

5

CHAPTER

Acceptance of Deposits by Companies



LDR Questions

Q. 4 Q. 5 Q. 10 Q. 11 Q. 20 Q. 22

ICAI Module Descriptive Questions

Rule 2 (1) (c) Amounts that shall not be treated as deposits

1. Enumerate the amounts which when received by a company in the ordinary course of business are not to be considered as deposits.

Solution:

According to Rule 2 (1) (c) (xii) of the Companies (Acceptance of Deposits) Rules, 2014, following amounts if received by a company in the course of, or for the purposes of, the business of the company, shall not be considered as deposits:

- (i) any amount received as an advance for the supply of goods or provision of services accounted for in any manner whatsoever to be appropriated within a period of three hundred and sixty-five days from the date of acceptance of such advance.
However, in case any advance is subject matter of any legal proceedings before any court of law, the time limit of three hundred and sixty-five days shall not apply.
- (ii) any amount received as advance in connection with consideration for an immovable property under an agreement or arrangement. However, such advance is required to be adjusted against such property in accordance with the terms of agreement or arrangement.
- (iii) any amount received as security deposit for contract for supply of goods or services.
- (iv) any amount received as advance under long term projects for supply of capital goods except those covered under item (b) above.
- (v) any amount received as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less.
- (vi) any amount received as an advance and as allowed by any sectoral regulator or in accordance with directions of Central or State Government.
- (vii) any amount received as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications.

However, if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have

necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules.

Further, for the purposes of this sub-clause the amount shall be deemed to be deposits on the expiry of fifteen days from the date it became due for refund.

Rule 2 (1) (c)

2. Answer the following citing relevant provisions:

- (i) Prayas Electricals Limited having paid-up capital of ₹1 crore availed a term loan of ₹10,00,000 from Beta Bank Limited to purchase electrical items. Mr. Sambhav, one of the directors of the company, is of the opinion that it shall be considered as 'deposit'. Is his contention correct?
- (ii) Eklavya Publishing Company Limited facing acute cash crunch wants to utilise a portion of 'Deposit Repayment Reserve Account' to pay off its short-term creditors who are pressing hard for repayment of ₹20,00,000. Is it justified to use funds lying in 'Deposit Repayment Reserve Account' in this manner?
- (iii) Sanjiv is a shareholder in Utsah Textiles Private Limited holding 10,000 shares of ₹10 each. His wife Sneha and his three sons Aayush, Pranav and Himanshu are also shareholders in the company holding 1,000 shares each. In response to the invitation from the company inviting deposits from its members, Sanjiv wants to deposit ₹1,00,000 for 36 months jointly with his wife and three sons.

Whether Utsah Textiles Private Limited can accede to the request of Sanjiv and accept deposit jointly in five names since all the depositors are shareholders of the company.

Solution:

- (i) In terms of Rule 2 (1) (c) (iii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received as a loan or facility from any banking company shall not be considered as 'deposit'.
In view of the above, the contention of Mr. Sambhav that the term loan of ₹10,00,000 availed by the company from Beta Bank Limited shall be considered as 'deposit' is not correct.
- (ii) Rule 13 of the Companies (Acceptance of Deposits) Rules, 2014, states that the amount deposited in the 'Deposit Repayment Reserve Account' shall not be used by a company for any purpose other than repayment of deposits.
Since there is a prohibition, Eklavya Publishing Company Limited is not permitted to utilise its 'Deposit Repayment Reserve Account' to pay off its short-term creditors.
- (iii) Rule 3 (2) of the Companies (Acceptance of Deposits) Rules, 2014, provides that where depositors so desire, deposits may be accepted in joint names not exceeding three.
In view of this provision, Sanjiv can deposit ₹1,00,000 with Utsah Textiles Private Limited jointly with two other persons only irrespective of the fact that all the five persons are members of the company.

Rule 2 (1) (c)

3. Define the term 'deposit' under the provisions of the Companies Act, 2013 and comment quoting relevant provisions whether the following amounts received by a company will be considered as deposits or not:

- (i) ₹5,00,000 raised by Rishi Confectionaries Limited through issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India.

- (ii) ₹2,00,000 received by Raja Yarns Limited from its employee Mr. Tarun, who draws an annual salary of ₹1,50,000, as a non-interest bearing security deposit under a contract of employment.
- (iii) ₹3,00,000 received by a private company from one of the relatives of a Director. The said relative has furnished a declaration that the amount was received by him from his mother as a gift.

Solution:

Deposits- According to Section 2 (31) of the Companies Act, 2013, the term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve bank of India.

Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014 states various amounts received by a company which will not be considered as deposits. In terms of this Rule the answers to the given situations shall be as under:

- (i) ₹5,00,000 raised by Rishi Confectionaries Limited through issue of non- convertible debentures not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub-clause (ixa) of Rule 2 (1) (c).
- (ii) ₹2,00,000 received by Raja Yarns Limited from its employee Mr. Tarun, who draws an annual salary of ₹1,50,000, as a non-interest bearing security deposit under a contract of employment will be considered as deposit in terms of sub-clause (x) of Rule 2 (1) (c), for the amount received is more than his annual salary of ₹1,50,000.
- (iii) ₹3,00,000 received by a private company from one of the relatives of a Director. When the relative furnishes a declaration that the said amount was received by him from his mother as a gift, then it will not be considered as deposit in terms of sub-clause (viii) of Rule 2 (1) (c). In fact, the preceding sub-clause requires that any amount given by a relative of a director of a private company shall not be considered as deposit if the relative furnishes a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others. Thus, the amount given to the private company out of gifted money by one of the relatives of a director is not a 'deposit'.

As an additional requirement, the company shall disclose the details of money so accepted in the Board's report. Further, according to Rule 16 (A) (2), it shall also disclose in its financial statement, by way of notes, about the money received from the directors, or relatives of directors.

Rule 2 (1) (c)

4. Discuss the following situations in the light of 'deposit provisions' as contained in the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time.



- (i) Samit, one of the directors of Zarr Technology Private Limited, a start-up company, requested his close friend Ritesh to lend to the company ₹30 lakh in a single tranche by way of a convertible note repayable within a period six years from the date of its issue. Advise whether it is a deposit or not.
- (ii) Polestar Traders Limited received a loan of ₹30 lakh from Rachna who is one of its directors. Advise whether it is a deposit or not.
- (iii) City Bakers Limited failed to repay deposits of ₹50 crore and interest due thereon even after the extended time granted by the Tribunal. Is the company or Swati, its officer-in-default, liable to any penalty?

- (iv) Shringaar Readymade Garments Limited wants to accept deposits of ₹50 lakh from its members for a tenure which is less than six months. Is it a possibility?
- (v) Is it in order for Diamond Housing Finance Limited to accept and renew deposits from the public from time to time?

Solution:

- (i) In terms of Rule 2 (1) (c) (xvii) if a start-up company receives rupees twenty-five lakh or more by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person, it shall not be treated as deposit.

In the given case, Zarr Technology Private Limited, a start-up company, received ₹30 lakh from Ritesh in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. In view of Rule 2 (1) (c) (xvii) which requires a convertible note to be repayable within a period of ten years from the date of its issue, the amount of ₹30 lakh shall not be considered as deposit.

- (ii) In terms of Rule 2 (1) (c) (viii), any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report.

In the given case, it is assumed that Rachna was one of the directors of Polestar Traders Limited when the company received a loan of ₹30 lakh from her. Further, it is assumed that she had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by her by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report.

If these conditions are satisfied ₹30 lakh shall not be treated as deposit.

- (iii) By not repaying the deposit of ₹50 crore and the interest due thereon even after the extended time granted by the Tribunal, City Bakers Limited has contravened the conditions prescribed under Section 73 of the Act. Accordingly, following penalty is leviable:
- (a) **Punishment for the company:** City Bakers Limited shall, in addition to the payment of the amount of deposit and the interest due thereon, be punishable with fine which shall not be less than rupees one crore or twice the amount of deposit accepted by the company, whichever is lower but which may extend to rupees ten crore.
- (b) **Punishment for officer-in-default:** Swati, being the officer-in-default, shall be punishable with imprisonment which may extend to seven years and with fine which shall not be less than rupees twenty-five lakh but which may extend to rupees two crore.

Further, if it is proved that Swati had contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, she will be liable for action under section 447 (Punishment for fraud).

- (iv) According to Rule 3 (1), a company is not permitted to accept or renew deposits (whether secured or unsecured) which are repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months.

However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:

- (a) such deposits shall not exceed ten percent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and
- (b) such deposits are repayable only on or after three months from the date of such deposits or renewal.

In the given case of Shringaar Readymade Garments Limited, it wants to accept deposits of ₹50 lakh from its members for a tenure which is less than six months. It can do so if it justifies that the deposits are required for the purpose of meeting any of its short-term requirements of funds but in no case such deposits shall exceed 10% ten per cent of the aggregate of its paid-up share capital, free reserves and securities premium account and further, such deposits shall be repayable only on or after three months from the date of such deposits.

- (v) According to section 73 (1) of the Act, no company can accept or renew deposits from the public unless it follows the manner provided under Chapter V of the Act (contains provisions regarding acceptance of deposits by companies) for acceptance or renewal of deposits from the public. However, Proviso to Section 73 (1) states that nothing in this sub-section shall apply to a banking company and non-banking financial company as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf. Further, Rule 1 (3) (iii) states that the Companies (Acceptance of Deposits) Rules, 2014 shall not apply to a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987.

In the given case, it is assumed that Diamond Housing Finance Limited is registered with the National Housing Bank and therefore, the 'Acceptance of Deposits' Rules shall not apply to it. Hence, Diamond Housing Finance Limited being an exempted company, can accept and renew deposits from the public from time to time without following the prescribed manner.

Rule 3 Maximum deposit to be accepted

- 5. Shubhra Chemicals Private Limited (not a start-up company) is desirous of accepting 'deposits' from its members amounting to two hundred percent of aggregate of its paid-up share capital, free reserves and securities premium account. What are the conditions it must fulfill before such acceptance?



Solution:

According to first proviso to Rule 3 (3), a private company may accept from its members monies not exceeding 100% of aggregate of the paid-up share capital, free reserves and securities premium account.

According to second proviso to Rule 3(3), the maximum limit in respect of deposits to be accepted from members shall not apply to the classes of private company which fulfils all of the following conditions, namely:

- (a) which is not an associate or a subsidiary company of any other company;
- (b) the borrowings of such a company from banks or financial institutions or any body-corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is less; and
- (c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:

According to third proviso all the companies accepting deposits shall file the details of monies so accepted with the Registrar in Form DPT-3.

In case Shubhra Chemicals Private Limited is not an associate or a subsidiary company of any other company and its borrowings from banks, etc. is less than twice of its paid-up share capital or fifty crore rupees, whichever is less and also it has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits, then it can accept 'deposits' from its members amounting to two hundred percent of aggregate of its paid-up share capital, free reserves and securities premium account.

Further, it shall file the details of monies so accepted with the Registrar in Form DPT-3.

Section 73 Procedure for Acceptance of Deposits from Member

6. State the procedure to be followed by companies for acceptance of deposits from its members according to the Companies Act, 2013. What are the exemptions available to a private limited company?

Solution:

Acceptance of deposits by a company from its members: As per section 73(2) of the Companies Act, 2013, a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely—

- (a) Issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed.
- (b) Filing a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular.
- (c) Depositing, on or before the thirtieth day of April each year, such sum which shall not be less than twenty per cent of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account.
- (d) Certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default and
- (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.

Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement. Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the National Company Law Tribunal (NCLT) 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 NCLT may deem fit.

Exemption to certain Private Companies

In terms of Notification No. GSR 464 (E), dated 05-06-2015 as amended from time to time, Clauses (a) to (c) and (e) of sub-section (2) of section 73 with respect to issue of circular, filing the copy of such circular with the Registrar, depositing of certain amount and certification as to no default committed, shall not apply to a private company:

- (i) which accepts from its members monies not exceeding one hundred per cent of aggregate of the paid-up share capital, free reserves and securities premium account or
- (ii) which is a start-up, for five years from the date of its incorporation or
- (iii) which fulfils all of the following conditions, namely
 - (a) which is not an associate or a subsidiary company of any other company.
 - (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is lower; and
 - (c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section.

However, such a company [as referred to in clauses (A), (B) or (C)] shall file the details of monies accepted to the Registrar in the specified manner (i.e. in Form DPT-3).

Section 73 Procedure for Acceptance of Deposits from Member

7. State, with reasons, whether the following statements are 'True or False'?

- (i) ABC Private Limited may accept deposits from its members to the extent of ₹50 lakh, if the aggregate of its paid-up capital, free reserves and security premium account is ₹50 lakh.
- (ii) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013, cannot accept deposits from the public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account.

Solution:

- (i) As per the provisions of Section 73 (2) of the Companies Act, 2013 read with Rule 3 (3) of the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding thirty five per cent of the aggregate of the paid-up share capital, free reserves and securities premium account of the company. It is provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid-up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in Form DPT-3.

Therefore, the given statement where ABC Private Limited is accepting deposits from its members to the extent of ₹50 lakh is 'true'.

- (ii) As per Rule 3 (5) of the Companies (Acceptance of Deposits) Rules 2014, a Government Company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent of the aggregate of its paid-up share capital, free reserves and securities premium account.

Therefore, the given statement where the limit of 25% has been stated for acceptance of deposits is 'false'.

Section 76 Eligible Company

8. What are the provisions relating to 'Credit Rating' which an 'eligible company' must follow if it wants to raise public deposits?

Solution:

The provisions relating to obtaining of 'Credit Rating' to be followed by an 'eligible company' are contained in Section 76 (1) of the Companies Act, 2013 and Rule 3 (8) of the Companies (Acceptance of Deposits) Rules, 2014 as amended from time to time. Accordingly, an 'eligible

company' which desires to raise public deposits shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency. The given rating which ensures adequate safety shall be informed to the public at the time of invitation of deposits from the public. Further, the rating shall be obtained every year during the tenure of deposits.

As per Rule 3 (8), a copy of the credit rating which is being obtained at least once in a year shall be sent to the Registrar of Companies along with the Return of Deposits in Form DPT-3.

Further, the credit rating shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits. It shall be obtained from any one of the approved credit rating agencies as specified for Non- Banking Financial Companies in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, as amended from time to time.

Section 76 Eligible Company

9. ABC Limited having a net worth of ₹120 crore wants to accept deposits from its members. The directors of the company have approached you to advise them as to what special care has to be taken while accepting such deposits from the members in case their company falls within the category of an 'eligible company'.

Solution:

According to section 76 (1) of the Act, an 'eligible company' means a public company, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits.

However, an 'eligible company', which is accepting deposits within the limits specified under section 180 (1) (c), may accept deposits by means of an ordinary resolution.

According to Rule 4 (a), an 'eligible company' shall accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members does not exceed ten percent of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

ABC Limited has a net worth of 120 crore rupees. Hence, it falls in the category of 'eligible company'. Thus, ABC Limited has to ensure that acceptance of deposits from its members together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from the members, in no case, exceeds 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

Rule 7 Appointment of Deposit Trustee

10. Explain the provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013 read with the 'Acceptance of Deposits' Rules, 2014.



Solution:

Appointment of Trustee for Depositors: In this respect following provisions are required to be observed as mentioned in Rule 7 of the Companies (Acceptance of Deposits) Rules, 2014:

- (i) One or more trustees for depositors need to be appointed by the company for creating security for the deposits.
- (ii) A written consent shall be obtained from the trustees before their appointment.

- (iii) A statement shall appear in the circular or advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company for such appointment.
- (iv) The company shall execute a deposit trust deed in Form DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.
- (v) No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee:
 - (a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;
 - (b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
 - (c) has any material pecuniary relationship with the company;
 - (d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;
 - (e) is related to any person specified in clause (a) above.

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 at a meeting of the board. In case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

RTP, MTP and PYQ Descriptive Questions

Rule 2(1)(c) Amounts that shall not be treated as deposits

11. Excel Pvt. Ltd. received ₹50 lakh from Mr. Giver. Mr. Giver was a director of the company at the time of the transaction. However, Mr. Giver did not submit any written declaration stating that the amount was not given out of borrowed funds. The company utilized the said funds for business expansion and disclosed the receipt of money in the Board's report.



Considering the provisions of the Companies Act, 2013, assess the following situations:

- (i) Was Excel Pvt. Ltd. compliant with the requirements w.r.t acceptance of the money from Mr. Giver?
- (ii) If Mr. Giver had given the money out of funds borrowed from another person, whether this amount will be considered as deposit? (RTP May 25)

Solution:

Law:- According to Rule 2(1)(c) of the Companies (Acceptance of Deposit) Rules, 2014, following categories of amounts, inter alia, are not considered as deposit:

Any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company;

However, the director of the company or relative of the director of the private company, as the case may be, from whom money is received, is required to furnish to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report.

Conclusion:- Accordingly,

- (i) Excel Pvt. Ltd. failed to obtain a written declaration from Mr. Giver at the time of receiving the amount. The declaration is mandatory to confirm that the funds are not borrowed or sourced from loans or deposits from others. Therefore, Excel Pvt. Ltd. was not in compliance with the requirements w.r.t acceptance of the money from Mr. Giver.
- (ii) If Mr. Giver had given the money out of funds borrowed from another person, the transaction would not be eligible under an exempted category under the Companies Act, 2013. Consequently, Excel Pvt. Ltd. would treat such an amount as a deposit.

Rule 2(1)(c)

12. Mr. Romit is an employee of PQR Trading Private Limited. As per his contract of employment, his annual salary is ₹5,00,000. Mr. Romit paid to the company ₹5,30,000 in the nature of non-interest bearing security deposit. Referring to the provisions of the Companies Act, 2013, decide whether this amount received from Mr. Romit will be considered as deposit as per rule 2(1)(c)?

(MTP Jan 25) (MTP May 24)

Solution:

Law:- Rule 2(1)(c) of the Companies (Acceptance of Deposit) Rules, 2014, states various amounts received by a company which will not be considered as deposits. As per rule 2(1)(c)(x) any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest-bearing security deposit is not considered as deposit.

Conclusion:- In the instant case, ₹5,30,000 was received by PQR Trading Private Limited as a non-interest-bearing security deposit, from its employee, Mr. Romit, who draws an annual salary of ₹5,00,000 under a contract of employment. Accordingly, amount of ₹5,30,000 received from Mr. Romit, will be considered as deposit in terms of sub-clause (x) of Rule 2(1)(c) of the Act, as the amount received from Mr. Romit is more than his annual salary of ₹5,00,000.

Rule 2(1)(c)

13. The Promoters of J Limited contributed in the shape of unsecured loan to the company in fulfilment of the margin money requirements stipulated by State Industries Development Corporation Ltd. (SIDCL) for granting loan. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder whether the unsecured loan will be regarded as Deposit or not. What will be your answer in case the entire loan obtained from SIDCL is repaid?

(MTP May 24)

Solution:

Law:- According to Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014, the following amount is not considered as deposit:

Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to the fulfillment of following

Conditions:

- (i) the loan is brought because of the stipulation imposed by the lending institutions on the promoters to contribute such finance;
- (ii) the loan is provided by the promoters themselves or by their relatives or by both; and
- (iii) such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter.

Conclusion:- Hence, in the instant case, the unsecured loan contributed by promoters of J Limited will not be regarded as deposit as the unsecured loan is brought because of the stipulation imposed by the SIDCL and the loan is provided by the promoters themselves.

In case the entire loan obtained from SIDCL is repaid, then the unsecured loan provided by promoters of J Limited will be regarded as deposit.

Rule 2(1)(c)

14. Define the term 'deposit' under the provisions of the Companies Act, 2013 and comment with relevant provisions that the following amount received by a company will be considered as deposit or not.

- (i) Rs.5,00,000 raised by Rishi Ltd. through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India.
- (ii) Rs.2,00,000 received from Mr. T, an employee of the company who is drawing annual salary of ₹1,50,000 under a contract of employment with the company in the nature of non-interest bearing security deposit.
- (iii) Amount of Rs.3,00,000 received by a private company from a relative of a Director, declared by the depositor as out of gift received from his mother. (Nov. 2019)

Solution:

According to section 2 (31) of the Companies Act, 2013, the term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as prescribed in the Rule 2 (1) of the Companies (Acceptance of deposit) Rules, 2014, in consultation with the Reserve bank of India.

- (i) where ₹5,00,000 raised by the Rishi Ltd. through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub-clause (ix) of the said rule.
- (ii) ₹2,00,000 was received from Mr. T, an employee of the company drawing an annual salary of ₹1,50,000 under a contract of employment with the company in the nature of non-interest bearing security deposit. This amount received by company from employee Mr. T will be considered as deposit in terms of sub-clause (x) of the said rule, as amount received is more than his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit.
- (iii) Amount of ₹3,00,000 received by a private company from a relative of a Director, declaring details of the amounts so deposited as out of gift received from his mother. This amount received by the private Company will not be considered as deposit in terms of sub-clause (viii) of the said rule. Here as per the requirement, the relative of the director of the private company, from whom money is received, furnished the declaration in writing to the effect that the amount is given out of gift received from his mother and not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.

Section 73 Procedure for acceptance of deposits from member

15. Ashish Ltd. having a net-worth 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 Ashish Ltd. for accepting deposits from public other than its members. (RTP May 2019)

Solution:

Law:- According to section 76 of the Companies Act, 2013, a public company, having net worth of not less than 100 crore rupees or turnover of not less than 500 crore rupees, can accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to some extra conditions as follows –

Extra Conditions to be followed by an Eligible Company for accepting Public Deposits

- (i) Every eligible company shall be required to obtain the credit rating from a recognised credit rating agency which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.
- (ii) Every eligible company accepting secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders, failing which it shall be described as 'Unsecured Deposits'.

Note: In respect of creation of security, Rule 6 of the Companies (Acceptance of Deposit) Rule, 2014, states that the company accepting secured deposits shall create security by way of charge on its tangible assets only.

- (iii) An 'eligible company' intending to invite deposits is required to issue a circular in the form of an advertisement in DPT-1.

Such advertisements shall be published in English in an English newspaper and in vernacular language in a vernacular newspaper. Both newspapers should have wide circulation in the State in which the registered office of the company is situated.

Conclusion:- Since, Ashish Ltd. has a net worth of ₹80 crores and turnover of ₹30 crores, which is less than the prescribed limits, hence, it cannot accept deposits from the public other than its members. If the company wants to accept deposits from the 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.

Section 73

16. State, with reasons, whether the following statements are True or False?

- (i) ABC Private Limited may accept the deposits from its members to the extent of ₹50.00 Lakh, if the aggregate of its paid-up capital; free reserves and security premium account is ₹50.00 Lakh.
- (ii) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013 cannot accept deposits from the public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account.

Solution:

- (i) As per the provisions of Section 73(2) of the Companies Act, 2013 read with Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014, as amended by the Companies (Acceptance of Deposits) Amendment Rules, 2016, private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.

Therefore, the given statement of eligibility of ABC Private Ltd. to accept deposits from its members to the extent of ₹50.00 lakh is True.

- (ii) A Government company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the

date of acceptance or renewal exceeds thirty five per cent of the aggregate of its Paid-up share capital, free Reserves and securities premium account of the company.

Therefore, the given statement prescribing the limit of 25% to accept deposits is False.

Section 76 Eligible company

17. ABC Limited having a net worth of 120 crore rupees wants to accept deposit from its members. They have approached you to advise them regarding that if they fall within the category of eligible company, what special care has to be taken while accepting such deposit from members

(MTP May 2019)

Solution:

Law:-

- (i) "Eligible company" means a public company as referred to in sub-section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits:
- (ii) However, an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of section 180, may accept deposits by means of an ordinary resolution.
- (iii) An eligible company shall accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds ten per cent. of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.

Conclusion:-

- (i) ABC Limited has a net worth of 120 crore rupees. Hence, it can fall in the category of eligible companies.
- (ii) Thus, ABC has to ensure that acceptance deposits from members should not exceed 10% of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.

Section 76

18. Viki Limited engaged in the business of consumer durables. It is managed by a team of professional managers. The Company has not made default in payment of statutory dues, and repayment of debenture/ Institutional loan with interest. The Company advertised a circular in the newspaper dated 20th September 2020 inviting the deposits from the members and public for the first time. The latest audited financial statement of the Company revealed the following data, as on 31.3.2020:

Paid up share capital ₹70 Crores

Securities Premium ₹20 Crores

Free Reserves ₹20 Crores

Long-term borrowings ₹50 Crores

The Company in the advertisement invited public deposit for a period of 4 Months Plan A and Plan B for 36 Months.

- (i) Explain the term 'eligible company' and calculate the Maximum amount of Deposit that can be accepted from Public (Non-Member) for Plan A and Plan B based on latest audited Financial Statement under the provisions of the Companies Act, 2013.

- (ii) Calculate the maximum amount of deposit Viki Limited can accept from the public under Plan B in case it is a wholly owned Government Company under the provisions of the said Act. (6 Marks)(Nov 2020)

Solution:

Law:-

- (i) According to Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014 “eligible company” means a public company as referred to in sub-section (1) of section 76 of the Companies Act, 2013, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits.

Net worth of Viki Limited as per section 2(57) of the Companies Act, 2013 can be calculated as follows:

Paid up share capital: ₹70 crores Free Reserves: ₹20 crores Securities premium: ₹20 crores. Total being ₹110 crores

Hence, Viki Limited is an eligible company, since its Net worth is in excess of ₹100 crores.

Tenure for which Deposits can be Accepted: As per Rule 3(1)(a) of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (Whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months.

Exception to the rule of tenure of six months: As per the proviso to the above rule, for the purpose of meeting any of its short-term requirements of funds, a company may accept or renew deposits for repayment earlier than six months subject to the condition that such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

As per Rule 3(1)(b) of the Companies (Acceptance of Deposits) Rules, 2014, such deposits are repayable not earlier than three months from the date of such deposits or renewal thereof.

Maximum Amount of Deposits: As per Rule 3(4)(b) of the Companies (Acceptance of Deposits) Rules, 2014, an eligible company is permitted to accept or renew deposits from persons other than its members. As per the law the amount of such deposit together with the amount of outstanding deposits (excluding deposits from members) on the date of acceptance or renewal can be maximum of twenty-five percent of the aggregate of its paid-up share capital, free reserves and securities premium account of the company.

Conclusion: For Plan A: Since the maximum period of deposits is 4 months, the maximum amount of deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

Maximum amount of deposits: 10% of 110 crores (70 + 20 + 20) = 11 crores.

For Plan B: Maximum amount of deposits: 25% of 110 crores (70 + 20 + 20) -11 crores (Outstanding deposit under plan A) = 16.5 crores.

- (ii) In terms of Rule 3(5) of the Companies (Acceptance of Deposits) Rules, 2014, in case Viki Limited is a wholly owned Government Company, so it can accept deposit together with the amount of other outstanding deposits as on the date of acceptance or renewal maximum up to thirty-five per cent. of the aggregate of its paid-up share capital, free reserves and securities premium account.

For Plan Bif wholly owned govt co: Maximum amount of deposits: 35% of 110 crores (70 + 20 + 20) = 38.5 crores.

Section 76

19. NOP Limited, since its incorporation in 2002, is engaged in the production of premium quality glass bottles. According to financial results of the company as on 31.3.2023 net worth of the company was ₹90 crore and turnover for the year 2022-23 was ₹510 crore. The company proposed to accept the deposits as on 1st February, 2024, which would be due for repayment on 30th September, 2028 from the public for expansion and redevelopment programs of the company.

Furthermore, the company has accepted a loan of ₹1.5 crore from Mr. P Kishore (Director) and the loan was to be repaid after 24 months. The company in its books of account, records the receipt as a loan under non-current liabilities. At the time of advancing the loan, Mr. P Kishore affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and complete details of such loan transaction is furnished in the boards' report.

On the basis of above facts answer the following questions:

- (i) Whether the company was eligible to accept deposits from the public? What is the criteria for acceptance of deposit and tenure for which deposit can be accepted? Whether the tenure decided by the company was in accordance with provisions of the Companies Act, 2013?
- (ii) With reference to the loan advanced by Mr. P Kishore to the company, state whether the same is to be classified as a deposit or not? (RTP May 24)

Solution:

Law:-

- (i) As per Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014, the term "eligible company" means a public company as referred to in section 76(1) of the Companies Act, 2013, which is 'eligible' to accept deposits from the public at large only if it meets the below-mentioned criteria. Accordingly:
 - (a) It should be a public company.
 - (b) It should have net worth of minimum ₹100 crore or a turnover of minimum ₹500 crore.
 - (c) It has obtained the prior consent by means of a special resolution passed in general meeting.
 - (d) The special resolution has been filed with the Registrar of Companies.
 - (e) An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under section 180 (1) (c).
- (ii) In terms of Rule 2(1)(c)(viii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report.

Conclusion:-

- (i) In the instant case, the turnover of NOP Limited is ₹510 crore, hence it is eligible to accept deposits from the public.

Tenure for which Deposits can be Accepted: A company is not permitted to accept or renew deposits (Whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty-six months.

The tenure for the proposed deposits dated 1st February, 2024 which would be due for repayment on 30th September, 2028, is not valid, as the maximum period of acceptance of deposit cannot exceed 36 months. Hence, it is not in compliance with the provisions of the Companies Act, 2013.

(ii) In the given case, the said deposits by Mr. P Kishore shall not be treated as deposit.

Section 76

20. On 30th June 2023, Sunrise Infratech Limited, raised secured deposits amounting to ₹160 crore from the public at an interest rate of 12% per annum, repayable after a period of three years. The company created

charges within the prescribed time in favour of the trustees for depositors, securing the deposits by creating charges over the following assets:

- Land and Building – ₹110 crore
- Plant and Machinery – ₹30 crore
- Factory Shed – ₹20 crore
- Trademark – ₹20 crore
- Goodwill – ₹30 crore

You are required to examine the validity of the charges created, particularly considering the nature of the assets offered as security, with reference to the applicable provisions of the Companies Act, 2013. (RTP SEP 2025)

Solution:

As per second proviso to section 76(1) of the Companies Act, 2013, every company which accepts secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets. The amount of charge shall not be less than the amount of deposits accepted. The charge shall be created in favour of the deposit holders in accordance with the prescribed rules.

In respect of creation of security, Rule 6 of the Companies (Acceptance of Deposit) Rule, 2014, states that the company accepting secured deposits shall create security by way of charge on its tangible assets only.

The other notable points are:

- The company cannot create charge on intangible assets (i.e. goodwill, trade-marks, etc.).
- Total value of security should not be less than the amount of deposits accepted and interest payable thereon.

In the given question,

Particulars	Amount (in ₹)
Total value of security (value of assets on which charge can be created)	110+30+20 [Land and Building, Plant & machinery and Factory Shed] = 160 crore
Total deposits accepted and interest payable thereon	160+ [(160*12%)*3 years] = 217.6 crore

Since, the total value of security is less than the amount of deposits accepted and interest payable thereon, hence the charge is not validly created.

Section 76

21. Following are the extracts of information (As per the latest audited balance sheet) in respect of Play World Ltd.:

	(₹ in crore)
(i) Paid-up share capital	20
(ii) Share premium	10
(iii) Free reserves	30
(iv) Turnover	510

The Company wants to accept deposits of 50 crore from the public and has obtained a credit rating. The tenure of the deposit is 36 months.

In light of the above data and referring to the provisions in the Companies Act, 2013, answer each of the following:

- (i) Can Play World Ltd. be permitted to accept deposits from the public other than its members after passing an ordinary resolution?
- (ii) Play World Ltd. needs 5 crore of funds for its short-term requirements and promises to repay the deposits within 5 months. Can the Company raise deposits under the Companies Act, 2013 and the applicable rules? **(MTP SEP 2025)**

Solution:

As per Rule 2(1)(e) of the Companies (Acceptance of Deposit) Rules, 2014, “eligible company” means a public company as referred to in section 76(1), having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits:

However, an eligible company, which is accepting deposits within the limits specified under section 180(1)(c), may accept deposits by means of an ordinary resolution.

A public company is ‘eligible’ to accept deposits from the public at large only if it meets the above-mentioned criteria.

According to Rule 3(1), a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months.


However, as an exception to this rule, for the purpose of meeting any of its short-term requirements of funds, a company is permitted to accept or renew deposits for repayment earlier than six months subject to the conditions that:

- (1) such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and
- (2) such deposits are repayable only on or after three months from the date of such deposits or renewal.
 - (i) In the given question, Play World Ltd., has turnover of ₹510 crore, hence, it is an eligible company.

Further, the duration of deposit is 36 months. Hence, Play World Ltd. can accept deposit from the public other than its members after passing an ordinary resolution, if the amount of ₹50 crore is within the limits specified under section 180(1)(c) of the Companies Act, 2013.

- (ii) The company can accept ₹5 crore of funds as the amount of deposit is within the prescribed limit (10% of 60 crore). Further, the tenure of deposit is 5 months i.e. it is repayable only after 3 months from the date of such deposits and it is required to meet company's short term requirements. Hence, the company can raise such deposits.

Rule 13 Use of DRRA

-  22. Samay Publishing Limited facing acute cash crunch wants to utilise a portion of 'Deposit Repayment Reserve Account' to pay off its short-term creditors who are pressing hard for repayment of ₹20,00,000. Is it justified to use funds lying in 'Deposit Repayment Reserve Account' in this manner? Give your answer as per the provisions of the Companies Act, 2013. (MTP Jan 25)

Solution:

Law: Rule 13 of the Companies (Acceptance of Deposits) Rules, 2014, states that the amount deposited in the 'Deposit Repayment Reserve Account' shall not be used by a company for any purpose other than repayment of deposits.

Conclusion: In the given question, Samay Publishing Limited wants to utilise a portion of 'Deposit Repayment Reserve Account' to pay off its short-term creditors. Since there is a prohibition, Samay Publishing Limited is not permitted to utilise its 'Deposit Repayment Reserve Account' to pay off its short-term creditors.

