

Chapter 5 - Acceptance of Deposits By Companies

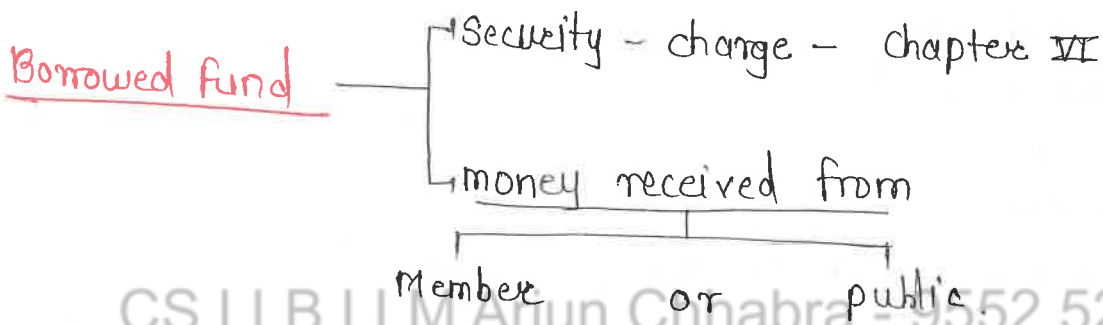
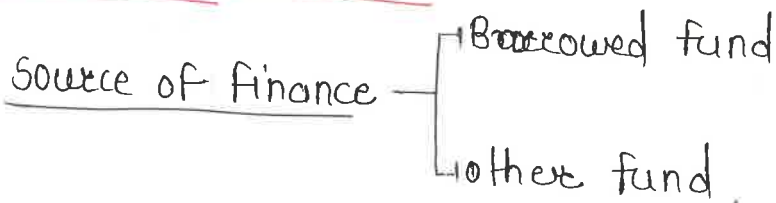
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The companies [Acceptance of Deposits] Rules, 2014.

Section = 2(81) + section 73 to 76A.

Forms = DPT

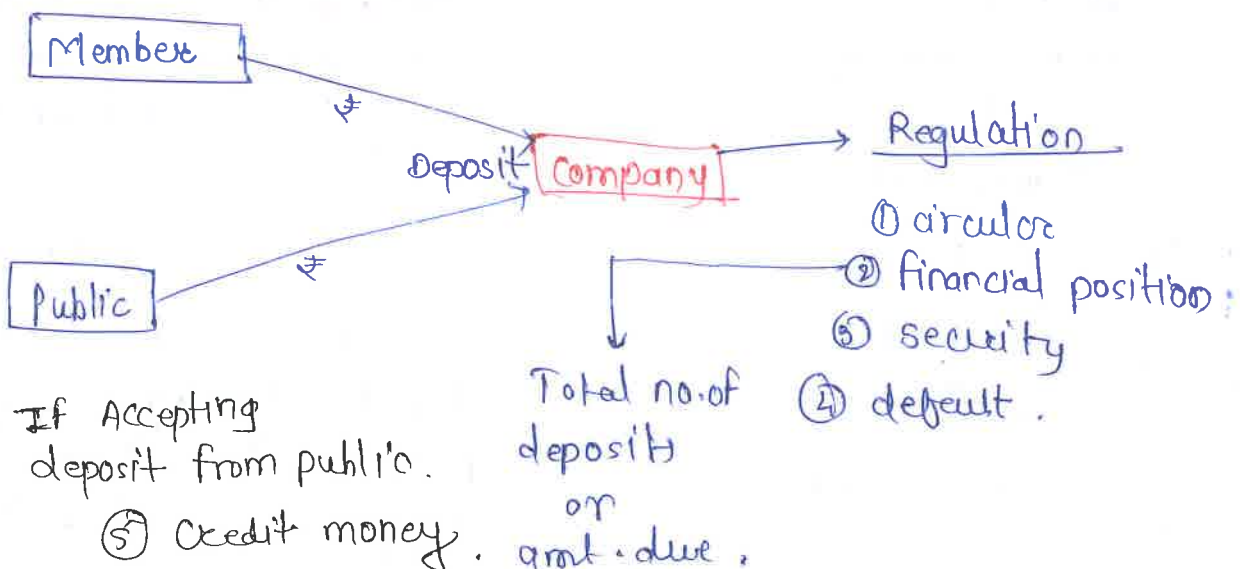
Background / Purpose



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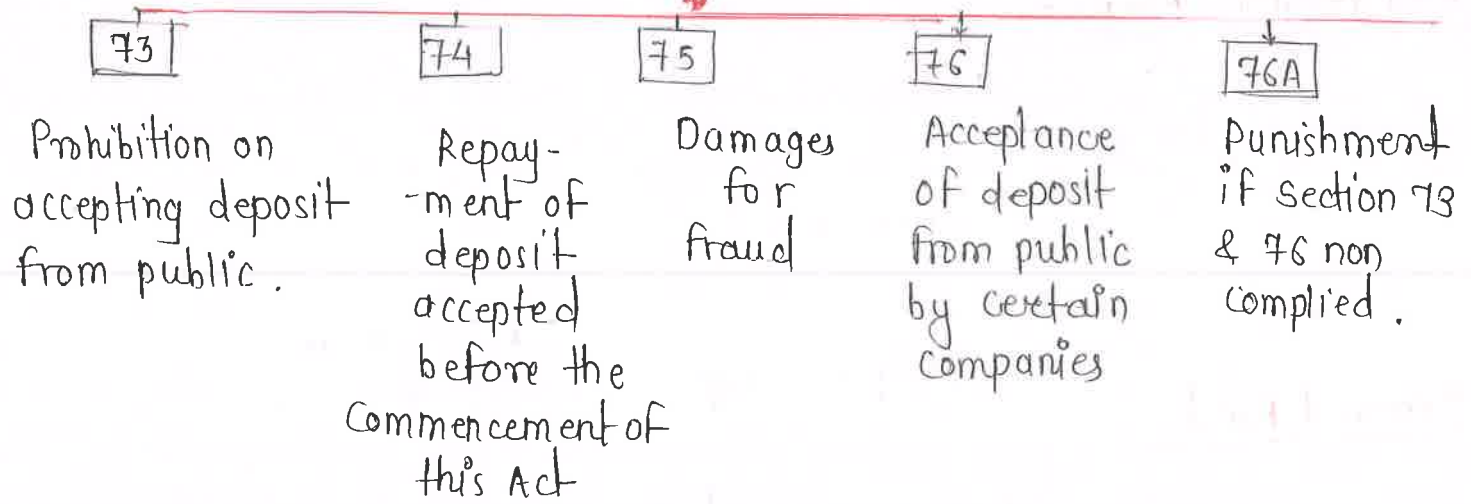
Sec 2(81) - Deposit includes any receipt of money by company.

Excludes → Later



Purpose :- Any money received by Company from public or members must be secured. And there should be complete transparency regarding the whereabouts of the company. So that public and members before giving money or deposit can take a rational decision.

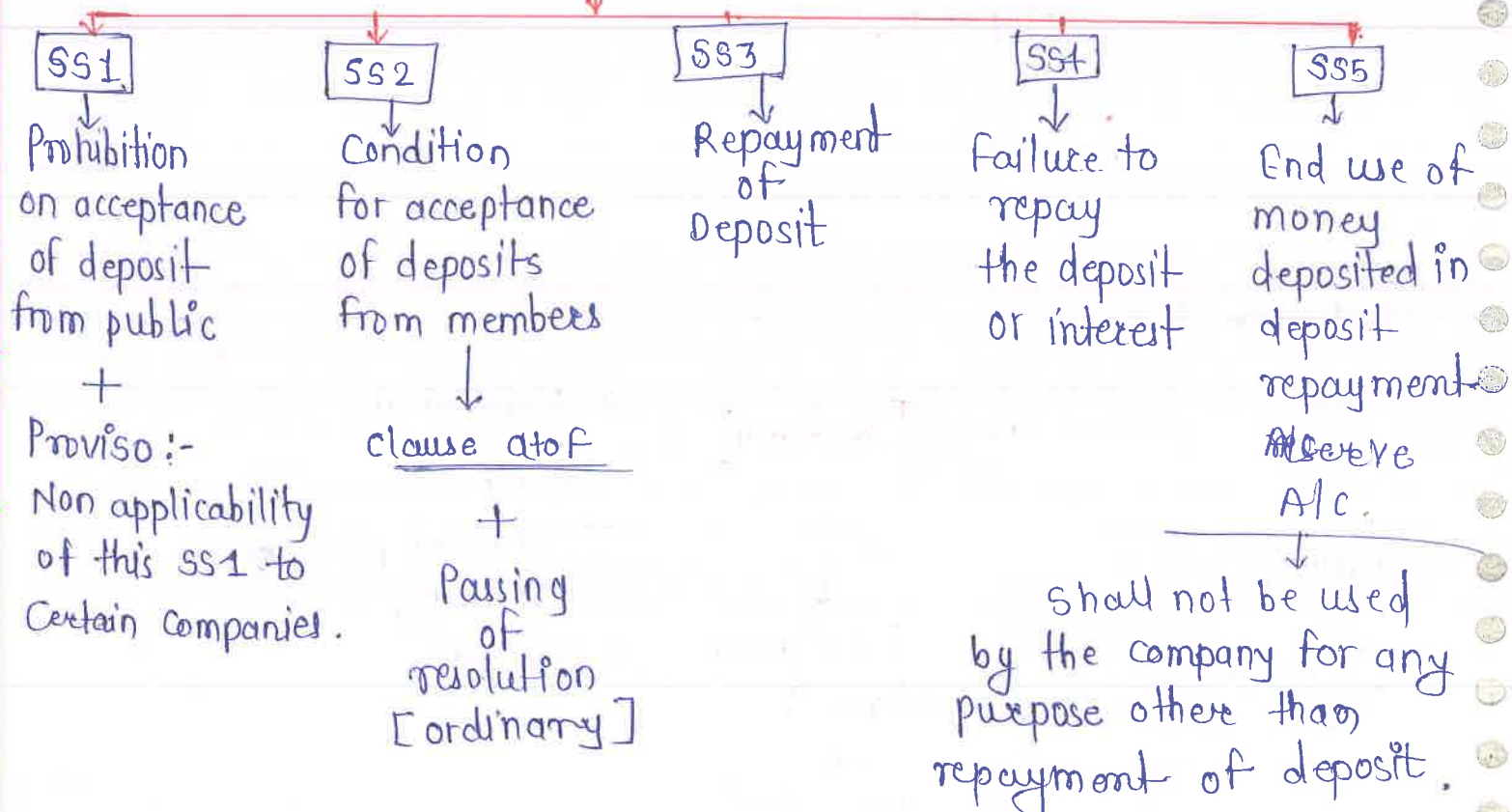
Sections



[Transition period]
[Refer page - 99 chartbook]

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Section 73



clause (a)-(f)

- a] Issue of circular to the members [DPT-1]
- b] Filing of circular with ROC
- c] Deposit repayment reserve A/c.
- d] Omitted
- e] Certification of no default [By auditor]
- f] Security with respect to deposit.

Section 76 - Acceptance of Deposits from public by certain companies.

SS1

overriding section
to sec 73

+

Proviso 1 - credit rating
must be
obtained.

Proviso 2 - Mandatory
creation of
charge.

SS2

Provision of this
chapter shall apply
Mutatis mutandis
[with necessary changes]

on acceptance of deposit
from public under this
section.

Section

73(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 Act.

76(1)

Notwithstanding anything
contained in sec 73, A public
company, having such networth
or turnover (eligible company)
as may be prescribed, may
accept deposits from persons
other than its members

↓
subject to compliance with

↓
Section 73(2) + rules made by CBI
in consultation with
RBI

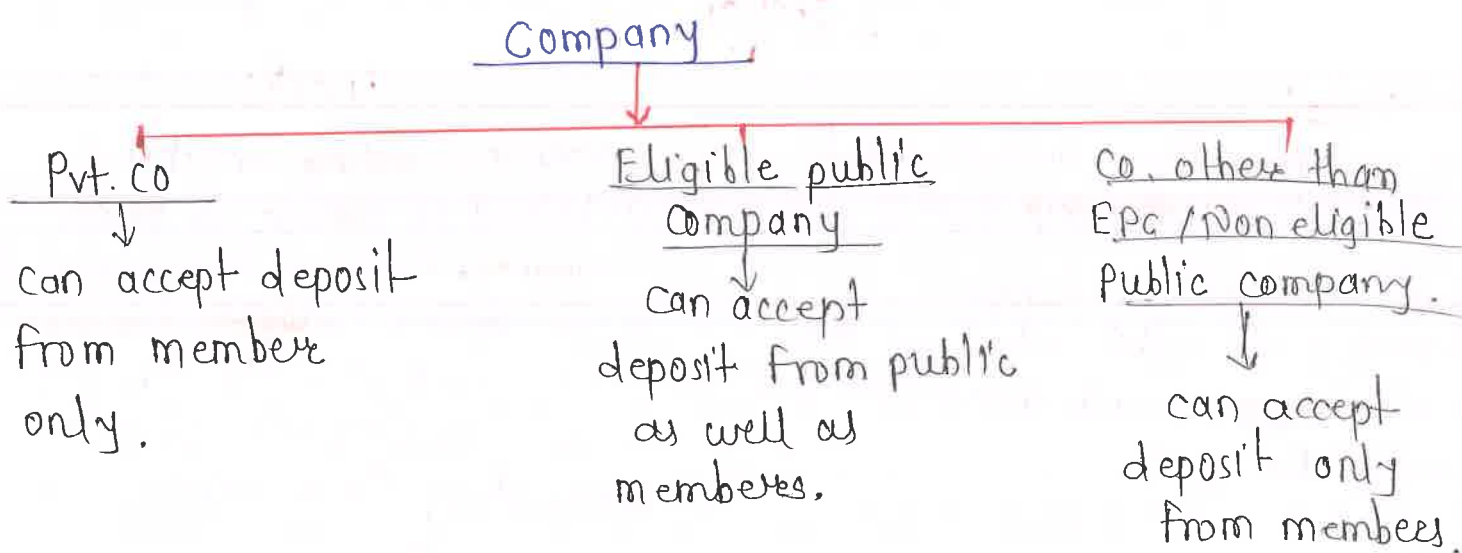
Interpretation of Sec 73(1)

- ① Company may invite, accept or renew deposit under this Act from its members.
- ② Company may invite, accept or renew deposits under this Act from the public by complying Sec 73(2) + read with Sec 73(1) along with the rules prescribed by CBI in consultation with RBI.

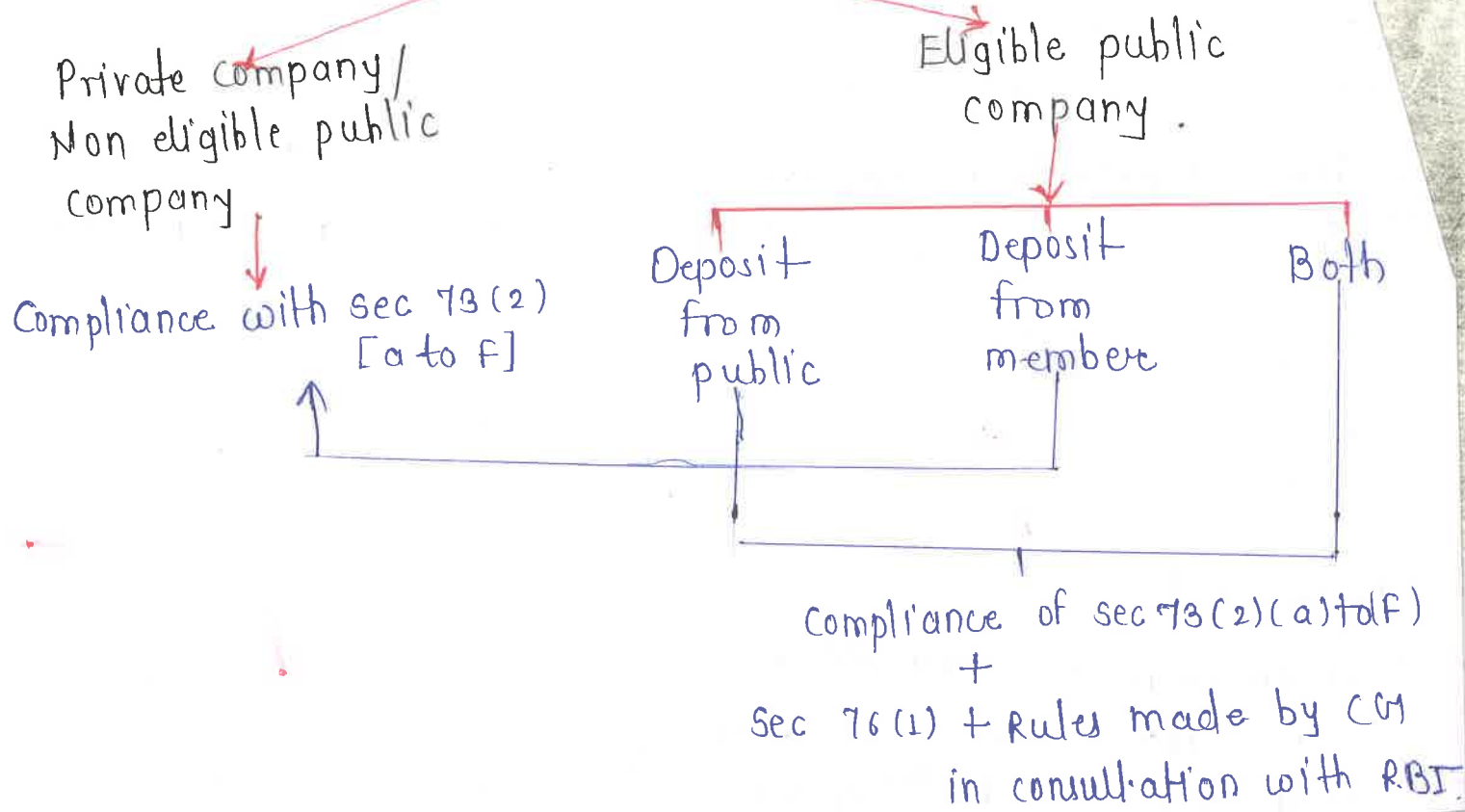
Interpretation Sec 76(1)

- ① Private company shall not invite, accept or renew deposit from public
- ② It means pvt company can invite, accept or renew deposit under this Act from its member only.
- ③ A company may accept deposit from person other than its members, only if it is an eligible company i.e -
 - a) It is a public company.
 - b) Its networth is ₹ 100 cr or turnover is ₹ 500 cr or more or more.
- ④ It means eligible public company may accept deposit from public as well as by members.

Conclusion chart of sec 73 read with section 76



Compliance chart for Accepting deposit



Section 73(2) - condition for accepting deposit from members

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- A resolution is passed in GM.
clause

a) Issue of circular to members.

The company shall issue a circular to the members inviting deposits from them in form no- DPT 1 with following information.

1] financial position of company.

2] credit rating obtained by company.

3] Total no. of depositors and amt. due towards deposits

4] in respect of any previous deposits accepted by the company.

4] such other particulars, in such form as may be prescribed

ing of circular :-

The circular along with the informations, shall be filed with the company with the registrar, atleast 30 days prior to the date of the circular to the members.

c] Deposit repayment reserve A/c -

① The company shall deposit in scheduled bank in a separate bank account a sum equal to 20% of amount of deposits maturing during the following financial year. such amt shall be deposited on or before the 30th day of April each year.

② such a/c shall be called as DRR A/c.

d] omitted

e] Certification of no default -

- The company shall certify that it has not defaulted in repayment of any deposit or interest there on.

- However, where a company has defaulted in repayment of any deposit or interest thereon, the company shall certify that it has made good the default and a period of five years had lapsed since the date of making good the default.

f] Security with respect to deposit -

- The company may provide security for the due repayment of deposits and interest payable there on, and create a charge on its assets for this purpose.

- If do. doesn't secure the deposit or secures them partly, then, such deposit shall be termed as 'unsecured deposit' in every circular, formed, advertisement or documents through which the deposits are invited or accepted.

SS3 - Repayment of Deposit

In accordance with ~~terms~~ and condition of such deposit.

SS4 - Failure to Repay the deposits or interest

Application to the tribunal

If a company fails to repay any deposit or interest thereon in accordance with the terms and conditions of such deposit, the depositor concerned may make an application to the tribunal.

orders of the tribunal

① The tribunal may order the company to pay to the depositor

Any sum due to him; and

Any loss or damage incurred by him.

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② The tribunal may make such other order as it may deem fit.

Sec 76

SS1 - Acceptance of deposits ~~from~~ ^{certain} public by eligible companies only.

c] It has obtained the prior consent of the members by means of—

1] An ordinary resolution if the deposits are within the limit specified u/s 181 c. [i.e 100% of the aggregate of its paid up share capital, free Reserves & securities premium A/c]; or

2] A Special resolution, any other case.

d] It has filed a copy of the ordinary Resolution - special resolution with registrar before making any invitation to the public for acceptance of deposits.

* conditions for acceptance of deposit from public.

① Compliance of Sec 73(2).

② Compliance with rules - Prescribed by CCI in consultation with RBI.

③ Rating of deposit -

1] The company shall obtain rating with respect to its deposits.

2] The rating shall include the networth of the company, liquidity and ability of company to repay the deposits on the due date.

3] The rating ensures adequate safety.

4] The rating shall obtain from a recognised credit rating agency.

5] The rating given to the company shall be informed to the public at the time of inviting deposits.

6] The rating shall be obtained every year during tenure of deposits.

④ Registration of charge, in case of secured deposit -

Where a company accept secured deposit from the public -

1] It shall within 30 days, create a charge on its assets in the favour of deposit holder;

2] The value of asset so charged shall not be less than the amt. of deposits accepted by it.

Credit Rating

- 1] AAA - highest safety.
- 2] AA - high safety
- 3] A - Adequate safety.
- 4] BBB - Moderate safety
- 5] BB - Inadequate safety
- 6] B - High risk.
- 7] CCC - substantial risk.
- 8] D - default.

Credit Rating Agency

- ① CRISIL
- ② BRICKWORK
- ③ IKRA
- ④ SAMARTRA

Sec 76A - Punishment for contravention of Sec 73 or 76.

Company accepting deposit in contravention of Sec 73 or 76 or rules made there under.

or

Company fails to repay the deposit or part thereof or any interest due within the time specified. u/s 73 or 76 or rules made there under.

Officer in default

Imprisonment ↓ Max - 7 years	Fine	
	Min	Max
	Rupees	Rupees
	25,00,000 (25 lakh)	20,00,000 (2 Cr)

Company

Min: fine	Max fine.
Lower of - ₹ 1 Cr; or twice the amt of deposits accepted in Contravention of Sec 73 or 76.	₹ 10 Cr

NOTE

- Every OJD instl will be liable for action u/s 447, if it is proved that he has contravened such provisions knowingly or willfully with the intention to deceive - ① The company; or ② Its shareholders; or ③ Its depository; or ④ Its creditors; or ⑤ Tax authorities.

Banking Co / NBFC etc

The restriction on invitation, acceptance shall not apply to -

- ① a Banking company ;
- ② A non-banking financial company
- ③ A housing finance company registered with the national housing bank ; &
- ④ Such other companies as may specified by Govt.

A prt. co. accepting deposits from its members not exceeding 100% of - [P.V.S.C / FRISPRK]

It has not defaulted in the repayment of such borrowing subsisting at the time of accepting deposits.

⑤

⑥ It is not an associate or a subsidiary of any other company

⑦ The borrowing of such a co. from banks or financial institution or any body corporate is less than twice of its paid up share capital & so on, which is lower, & 8.

Exemptions

Exemption to prt companies.

Condition as contained in clause (a) to (e) of SS2 of Sec 73 shall not apply to

A prt. co. which is start-up, for five years from date of its incorporation.

Exempted from clause (a) to (e) same as prt. company.
If accepting deposit from its members not exceeding 100% of paid up share capital / free reserve / securities premium A/c.

ITFC Public Co.

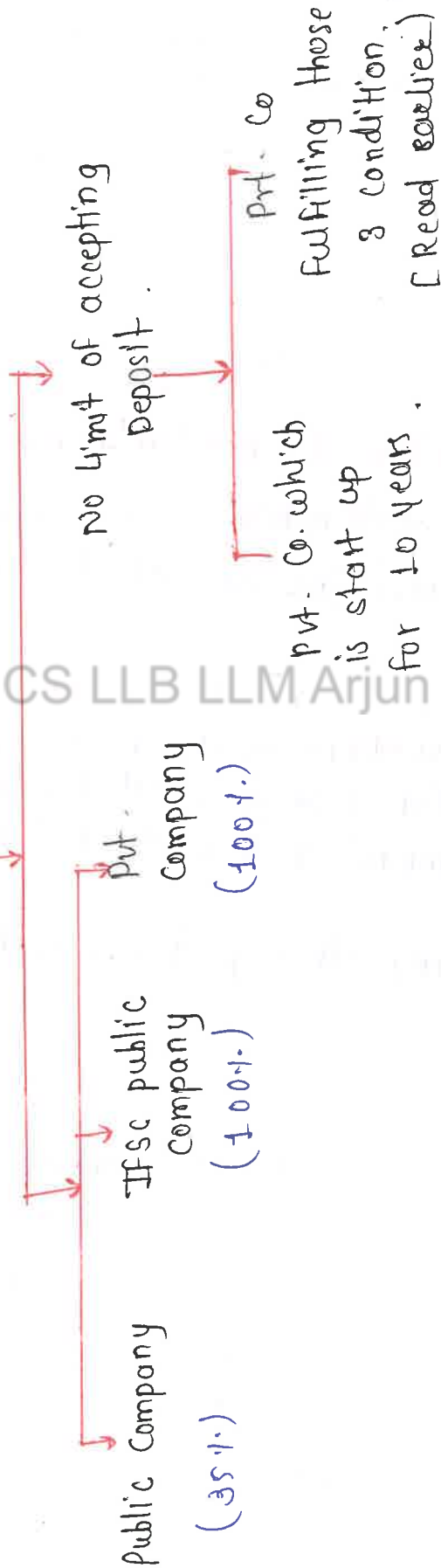
Prt. co. which fulfills all following condition -

NOTE -

The exempted pvt. co. & IFSC companies mentioned above, shall file the details of deposits accepted by it to ROC in

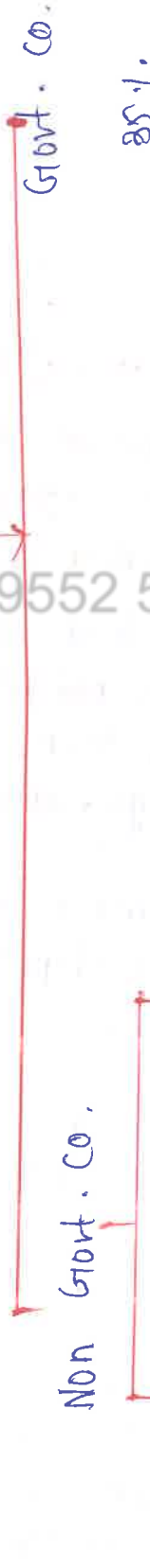
DPT 3

Maximum limits on Deposit - Refer 98 [By Members]



Maximum Amt. of Deposit from public by Eligible Pub. Co.

Eligible public company



- a) maximum 10% from members
- b) Max 25% from public.

Deposit - [Sec 2 (31)]

Includes

- Any receipt of money
- by Company
- by way of
- deposit ; or [2 (31)]
- loan ; or
- in any other form.

Does not Include [Excludes]

such categories of amt. [Rule 2(1)(d)]
as may be prescribed
in consultation with RBI.

Rule 2(1)(c) - Exclusions i.e. Amounts - Not a deposit

① Amt received as subscription to any securities (i.e. Application money) -

- Any amount received towards subscription to any securities if such amount is appropriated only against the amount due on allotment of securities applied for.
- It is clarified that if the securities for which the application money received, are not allotted within 60 days of the receipt of application money, then, such application money shall be refunded within next 15 days, otherwise such amount shall be treated as deposit.
- If such amount is adjusted for any other purpose, such amt shall be treated as deposit.

Jan 2001

case study

R.S Ltd

1.6.2019
Received 50 lakh
as share application money

30.9.19

₹ 5 lakh was refunded to
Mr. Khanna a customer of
co. as adjustment towards
dues payable by him.

CS of co reports
to the BOB that
entire amount of
₹ 50 lakh shall be
deemed to be
deposit.

Advice ??

→ Hint Answer

1] 60 days will end on 31/7/2019 and the company has more 15 days to refund.

Hence the cs of Rs Ltd not correct to consider the entire amt of ₹ 50 lakh as deposit on 31/07/2019.

2] The amt. of ₹ 5 lac adjusted against payment due to be received from Mr. Khanna can not be treated as refund.

Special Note - Here the term "refund" means actual refund. adjustment does not amount to refund.

② Amt. brought by the promoters -

Any amt. brought in by the promoters of the co. by way of unsecured loan because of stipulation (condition) of any lending financial institution or a bank, subject to fulfillment of the following conditions:-

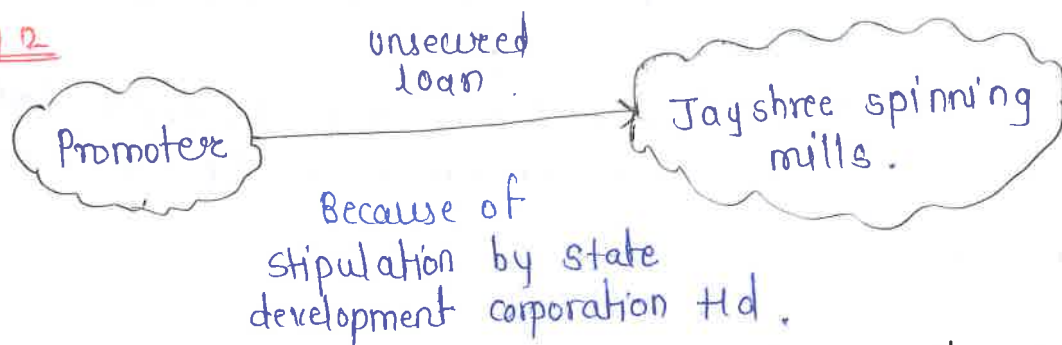
a) The loan is provided by the promoters themselves or by their relatives or by both.

b) The loan is brought in because of the stipulation imposed by the lending institution on the promoters to contribute such finance.

c) Such exemption shall be available only till the loans of financial institutions or bank are repaid and not thereafter.

[July 2021]

case study 2



Q) Whether that unsecured loan amounts to deposit ??

Q) What if, the entire loan obtained from SIDCL is paid ?

→ Unsecured loan contributed by promoter will not be regarded as deposit bco the loan was bought as per stipulation imposed by lending institution.

→ The loan is not regarded as deposit till it is repaid.

③ Amt. received by start up company -

An amount of ₹ 25 lakh 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 issue) in a single tranche, from a person.

Convertible Note - Means an instrument evidencing receipt of money initially as debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of the start up company as per the terms and condition indicated in instrument.

Dec 21

Ex

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moon Technology prt Ltd.
(start up company)

Bhupendra (director of Co.)

Request to send ₹ 20 lakh in single tranche by way of Convertible note repayable within period of 6 years from the date of its issue.

Paras (close friend of Bhul)

The amount received is below threshold limit of ₹ 25 lakh. Hence the amount of ₹ 20 lakh shall be considered as deposit.

④ Amt. received from Director -

Any amount received from -

- a) A director of the company (whether private or public) or
- b) A relative of the director of a prt. company

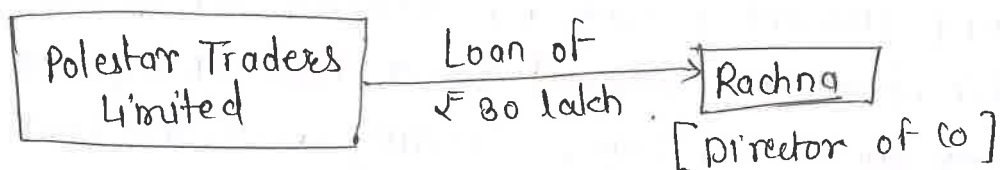
Condition for receiving such amt -

a) The person from whom the money is received (i.e. the director of the company or the relative of the director of a prt. company) shall furnish to the company at the time of giving of money, A written declaration that the amt is not being given out of the funds required by him by borrowing or accepting loans or deposits from others

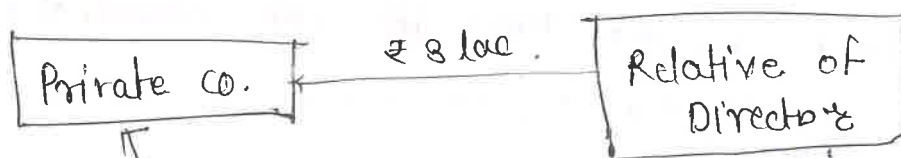
b) Company shall disclose the details of money so accepted in boards report.

c) Every company shall disclose in its financial statement, by way of notes, about the money received from the directors & relatives of directors.

Ex



Deposit ??



furnished a declaration that he said money received by him as gift from mother.

* Deposit ??

* Hint Answer

Assuming that rachna has furnished to the Company, ^{written} ~~return~~ declaration and company had disclosed the details of money in board reports. ₹ 80 lac received from rachna shall not be considered as deposit.

₹ 8 lac received from relative of director of pvt. company will not be considered as deposit, if return declaration as per 2(1)(c) is furnished

⑤ Security deposit received from an employee -

Any security deposit received from an employee of the company, any if the following two conditions are satisfied;

- The security deposit is not interest bearing.
- The amt. of security deposit shall not exceed annual salary of such employee.

⑥ Amt. raised by issue of secured debenture -

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Any amount raised by secured debentures if -

- The debentures are secured by a first charge or a charge ranking paripassu (with same standing) with the first charge.
- The charge created on any asset excluding intangible asset; and
- The amount of such debentures does not exceed the market value of such assets as assessed by registered valuer.

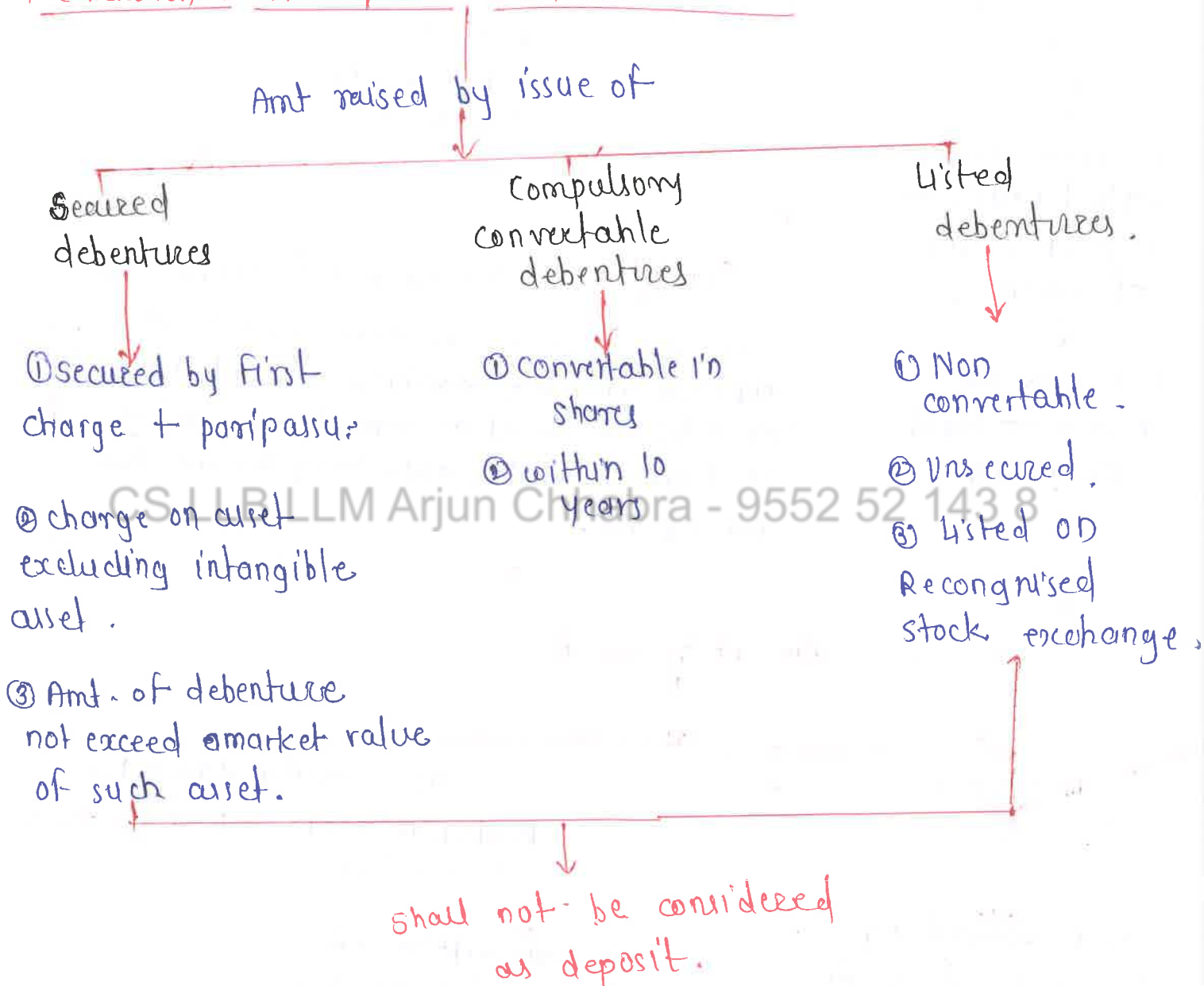
⑦ Amount raised by compulsorily convertible debenture -

- Any amount raised by issue for debenture such debentures are compulsorily convertible into shares of the company; &
- such conversion shall take place within 10 years.

⑧ Amt raised by issue of listed debenture -

Any amount raised by issue of non convertible debenture not constituting a charge on the assets of the company and listed on recognised stock exchange as per applicable regulations made by SEBI.

* Conclusion chart of point no 6, 7 and 8 -



Any amount received for the purpose of business of company

As on advance.

(12) (a) for the supply of goods or provision of services.

(11) (b) Received for an immovable property.

(10) (c) for providing future services as warranty or maintenance as per written agreement.

(9) (d) Received for supply of capital goods.

↓
Provided advance applied within 365 days of receipt of advance.

↓
Not applicable in case of legal proceedings.

NOTE - for (a) (b) and (d) above :- if amount becomes refundable due to non-approval wherever required amount received shall be considered as deposit on expiry of 15 days from the date they become due for refund.

Amount received

(10) as advance

And allowed by any sectorial regulator or in accordance with direction of Cb or SG.

(12) as security deposit for performance of contract for goods & services.

↓
for subscription of publication (in print or electronic mode)

↓
adjusted against receipt of such publication.

Miscellaneous

(15)

Any amount received by Co.

way of subscription
in chit fund
or
by Nidhi Co.

under any
collective investment
scheme

from SEBI
regulated
funds.

(16) Amount received from govt. etc.

- a] central Govt ; or .
- b] Any state govt. ; or
- c] Any local authority ;
- d] A statutory authority constituted under an act of parliament or a state legislature ; or .
- e] any amount whose repayment is guaranteed by Govt or SGT.

(17) loan from banks

(18) loan from PFI [Public financial institution]

(19) Amount received from foreign govt.

-subject to FEMA regulation

- a) foreign govt ; or .
- b) foreign or international banks ; or .
- c] foreign collaborators ; or .
- d] foreign financial institution ; or .
- e] foreign body corporate and foreign citizen.

(20) Amount received from another company .

(21) Any amount (non-interest bearing received and held in trust by a company) .

Provisions contained in the Companies (Acceptance of Deposit) Rules 2014

Rule 3 - Tenure of Deposit

* (a) A company shall not accept or renew any deposit which is -

- Repayable on demand; or
- Repayable upon receiving a notice.

(b) Maximum tenure of deposit shall be 36 months.

(c) Min. tenure of deposit shall be 6 month. However, A company may accept such short term deposit which are repayable earlier than 6 month from date of acceptance of such deposit, subject to fulfillment of all the following conditions:-

- Such deposits are repayable not earlier than 3 months from date of acceptance of such deposit.
- Such deposits are accepted for the purpose of meeting any short term requirement of funds.
- Such deposit shall not exceed 10% of the aggregate of the paid up share capital, free reserve, security premium A/c.

Tenure

company shall not accept or renew any deposit which is payable on demand.

Duration

Earlier than 6 month

Min.
6 months

Max
36 months

Conditions -

- Not earlier than 3 months.
- For short term requirement.
- maximum limit shall not exceed 10% of [P.V.sc + F.R + S.P.A/c]

Rule 4 - form of circular.

a] Every Company intending to invite deposit from its members shall issue a circular. [In form DPT 1] to all its members by registered post with acknowledgement due, or speed post or by electronic mode.

The date of dispatch of circular to the members shall be deemed to be the date of issue of circular to the members.

b] In addition to issue of such circular to all members the circulars may be published in English in an English newspaper and in vernacular language in vernacular newspapers having wide circulation in state in which RO of Co. is situated.

c] Certification of no default.

d] Every eligible company intending to invite deposit from public shall issue a circular in the form of an advertisement in form DPT-1.

The date of issue of the newspaper in which the advertisement appears shall be taken as the date of issue of advertisement.

The advertisement shall be issued in -

① same as above. EL in EN having country wide circulation; &

② same as above. VL in VN having wide circulation in state in which RO of Co. is situated.

e] Every eligible company inviting deposit from public shall place the circular on website of company, if any.

f] The circular in the form of advertisement shall be valid till -

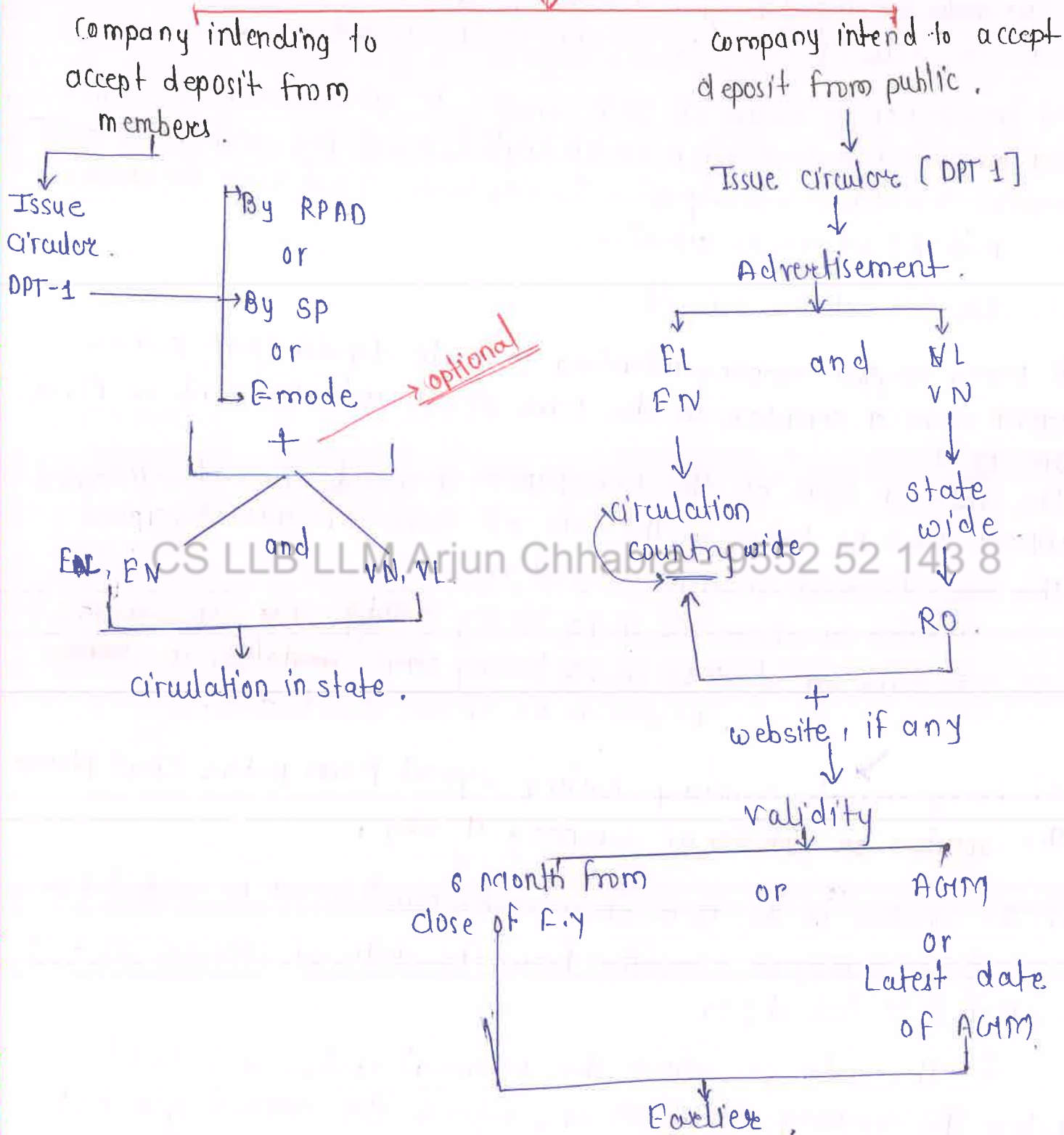
① The expiry of 6 months from the date of closure of f.y in which it is issued; or

② The date on which the financial statement is laid before the company in AGM or, where the annual general meeting for has not been held, the latest day on which AGM should have been held in accordance with the provision of this Act.

whichever is earlier.

A fresh circular in the form of advertisement shall be issued, in each succeeding financial year, for inviting deposits during that financial year.

Forms of circular



* Appointment of trustee for Depositors. - Rule 7

a] A Company shall not issue any circular or advertisement inviting secured deposit unless the company has appointed one or more trustees for depositors.

b] A ~~written~~ consent shall be obtained from the trustee for the depositor before his / there appointment.

c] A statement shall appear in the circular in the form of advertisement with reasonable prominence to the effect that the trustee for depositors has / have given his / there consent to the Company to be so appointed.

d] The company shall execute a deposit trust deed in Form DPT-2 at least 7 days before issuing the circular.

e] A person (including a company) i.e. in the business of providing trusteeship services shall not be appointed as a trustee for the depositors, if the proposed trustee:-

① Is a depositor in the company;

② Is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary, associate company (cash);

③ Is indebted to the co., ASH (CASH);

④ Has any material pecuniary (पैसे से संबंधित);

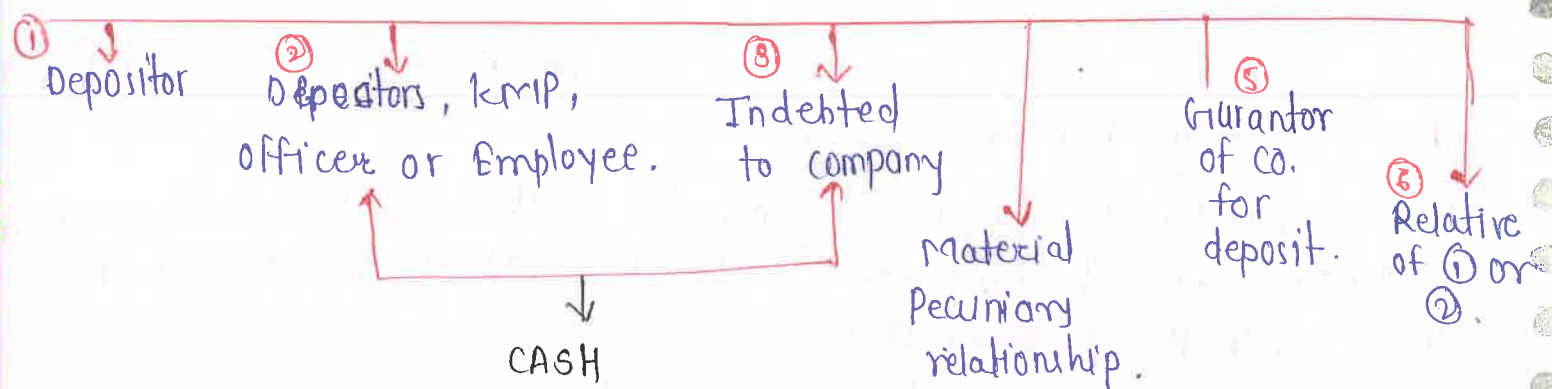
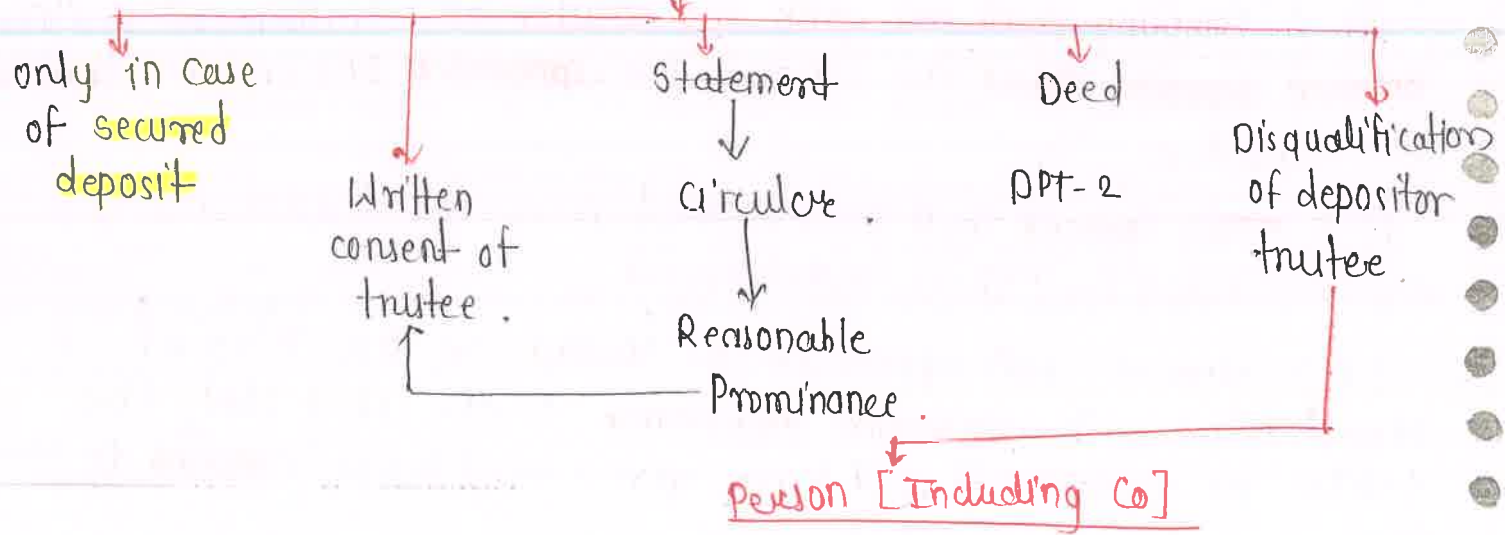
⑤ Has given any guarantee in respect of deposits accepted by the company or interest there on.

⑥ Is related to any person specified in point ① or ② above.

f] No trustee for depositors shall 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 in a board meeting. [Unanimous resolution.]

[as per sec 149(4)]
further, in case the co. is required to have independent directors, at least one Independent director shall be present in such board meeting.

Appointment of trustee for depositors



* Rule 10 - Application form for deposit

a] A Co. shall not accept or renew any deposit, whether secured or unsecured unless an application is submitted by the depositor for acceptance of such deposit.

b] The application form shall contain a declaration by depositor that the deposit amount is not a borrowed fund.

* Rule 12 - Furnishing of Deposit receipt to depositors

shall be furnished to the depositor within 21 days from the date of receipt of money and shall be signed by an officer authorised by board.

* Rule-16 Return of deposits to be filed with registrar.

Every company shall on or before the 30th day of June every year file with registrar, a return in Form no DPT-3

* Rule 17 Penal rate of Interest

Failure of company to repay deposit and interest there on will cause a company a penal rate of interest of 18% p.a. for the overdue period.

* Rule 21 - Punishment for Contravention -

Where no punishment is provided for contravention of this rules.

Company & officers in default shall punishable with -

(a) Fine, Max-5000/- ; &

(b) Further fine ₹ 500/- per day till contravention continuous.

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