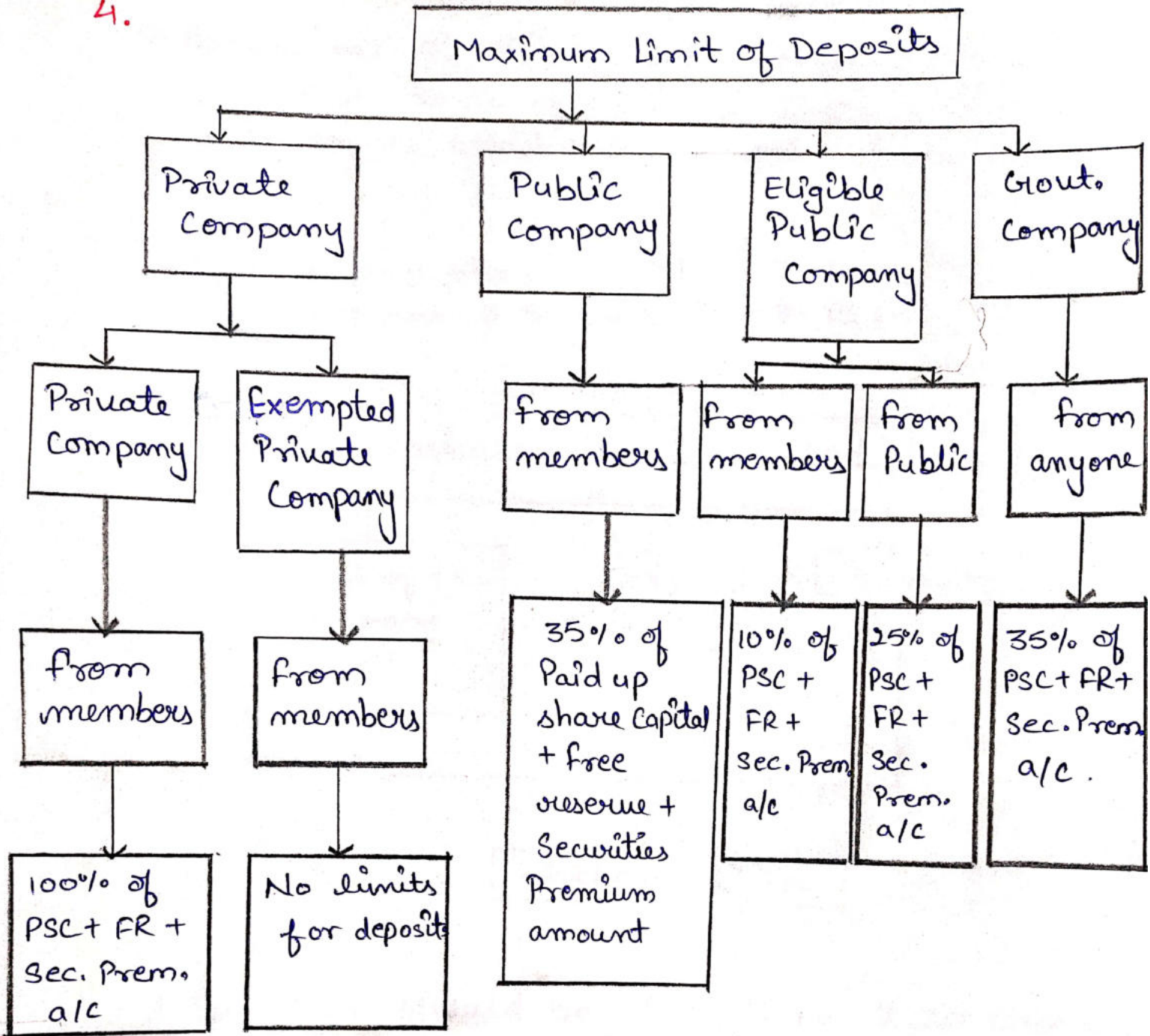
* [Section - 76 A] Punishment for Contravention of Section 73 or 76 :

1. In case of any non-compliance, Company will pay fine of minimum ₹ 1 crore or twice the amount of deposit, whichever is lower.
2. This fine can go up to ₹ 10 crore as may be imposed by authorities.
3. Officer in default shall pay minimum ₹ 25 Lakhs and maximum ₹ 2 crore.
4. Officer in default may also be liable for imprisonment maximum 7 years.
5. If it is found that contravention of Section 73 or 76 was done with fraudulent intention, Section 447 will also apply.

* Acceptance of Deposits Rule, 2014 :

1. Deposit Rules, 2014 do not apply on banking company and NBFC as their deposits are governed by RBI.
2. Minimum and Maximum period :
 - a) Minimum period shall be 6 months.
 - b) Maximum period shall be 36 months.
 - c) Minimum period can also be 3 months if total deposits do not exceed 10% of paid up share capital + free reserves + Securities Premium amount.
3. Joint Deposits :
 - a) Maximum Joint depositories allowed are 3.
 - b) Joint Deposits can be operated by them jointly, either or survivor first named or survivor, Anyone or survivor.

4.



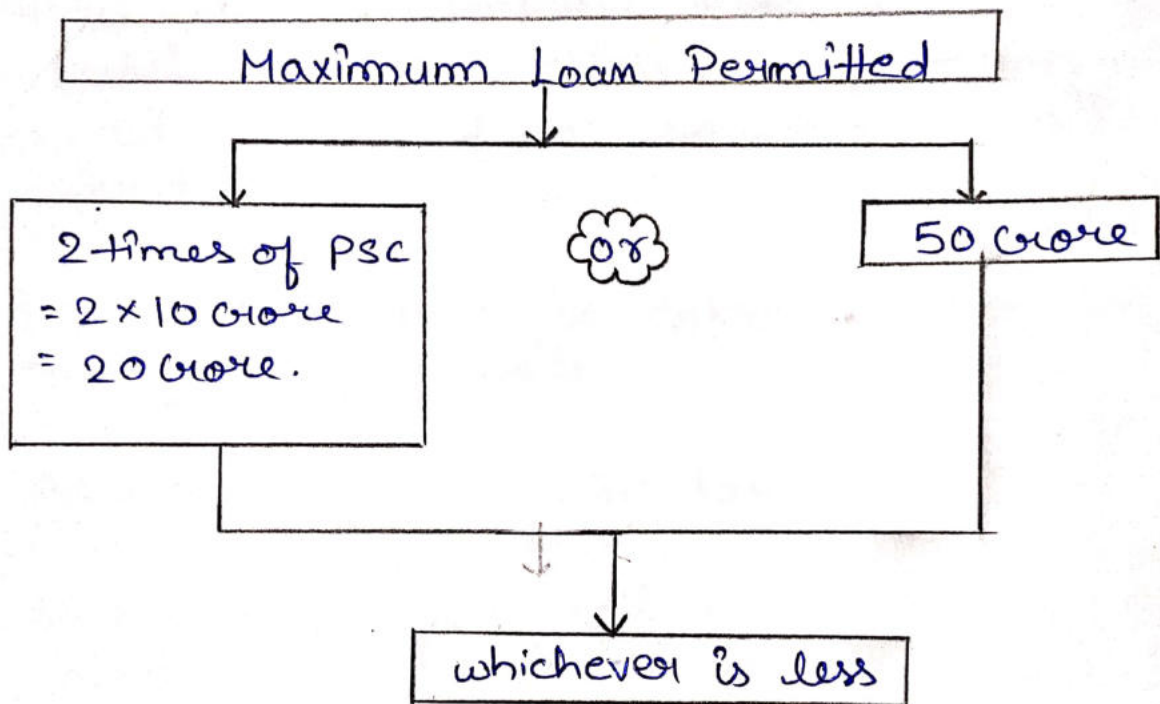
5. Exempted Private Company means :

- a) Start up company for 5 years
- b) Any other private company which fulfill following 2 conditions :
 - > such private company should not associate or subsidiary of any other company.

→ Borrowings of this private company should be less than twice of paid-up share capital or ₹ 50 crore, whichever is less.

NBFC &
Non-Banking
Financial
Companies

Eg:- Paidup Share Capital ₹ 10 Cr.
Reserve & Surplus ₹ 15 Cr.



So, loan should be less than ₹ 20 crore for getting unlimited amount of deposits.

6. Rate of Interest

Company can pay any interest on its deposits but this rate shouldn't be more than the rate applicable on deposits taken by NBFC.

7. Reservation of Right to make changes.

Company cannot reserve the right to make changes in the term and conditions of Deposit.

8. Credit Rating (only for eligible Company)

- a) When eligible company takes deposits from public it must obtain minimum specified credit rating from specified credit rating agencies.
- b) Such rating must be taken each year during the year of deposits.

9. Advertisement or Circular

- a) Every company accepting deposits u/s 73 shall send circular inviting deposits in form DPT-1.
- b) DPT-1 shall also be published in English and Oriental language Newspaper.
- c) Every company accepting deposit u/s 76 will also issue Newspaper notice in form DPT-1

10) ROC Filing

ROC filing of DPT-1 shall be done 30 days

before Dispatch to members and Newspaper notice so that ROC gets sufficient time for raising objections.

11) Validity period of Circular :

- a) A circular once issued shall remain valid for 6 month period.
- b) It means deposits must be taken in that period only and if 6 months are over, any fresh deposits will need fresh circular.

* Receipts not considered as Deposits as specified by RBI :

1. Amount received from the Central Government or any source guaranteed by Central Government or State Government or any amount received from local authority or statutory Authority.
2. Amount received from Foreign Government, foreign or International Banks, Multilateral financial Institutions, Foreign Government owned development financial Institution, Foreign Export credit Agency, Foreign collaborators, Foreign Bodies Corporate and Foreign Citizens, Foreign Authorities and Person Resident Outside India (PROI) as per Foreign Exchange Rules.

3. Amount received as loan or facility from Bank.
4. Amount received as a loan from Public Financial Institutions, Regional Financial Institutions, Insurance Companies.
5. Amount received against Issue of Commercial Paper or other similar instrument.
6. Amount received by a Company from any other Company.
7. Amount received and held towards subscription to any securities, If allotment is not done in 60 days of receiving money and refund is not processed in 15 days after expiry of 60 days.
8. Amount received from director of the Company or relative of director of a Private Company with a declaration in writing that source of this money is not a loan or deposit from someone else.
9. Amount raised by the issue of Bonds or Debentures secured or unsecured, convertible or non-convertible, listed or unlisted for the tenure of debentures.

10. Amount received from an employee of the Company not exceeding his annual Salary in the nature of Non-Interest Bearing Security deposit
11. Amount of Non-Interest Bearing trust.
12. Following Advances :
 - a) Amount received as advance from customer to be appropriate in maximum 365 days unless its a Court Dispute.
 - b) Advance against Property Sale.
 - c) Security Deposit for any Contract.
 - d) Amount received for long term project.
 - e) Warranty advance for maximum 5 years.
 - f) Advance allowed by Sectoral regulators.
 - g) Advance for Subscription towards publication whether in print or in electronic.
13. Any amount brought in by Promoters of the Company by way of unsecured loan only as a Pre-condition of Financial Institution giving assistance to Company.
14. Amount accepted by Nidhi Company.

15. Amount received by way of subscription in respect of a debt.
16. Amount received by the Company under any Collective Investment scheme as per SEBI Regulation.
17. Amount of ₹ 25,00,000 or more received by a Startup Company by way of convertible note, convertible into Equity shares or repayable within a period not exceeding 10 years from the date of issue, in a single transaction per person.

List of Important Forms

Form No.	Purpose of Form as per Companies Act, 2013	Important Section	Important Rule
DPT-1	Circular or Circular in the form of Advertisement inviting Deposits	73 (2)(a), (76)	4(1), 4(2)
DPT-2	Deposit Trust Deed	—	7(2)
DPT-3	Return of deposits		16
DPT-4	Statement regarding deposits existing on the commencement of the Act		20
MBP-1	Notice of interest by director	184(1)	9(1)
MBP-2	Register of loans, guarantee, security and acquisition made by the company	186(9)	12(1)
MBP-3	Register of investments not held in its own name by the company	187(3)	14(1)
MBP-4	Register of contracts with related party and contracts and Bodies etc. in which directors are interested.	189(1)	

Amendment made by Companies (Amendment) Act, 2017

Punishment for Contravention of Section 73 or 76

“Section 76A. Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under Section 73 or Section 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under Section 73 or Section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under Section 73:

- (a) *the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than ₹ 1 crore but which may extend to ₹ 10 crores; and*
- (b) *every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than ₹ 25 lakhs but which may extend to ₹ 2 crores, or with both:*

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."

PRACTICAL QUESTIONS

2013 - June [8] (c) VKS TEXTILES PVT. LTD., which is a private company which is not a subsidiary of any public company, does not furnish the details of its investments in Indian companies as required by note (1) *Schedule III* to the Companies Act, 2013. The company is of the view that Section 186 of the Companies Act, 2013 is not applicable in its entirety to all the companies, i.e. public and private.

Is the said view of VKS TEXTILES PVT. LTD. in accordance with law?

(3 marks)

Answer:

Central Government to prescribe accounting standards (Section 133 of the Companies Act, 2013) The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under **Section 3 of the Chartered Accountants Act, 1949**, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

— Space to write important points for revision —

2018 - June [2] (a) ABC Ltd. having a networth of ₹ 80 crores and turnover of ₹ 30 crores wants to accept deposits from public other than its members. Referring to the provisions of the Companies Act, 2013, state the conditions and the procedures to be followed by ABC Ltd. for accepting deposits from public other than its members. **(4 marks)**

Answer:

Eligible company : As per Section 76 of the act a public company which is having a net worth of more than ₹ 100 crores , OR having a net turnover of ₹ 500 crores , is an Eligible company.

Only an eligible public company can accept deposits from publics subjected to certain conditions.

Prior consent of company , in general meeting , by SR File the SR to the registrar before making any initiation.

If proposed deposit is less than net worth of the company then consent of the company can be obtained by OR.

Terms and conditions for eligible companies to accept deposits from public:
A company cannot accept the following deposit.

Demand deposit: Deposits payable within 6 months or after 36 months from the date of acceptance. Deposits may be accepted in joint name but not more than 3 joint depositors.

Since, ABC Ltd. has a net worth of ₹ 80 crores and turnover of ₹ 30 crores, which is less than the prescribed limits, hence, it cannot accept deposit from public other than its members. If the company wants to accept deposits from public other than its members, it has to fulfill the eligibility criteria of net worth or Turnover or both and then the other conditions as stated above.

— Space to write important points for revision —