

## MOST IMPORTANT QUESTIONS FOR CA INTER CORPORATE & OTHER LAWS

### CHAPTER 5 – ACCEPTANCE OF DEPOSIT BY COMPANIES

Five Star	Four Star	3 Star	2 Star
✓ Sec 2 (31) + Rule 2 (1) (c)	✓ Sec 73 Prohibition on acceptance of deposits from public + Exemptions ✓ Sec 76 Acceptance of deposits from public by certain companies ✓ Rule 3 etc	✓ Sec 76 Credit rating ✓ Depositor Trustee	✓ Repayment of deposits, etc., accepted before commencement of this Act

### Definition of Deposit

#### Question 1A

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) 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) 2,00,000 received from Mr. T, an employee of the company who is drawing annual salary of Rs. 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.

#### Answer

**Deposit:** 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) (c) of the Companies (Acceptance of deposit) Rules, 2014, in consultation with the Reserve bank of India.

Amounts received by the company will not be considered as deposit: In terms of Rule 2 (1) (c) of the Companies (Acceptance of deposit) Rules, 2014, following shall be the answers-

- (i) In the first case, where Rs. 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 (ixa) of the said rule.
- (ii) In the second case, Rs. 2,00,000 was received from Mr. T, an employee of the company drawing annual salary of Rs. 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) In the third case, amount of Rs. 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.

### **Question 1B**

RS Ltd. received share application money of Rs. 50.00 Lakh on 01.06.2019 but failed to allot shares within the prescribed time limit.

The share application money of Rs. 5.00 Lakh received from Mr. Khanna, a customer of the Company, was refunded by way of book adjustment towards the dues payable by him to the company on 30.07.2019. The Company Secretary of RS Ltd. reported to the Board that the entire amount of Rs. 50.00 Lakh shall be deemed to be 'Deposits' as on 31.07.2019 and the Company is required to comply with the provisions of the Companies Act, 2013 applicable to acceptance of deposits in relation to this amount.

You are required to examine the validity of the reporting of the Company Secretary in the light of the relevant provisions of the Companies Act, 2013.

### **Answer**

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

- Any amount received and held pursuant to an offer made in accordance with the provisions of the Companies Act, 2013
- towards subscription to any securities, including share application money or advance towards allotment of securities,
- pending allotment,
- so long as such amount is appropriated only against the amount due on allotment of the securities applied for;

It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit under these rules.

Further, it is clarified that any adjustment of the amount for any other purpose shall not be treated as refund.

In the given question, RS Limited has received Rs. 50 Lakhs as share application money on 01.06.2019. It failed to allot shares within the prescribed limit. Further, on 30.07.2019 the company adjusted the amount of Rs. 5 Lakhs received from Mr. Khanna (a customer of the company), by way of book adjustment towards the dues payable by him to the company.

In the light of the facts of the question and provisions of Law:

- (1) If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit. In the question, the prescribed limit of 60 days will end on 31.07.2019 and the company has 15 more days to refund such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded will be treated as deposit. Hence, the Company Secretary of RS Limited is not correct in treating the entire amount of Rs. 50 Lac as 'Deposits' on 31.07.2019.
- (2) Any adjustment of the amount for any other purpose shall not be treated as refund. Thus, the amount of Rs. 5 Lakhs adjusted against payment due to be received from Mr. Khanna, cannot be treated as refund.

### **Question 1C**

The Promoters of Jayshree Spinning Mills 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?

### **Answer**

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:

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

Hence, in the instant case, the unsecured loan contributed by promoters of Jayshree Spinning Mills 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 Jayshree Spinning Mills Limited will be regarded as deposit.

### **Question 1D**

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 Rs. 30.00 lacs 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 Rs. 30.00 lacs 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 Rs. 50.00 crores 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 Rs. 50.00 lacs from its members for a tenure which is less than six months. Is it a possibility?

(v) Is it in order for the Diamond Housing Finance Limited to accept and renew deposits from the public from time to time?

**Answer**

(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 Rs. 30.00 lacs 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 Rs.30.00 lacs 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 ₹ 30.00 lacs 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 Rs. 30.00 lacs shall not be treated as deposit.

(iii) By not repaying the deposit of Rs. 50.00 crores 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:

- 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 but which may extend to ten crore rupees
- Punishment for officer-in-default: Swati, being the officer-in-default, shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than rupees twenty-five lakhs but which may extend to rupees two crores, or with both

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 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:

- (i) 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
- (ii) 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 Rs. 50.00 lacs 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 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 public. However, Proviso to Section 73 (1) states that such prohibition with respect to the acceptance or renewal of deposit from public, inter-alia, 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 prohibition contained in section 73 (1) of the Act with respect to the acceptance renewal of deposit from public shall not apply to it. In other words, it being an exempted company, can accept deposits from the public from time to time without following the prescribed manner.

### **Question 1E**

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) Bhupendra, one of the Directors of Moon Technology Private Limited, a start-up company, requested his close friend Paras to lend to the company Rs. 20.00 lacs in a single tranche by way of a convertible note repayable within a period of six years from the date of its issue. Advise whether it is a deposit or not.
- (ii) The turnover of Y Ltd. is Rs. 400 crores as per last audited financial statement and net worth is Rs. 50 crores. Can Y Ltd. accept deposits from the public as per section 73 of the Companies Act, 2013?

### **Answer**

- (i) In terms of Rule 2 (1)(c)(xvii) of the Companies (Acceptance of Deposits) Rules, 2014, 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, Moon Technology Private Limited, a start-up company, received Rs.20.00 lacs from Paras 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. The amount received is below threshold limit of Rs. 25.00 lacs. Hence, the amount of Rs. 20.00 lacs shall be considered as deposit and the provisions for acceptance of deposit will apply accordingly.

- (ii) 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), 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.

Thus, a public company can accept deposit from public if it is an eligible company. In the given question, Y Ltd. has a turnover of Rs. 400 crore and net worth of Rs. 50 crores. Hence, it cannot be termed as an eligible company and thus cannot accept deposits from the public.

### **Question 1F**

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

### **Answer**

**Deposit:** 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. 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.

In the instant case, Rs. 5,30,000 was received by DSP Trading Private Limited as a non- interest-bearing security deposit, from its employee, Mr. Raj, who draws an annual salary of Rs. 5,00,000 under a contract of employment.

Accordingly, amount of 7 5,30,000 received from Mr. Raj, 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. Rai is more than his annual salary of Rs. 5,00,000.

### **Question 1G**

Answer the following citing relevant provisions of the Companies Act, 2013: (a) Wire Electricals Limited having paid-up capital of Rs. 1.00 crore availed a term loan of Rs. 10,00,000 from ABC Bank Limited to purchase electrical items. Mr. Taar, one of the directors of the company, is of the opinion that it shall be considered as 'deposit'. Is his contention correct?

### **Answer**

In terms of Rule 2 (1) (c) (i) 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. Taar that the term loan of Rs. 10,00,000 availed by the company from ABC Bank Limited shall be considered as 'deposit' is not correct.

## **Acceptance of deposit by members**

### **Question 2**

State the procedure to be followed by companies to accept deposits from its members according to the Companies Act, 2013. What are the exemptions available to the Private Limited Companies?

<b>Answer</b>											
Restriction on acceptance of deposit from public [Sec. 73(1)]	<p>No company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter:</p> <p>Provided that nothing in this sub-section shall apply to</p> <p>(i) a banking company;</p> <p>(ii) a non-banking financial company;</p> <p>(iii) a housing finance company registered with the National Housing Bank; and</p> <p>(iv) such other company as may be specified by CG.</p>										
Conditions for acceptance of deposits from members [Sec. 73(2)]	<p>A company may accept deposits from its members -</p> <p>— on such terms and conditions as may be agreed between the company and the members;</p> <p>— subject to the fulfilment of the following conditions:</p>										
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	<p style="color: red;">Security w.r.t. deposits [Sec. 73(2)(f)]</p>	<p>(a) The company may provide security for the due repayment of deposits and interest payable thereon, and create a charge on its assets for this purpose.</p> <p>(b) If the company does not secure the deposits or secures them partially, then, such deposits shall be termed as ‘unsecured deposits’ in every circular, form, advertisement or document through which the deposits are invited or accepted.</p>
<p style="color: red;">Repayment of deposits [Sec. 73(3)]</p>	<p>Every deposit accepted by a company under sub-section (2) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.</p>	
<p style="color: red;">Failure to repay the deposits or interest [Sec. 73(4)]</p>	<p>Where a company fails to repay the deposit or part thereof or any interest thereon under sub-section (3), the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.</p>	
<p style="color: red;">End use of DRR [Sec. 73(5)]</p>	<p>The deposit repayment reserve account referred to in clause (c) of sub-section (2) shall not be used by the company for any purpose other than repayment of deposits.</p>	
<p style="color: red;">Exemptions to private companies</p>	<p>The conditions for acceptance of deposits from members as contained in clauses (a) to (e) of sub-section (2) of section 73 shall not apply to -</p> <p>(i) a private company which accepts from its members deposits <b>not exceeding 100%</b> of aggregate of the paid-up share capital, free reserves and securities premium account; or</p> <p>(ii) a private company which is a <b>start-up, for 5 years</b> from the date of its incorporation; or</p> <p>(iii) a private company which fulfils all of the following conditions, namely:</p> <p>(a) It is <b>not an associate or a subsidiary</b> company of any other company;</p> <p>(b) The borrowings of such a company from banks or financial institutions or any body corporate is less than -</p> <ul style="list-style-type: none"> <li>■ twice of its paid-up share capital; or</li> <li>■ Rs. 50 crore, whichever is lower; and</li> </ul> <p>(c) It has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits.</p> <p>A private company as referred to in Points (i), (ii) or (iii) above -</p> <p>(i) shall file the details of deposits accepted by it to the Registrar (<b>in Form DPT-3</b>); and</p> <p>(ii) shall be eligible to claim the exemption only if it has <b>not committed any default in filing its FS u/s 137 or AR u/s 92.</b></p>	
<p style="color: red;"><b>Acceptance of deposit from public</b></p>		
<p><b>Question 3A</b></p> <p>Ashish Ltd. having a net-worth of Rs. 80 crores and turnover of Rs. 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.</p>		

**Answer**

**Acceptance of deposit from public:** 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 such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe.

Provided that such a company 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 for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.

Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the number of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

Since, Ashish Ltd. has a net worth of Rs. 80 crores and turnover of Rs. 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.

**Question 3B**

Safar Limited having a net worth of Rs. 130 crore wants to accept deposits from its members. It has approached you to advise whether it falls within the category of an eligible company? What special care has to be taken while accepting such deposits from members?

**Answer**

According to Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014, an “eligible company” as referred to in section 76(1) of the Companies Act, 2013 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) of the Companies (Acceptance of Deposits) Rules, 2014, 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 per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

Safar Limited is having a net worth of Rs. 130 crores. Hence, it falls in the category of ‘eligible company’.

The fact that turnover has not been stated in the question will not affect this answer, since fulfilling any one criteria will be sufficient.

Thus, Safar 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.

## Limits on acceptance of deposit

### Question 4A

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 Rs. 50.00 Lakh, if the aggregate of its paid-up capital; free reserves and security premium account is Rs. 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 public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account.

### Answer

(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, 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.**

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 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.**

### Question 4B

Wiki 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 Rs. 70 Crores  
Securities Premium Rs. 20 Crores  
Free Reserves Rs. 20 Crores  
Long-term borrowings Rs. 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.

**Answer**

(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.

Provided that 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.

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

Paid up share capital: Rs. 70 crores

Free Reserves: Rs. 20 crores

Securities premium: Rs. 20 crores

Total: Rs. 110 crores

Hence, Viki Limited is an eligible company, since its Net worth is in excess of Rs.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 twenty-five per cent. of the aggregate of its paid-up share capital, free reserves and securities premium account of the company.

**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 B:** Maximum amount of deposits: 35% of 110 crores (70 + 20 + 20) = 38.5 crores.

### Charge on tangible asset

#### Question 5

Perfect Limited Company raised the secured deposit of Rs.100 crores on 30th June, 2021 from the public on interest @ 12% p.a. repayable after 3 years. The charges has been created within prescribed time in favour of trustee of depositors against the deposit taking following assets of the company as security:

Land & Building	Rs. 60 crores
Plant & machinery	Rs. 20 crores
Factory Shed	Rs. 20 crores
Trade Mark	Rs. 20 crores
Goodwill	Rs. 25 crores

Explain the validity of the charges created with reference to the Companies (Acceptance of Deposit) Rules, 2014.

#### Answer

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.
- The market value of assets subject to charge shall be assessed by a registered valuer.
- The security shall be created in favour of a trustee for the depositors on specific movable and immovable property of the company.

In the given question,

Particulars	Amount
Total value of security (value of assets on which charge can be created)	60+20+20 [Land and Building, Plant & machinery and Factory Shed] = 100 crore
Total deposits accepted and interest payable thereon	100+ [(100*12%)*3 years] = 136 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.

## Depositor trustee

### Question 6

Explain provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013.

### Answer

Appointment of Trustee for Depositors [Rule 7 of the Companies (Acceptance of Deposits) Rules, 2014]:

No company referred to in sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors for creating security for the deposits.

However, a written consent shall be obtained from the trustee for depositors before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company to be so appointed.

(2) The company shall execute a deposit trust deed in DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.

(3) 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.

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

## Credit Rating

### Question 7

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

### Answer

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.

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), 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.

CS LLM ARJUN CHHABRA