

Debt Instruments – Concepts

Lesson 6

KEY CONCEPTS

■ Borrowings ■ Loans & Debts ■ Funding ■ Debentures ■ Bonds ■ Debenture Redemption Reserve ■ Debenture Trust Deed ■ Company Deposits

Learning Objectives

To understand:

- The borrowing powers of the Board
- Powers & Restrictions of Board to borrow money
- Unauthorised / *Ultra-Vires* Borrowings
- Types of Borrowings
- Creation of Security
- Conversion of Debentures into Shares
- Overview of Acceptance of Deposits

Lesson Outline

- Meaning and provisions related to Borrowing Powers of company
- Instruments for Corporate Funding-Debt Capital
- Kinds of Debentures
- Debenture Redemption Reserve Account
- Debenture Redemption Fund
- Debenture Trustee
- Overview of Acceptance of Deposit by Company
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- The Companies Act, 2013 [Section 71 to 71A]
- The Companies (Share Capital & Debentures) Rules, 2014
- The Companies (Acceptance and Deposit) Rules, 2014
- The SEBI (LODR) Regulations, 2015
- The SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021
- The SEBI (Issue of Capital and Disclosure Requirements) Regulations 2018
- Reserve Bank of India Guidelines

PART A**BORROWING POWERS OF COMPANY AND DEBT CAPITAL****Borrowings - “the act of one who borrows”**

In simple language borrowing can be defined as to obtain or receive money on loan with the promise or understanding that it will be repaid.

The one may not always have the money required to do certain things or to buy certain things. In such situations, individuals and businesses/firms/ Companies/institutions go for the option of borrowing money from lenders.

In order to run a business effectively and successfully, adequate amount of capital is necessary. In some cases capital which is arranged through internal resources i.e. by way of issuing equity share capital or using accumulated profit is not adequate and the organisation is resorted to external resources of arranging capital i.e. Bank Loan, Term Loan, Working Capital Loan, Overdraft facility from Bank, Debentures, Public Fixed Deposits, External Commercial borrowing (ECB) etc. Thus, borrowing is a mechanism used whereby the money is arranged through external resources with an implied or expressed intention of returning money.

What is Loan ?

A loan is a sum of money that one or more individuals or companies borrow from banks or other financial institutions so as to financially manage planned or unplanned events. In doing so, the borrower incurs a debt, which he has to pay back with interest and within a given period of time.

When a lender gives money to an individual or entity with a certain guarantee or based on trust that the recipient will repay the borrowed money with certain added benefits, such as an interest rate, the process is called lending or taking a loan.

Debts vs. Loans

Loan and debt are terms often used interchangeably due to the reason that they both primarily mean borrowing money. However, there is a small difference between the two. A loan is money borrowed from a lender. The lender can be a bank or a financial institution. Moreover, a loan is more structured in terms of payment, and the principal amount is paid back by the borrower to lender in instalments over a period of time.

The term debt connotes that debt is the money that the company raises through the issuance of bonds and debentures. Governments, companies, trusts, or corporations can issue bonds and debentures to fund their business, and the lender, in this case, will be the investor. The investor will receive interest payment regularly until the bond or debenture matures. Also, upon maturity, the investor gets back the entire principal amount in lump sum.

Every company needs additional capital for its business from time to time. The company can meet such requirement of capital, to an extent, by the issue of share, and at times has to raise loans. Borrowing can be defined as a means through which companies arrange financial funds through external sources like bank loans, shareholders, public investment, etc. The manner to borrow money, from whom it can borrow, to the extent it can borrow and compliances to be done by a company is regulated by various provisions of Companies Act, 2013 (“Act”).

Powers & Restrictions of Board u/s 179 and 180 of the Companies Act, 2013

Borrowings being an external source of raising money, a company cannot borrow money until it is so authorised by its memorandum.

Under Section 179 of the Companies Act, 2013, the Board of Directors of a company are entitled to exercise its power to borrow monies subject to the provisions contained in the Act and as contained in the memorandum or articles of association of the Company or in any regulations not inconsistent therewith, by passing a resolution at duly convened meeting of Board of Directors of the Company.

In terms of First proviso to section 179(3) of the Companies Act, 2013 the Board may, by a resolution passed at a meeting may delegate the power to borrow monies to any committee of Director the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office.

While section 179 of the Companies Act deals with Powers of Board and section 180 of the Companies Act, 2013 deals with restrictions on powers of Board.

Section 180(1) of the Companies Act, 2013 states that the Board of Directors of a company shall exercise the powers conferred under this section only with the consent of the company by a special resolution.

The power conferred under section 180(1)(c) talks about “to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves and securities premium, apart from temporary loans obtained from the company’s bankers in the ordinary course of business unless they have received the prior sanction of the company by a special resolution in general meeting.

Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause.

It is explained that, the expression “temporary loans” means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;”.

Exemption:

As per the exemption notification no 464(E) dated 5th June, 2015 issued by Ministry of Corporate Affairs, private companies have been exempted to comply the entire provisions of Section 180 of the Companies Act 2013, as a result special resolution is not required for private companies to borrow monies.

Unauthorised / Ultra Vires Borrowings

Ultra-vires

It is a Latin term made up of two words “*ultra*” which means *beyond* and “*vires*” meaning *power or authority*. So we can say that anything which is beyond the authority or power is called *ultra-vires*. In the context of the

company, we can say that anything which is done by the company or its directors which is beyond their legal authority or which was outside the scope of the object of the company is *ultra-vires*.

Doctrine of Ultra-Vires

Memorandum of association is considered to be the constitution of the company. It sets out the internal and external scope and area of company's operation along with its objectives, powers, scope. A company is authorized to do only that much which is within the scope of the powers provided to it by the memorandum. A company can also do anything which is incidental to the main objects provided by the memorandum. Anything which is beyond the objects authorized by the memorandum is an *ultra-vires* act.

Consequences of Ultra-Vires Borrowings

- *Void ab initio*: The *ultra-vires* acts are null and void ab initio. These acts are not binding on the company. Neither the company can sue, nor it can be sued for such acts. [*Ashbury Railway Carriage and Iron Company v. Riche*].
- *Estoppel*: Estoppel or ratification cannot convert an *ultra-vires* act into an *intra-vires* act.
- *Injunction*: the lender has been given authority under law to restrain the company for using the money lent. 'The members can restrain it from doing so by getting an injunction from the court'. [*Attorney General v. Gr. Eastern Rly. Co., (1880) 5 A.C. 473*]
- *Subrogation*: Where the money of an *ultra-vires* borrowing has been used to pay off lawful debts of the company, he would be subrogated to the position of the creditor paid off and to that extent would have the right to recover his loan from the company. Subrogation is allowed for the simple reason that when a lawful debt has been paid off with an *ultra-vires* loan, the total indebtedness of the company remains the same. By subrogating the *ultra-vires* lender, the Court is able to protect him from loss, while debt burden of the company is in no way increased.
- *Liability of directors*: In case of *ultra-vires* borrowing, the lender may be able to sue the directors for breach of warranty of authority, especially if the directors deliberately misrepresented their authority.

Intra vires Borrowing but outside the Scope of Agents' Authority

A distinction should always be made between a company's borrowing powers and the authority of the directors to borrow. Where the directors borrowed money beyond their authority but the borrowing is not *ultra-vires* of the company, such borrowing is called *Intra-vires* borrowing but outside the Scope of Agents' Authority. The company will be liable to such borrowing if the borrowing is within the directors' ostensible authority and the lender acted in good faith or if the transaction was ratified by the company.

Where the borrowing is *intra-vires* of the company but outside the authority of the directors e.g. where the articles provide that the directors shall have the power only up to Rs. 100 lakhs and prior approval of the shareholders would be required to borrow beyond Rs. 100 lakhs; any borrowing beyond Rs.100 lakhs without shareholders approval i.e. *intra-vires* borrowing by the company but outside the authority of directors and can be ratified by the company, then it becomes binding on the company. Here the legal position is quite clear. The company has power or capacity to borrow, but the authority of the directors is restricted either by the articles of the company or by the statute, and they have exceeded it. The company may, if it wishes, ratify the agent's act in which case the loan binds the company and the lender as if it had been made with company's authority in the first place.

On the other hand, the company may refuse to ratify the agent's act. Here the normal principles of agency apply. The doctrine of Indoor Management (also known as rule in *Royal British Bank v. Turquand* (1856) CI & B 327) shall protect the lender, provided he can establish that he advanced the money in good faith. A third-party who deals with an agent knowing that the agent is exceeding his authority has no right of action against the

principal. Bearing in mind that the memorandum and articles are public documents, the contents of which the third-party is deemed to know, he will obviously have no right of action against the company if the agent's lack of authority is obvious from reading them. But a third-party is not effected by secret restrictions on the agent's authority, as the lack of authority is not clear from the public documents and the lender can not be aware of it from some other source. Therefore, the company will be liable.

CASE LAWS

Related to borrowing power of a company

- (a) The behaviour of the directors, as the company's agents, can have no effect whatsoever on the validity of the loan for no agent can have more capacity than his principal. No agent can have a power which is not with the principal. If, therefore, the borrowing is *ultra-vires* the company, so that the company has no capacity to undertake it, the lender can have no rights at common law. No debt is created and any security which may have been created in respect of the borrowing is also void. The lender cannot sue the company for the repayment of the loan. [*Sinclair v. Brougham (1914) 88 LJ Ch 465*].
- (b) If the borrowing by the directors is *ultra-vires* their powers, the directors may, in certain circumstances, be personally liable for damages to the lender, on the ground of the implied warranty given by them, that they had power to borrow [*Firbank's Executors vs. Humphreys, (1886) 18 QBD 54; Garrard v. James, 1925 Ch. 616*].
- (c) Sometimes it happens that a power to borrow exists but is restricted to a stated amount, in such a case if by a single transaction an amount in excess is borrowed, only the excess would be *ultra-vires* and not the whole transaction [*Deonarayan Prasad Bhadani v. Bank of Baroda, (1957) 27 Com Cases 223 (Bom)*].
- (d) The acquiescence of all shareholders in excess loans contracted by directors beyond their powers but not *ultra-vires* the powers of the company would be sufficient to validate such excess debts. [*Sri Balasar aswathi Ltd. v. Parameswara Aiyar, (1956) 26 Com Cases 298, 308: AIR 1957 Mad 122*].
- (e) If the borrowing is unauthorized, the company will be liable to repay, if it is shown that the money had gone into the company's coffers [*Lakshmi Ratan Cotton Mills Co. Ltd. v. J.K. Jute Mills Co. Ltd., (1957) 27 Com Cases 660: AIR 1957 All 311*].
- (f) In *V.K.R.S.T Firm v. Oriental Investment Trust Ltd., AIR 1944 Mad 532* under the authority of the company, its managing director borrowed large sums of money and misappropriated it. The company was held liable stating that where the borrowing is within the powers of the company, the lender will not be prejudiced simply because its officer have applied the loan to unauthorised activities provided the lender had no knowledge of the intended misuse.
- (g) In *Equity Insurance Co. Ltd. v. Dinshaw & Co., AIR 1940 Oudh 202*, it was held that "where the managing agent of a company who is not authorised to borrow, has borrowed money which is not necessary, neither bona fide, nor for the benefit of the company, the company is not liable for the amount borrowed".
- (h) In *SurajBabu v. Jaitly & Co. AIR 1946 All 372, P & Co.*, were the managing agents of L & Co., which was in liquidation. P the manager borrowed a sum of money from J in his own name. In one letter to J he indicated that the loan was for a requirement of L & Co. and that company had actually benefited. It was held that there was no intention to bind the company. "The mere fact that the company had benefited was not in itself sufficient to bind the company".

Types of Borrowings

A company uses various kinds of borrowing to finance its operations. The various types of borrowings can generally be categorized into:



1. *Long term Borrowing:* means liabilities that represent money borrowed from banks or other lenders to fund the on-going operations of a business and that will not come due within one year.
Funds borrowed for a period ranging for five years or more are termed as long-term borrowings. A long term borrowing is made for getting a new project financed or for making big capital investment like purchase of property, plant, equipment and other fixed assets etc. Generally Long term borrowing is made against charge on fixed assets of the company.
2. *Short term Borrowing:* The funds are borrowed for a short period of up to one year. It is a temporary support for business and meeting the working capital needs is the main purpose. These are borrowings that have to be paid off within a year.
3. *Medium Term Borrowing:* Where the funds to be borrowed are for a period ranging from one to five years, such borrowings are termed as medium term borrowings. The commercial banks normally finance purchase of land, machinery, vehicles etc.
4. *Secured Borrowing:* A debt obligation is considered secured, if creditors have recourse to the assets of the company on a proprietary basis or otherwise ahead of general claims against the company.
5. *Unsecured Borrowing:* Under this, the debt consists of financial obligation. There is no collateral issued against the unsecured borrowings.
6. *Syndicated borrowing:* If a borrower requires a large or sophisticated borrowing facility this is commonly provided by a group of lenders known as a syndicate under a syndicated loan agreement. The borrower uses one agreement covering the whole group of banks and different types of facility rather than entering into a series of separate loans, each with different terms and conditions.
7. *Bilateral borrowing:* Refers to a borrowing made by a company from a particular bank/financial institution. In this type of borrowing, there is a single contract between the company and the lender.
8. *Private borrowing:* Under this, the company takes a loan from the bank of a financial institution. It consists of bank loan obligations.
9. *Public Borrowing:* Is a general definition covering all financial instruments that are freely tradable on a public exchange or over the counter, with few, if any, restrictions i.e. Debentures, Bonds etc.

Funding

How Companies execute funding?

Companies can fulfil their financial requirements by issuing equity or debt, borrowing funds through financial institutions. Unlike equity, debt has a specified interest rate and a schedule of dates when interest is to be paid and all the principal fully repaid. Equity is money the company already has in its coffers or can raise from investors.

Many companies would prefer to use debt to support their growth, rather than equity, as it is less expensive form of financing but there must still be sufficient operating cash flow generated by the Company to meet the debt's interest and principal payment obligations.

In every corporate organization engaged in doing business or involved in manufacturing activity or industry providing services etc., there is always requirement of finances and funds. In order to run a business effectively and successfully, adequate amount of capital is necessary. In some cases it is capital is arranged by way of issuing equity share capital or using accumulated profit. But, Equity funds most of the times when not adequate to meet the financial demand of the company for long run, the organization is resorted to external resources for arranging capital i.e. External Commercial Borrowing (ECB), Debentures, Bank Loan, Public Fixed Deposits etc.

The finances raised through debentures are generally long-term debt. Since debentures have no collateral backing, they must rely on the creditworthiness and reputation of the issuer for support. Both corporations and governments frequently issue debentures to raise capital or funds.

Debentures & Bonds

Meaning of Debentures

The word 'debenture' has been derived from a Latin word '*debere*' which means to borrow. Debenture is a written instrument acknowledging a debt. It contains a contract for repayment of principal after a specified period or at intervals or at the option of the company and for payment of interest at a fixed rate payable usually either half-yearly or yearly on fixed dates. For better understanding of the concept of Debentures, one must need to understand the few terms like, debt instruments, securities (convertible / Non-convertible) etc. as Debentures are one of the form of Debt securities.

Definitions

SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 defines the following terms:

Regulation 2(1)(j)

“Convertible debt instrument” means an instrument which creates or acknowledges indebtedness and is convertible into equity shares of the issuer at a later date at or without the option of the holder of the instrument, whether constituting a charge on the assets of the issuer or not.

Regulation 2(1)(k)

“Convertible security” means a security which is convertible into or exchangeable with equity shares of the issuer at a later date, with or without the option of the holder of such security and includes convertible debt instrument and convertible preference shares.

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 defines the following terms:

Regulation 2(1)(zl)

“Specified securities” means 'equity shares' and 'convertible securities' as defined under clause (eee) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Regulation 2(1)(t)

“Non-convertible debt securities” means ‘debt securities’ as defined under the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021.

SEBI (Issue And Listing Of Non-Convertible Securities) Regulations, 2021 defines debenture under the definition of “Debt securities” and related terms:

Regulation 2(1)(k)

“Debt securities” means non-convertible debt securities with a fixed maturity period which create or acknowledge indebtedness and includes debentures, bonds or any other security whether constituting a charge on the assets/properties or not, but excludes security receipts, securitized debt instruments, money market instruments regulated by the Reserve Bank of India, and bonds issued by the Government or such other bodies as may be specified by the Board.

Regulation 2(1)(x)

“Non-convertible securities” means debt securities, non-convertible redeemable preference shares, perpetual non-cumulative preference shares, perpetual debt instruments and any other securities as specified by the Board.

Regulation 2(1)(hh)(ii)

“Secured debt securities” shall mean such debt securities which are secured by creation of a charge on the properties or assets of the issuer or its subsidiaries or its holding companies or its associate companies having a value which is sufficient for the due repayment of principal and payment of interest thereon.

Under the Companies Act, 2013**Section 2(30)**

“Debenture” includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not.

Provided that–

- (a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and
- (b) such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company,

shall not be treated as debenture;

From the above discussion, it can be said that debentures / debt securities are defined under various statutes.

Concepts – Bonds & Debentures

Bonds and Debentures both are debt instrument issued by the government or companies. Both of these are fund raising tools for the issuer / forms of borrowed capital for companies.

Debentures, in comparison to other forms of bonds, serve a more specific purpose. While both are used to raise funds, debentures are frequently used to fund the costs of an upcoming project or to pay for a planned corporate expansion. These debt securities are a common form of long-term funding for companies.

A debenture is a marketable security that businesses can issue to obtain long-term financing without needing to dilute their equity. In corporate finance, a debenture is a medium- to long-term debt instrument used by large companies to borrow money, at a fixed rate of interest. The legal term “debenture” originally referred to a document that either creates a debt or acknowledges it, but in some countries the term is now used interchangeably with bond, loan stock or note. A debenture is thus like a certificate of loan or a loan bond evidencing the company’s liability to pay a specified amount with interest. Although the money raised by the debentures becomes a part of the company’s

capital structure, it does not become share capital. Senior debentures get paid before subordinate debentures, and there are varying rates of risk and payoff for these categories.

Debentures are freely transferable by the debenture holder. Debenture holders have no rights to vote in the company's general meetings of shareholders, but they may have separate meetings or votes e.g. on changes to the rights attached to the debentures. The interest paid to them is a charge against profit in the company's financial statements.

Another term used in companies in the same perspective is 'Bond'. Bond is also an instrument of acknowledgement of debt. Traditionally, the Government issued bonds, but these days, bonds are also being issued by semi-government and non-governmental organisations. In simple words it can be illustrated as, Bonds are debt financial instruments issued by large corporations, financial institutions and government agencies that are backed up by collaterals or physical assets.

The terms 'debentures' and 'Bonds' are many times used inter-changeably. The holder of bonds is called as lender, while the issuer of bonds is called as the borrower. There are various types of bonds and debentures, and an investor can invest their money depending on the preferences and risk-taking ability. Below are the points distinguishing between the two:

Difference between Bonds and Debentures

Basis of Difference	Debentures	Bonds
Nature	Debentures are debt financial instruments issued by private / public companies, for raising capital from the investors.	Bonds are debt financial instruments issued by large corporations, financial institutions and government agencies for raising additional fund from the public.
Security	Debentures can be secured as well as unsecured.	Bonds are secured in nature.
Owner	The owner of a debenture is called a debenture holder.	The owner of a bond is called a bondholder.
Collateral	Debentures do not get secured by the collateral or physical assets of the issuing company. Lenders purchase these instruments solely based on the reputation of the issuing company.	Bonds get secured by the collateral or physical assets of the issuing company.
Tenure	Debentures are generally short to medium term investments and their tenure is usually lower than bonds.	Bonds are long term investments and their tenure is generally higher than debentures.
Convertibility	Issuing company can convert only convertible and also partially convertible debentures into shares on the expiry as specified in the clause.	Bonds cannot be converted into equity shares of the company.
Rate of Interest	The debentures carry a fixed or floating interest rate that is generally higher than bonds because they are less stable in terms of repayment, and they are also not backed by collateral.	The bonds carry a fixed or floating interest rate that is generally lower than debentures because they are more stable in terms of repayment, and they get backed by collateral of the issuing company.
Liquidation	During liquidation, the debenture holders are paid after the bondholders.	During company liquidation, Bondholders are given priority over the debenture holders.

<p>Payment Structure</p>	<p>The payment of interest for debentures is done on a periodical basis and depends on the company's performance.</p>	<p>The payment of interest for bonds is on an accrual basis. The issuing company pays this amount on a monthly, half-yearly or yearly basis and this payment is not dependent on the performance of a company.</p>
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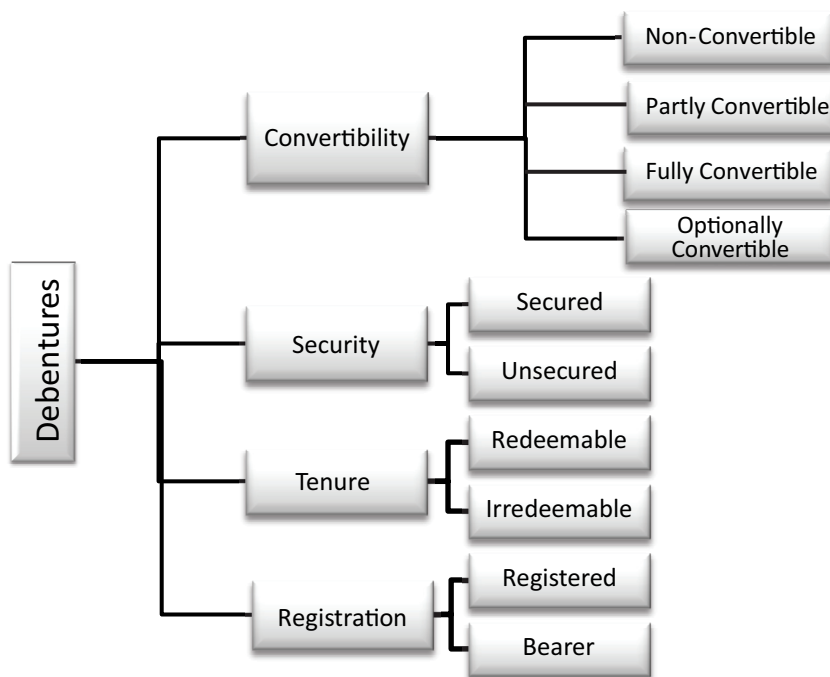
Nature of Debentures

As per Section 44 of the Companies Act, 2013, the debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the Articles of Association of the company.

As per the provisions of Section 56, securities will be transferable vide Form SH-4. Transferability is governed by the provisions of the Articles of Associations.

Kinds of Debentures

Debentures are generally classified into different categories:



On the basis of Convertibility

- (a) *Non-Convertible Debentures (NCD)*: These instruments retain the debt character for the whole of the tenure and cannot be converted into equity shares or any other form of security.
- (b) *Partly Convertible Debentures (PCD)*: Partly convertible debentures, as the name suggests, a certain portion of these debentures are partially converted into equity shares upon exhaustion of the specified duration. These instruments allow holders to convert only a portion of their investment into equity shares at the end of the pre-determined period. The holders has the option to redeem the remaining amount of the debenture on maturity. Additionally, at the time of issuance, the Company chooses the conversion ratio for these debentures. Moreover, the holders of these debentures become shareholders in the Company to the extent of their holdings after being partially converted into equity.

- (c) *Fully convertible Debentures (FCD)*: These are fully convertible into Equity shares or any other form of security at the issuer's notice. The ratio of conversion is decided by the issuer. Upon conversion the investors enjoy the same status as shareholders of the company.
- (d) *Optionally Convertible Debentures (OCD)*: The investor has the option to either convert these debentures into shares at price decided by the issuer/agreed upon at the time of issue.

On the basis of Security

- (a) *Secured Debentures*: Debentures that are issued against a security are called secured debentures. In other words, a charge is made against the assets of the issuing company. So, if the issuer fails on payment of the principal or interest amount, his assets can be sold to repay the liability to the investors. Section 71(3) of the Companies Act, 2013 provides that secured debentures may be issued by a company subject to such terms and conditions as may be prescribed by the Central Government through rules.
- (b) *Unsecured Debentures*: Debentures which are issued without any charge against the issuing company's assets are called unsecured debentures. These instruments are unsecured in the sense that if the issuer defaults on payment of the interest or principal amount, the investor has to be along with other unsecured creditors of the company, are also said to be naked debentures. Unlike secured debentures, unsecured debentures are issued by the Company without creation of charge over the assets of the Company. In case a Company is unable to pay the principal or interest on due date, these debentures do not offer any protection to the debenture holders.

On the basis of Tenure

- (a) *Redeemable Debentures*: Redeemable debentures clearly spell out the exact terms and date by which the issuer of the bond must repay their debt in full. It refers to the debentures which are issued with a condition that the debentures will be redeemed at a fixed date or upon demand, or after notice etc.
- (b) *Irredeemable Debentures*: An irredeemable debenture is a type of debenture in which there is not fixed time for the issuer to repay the amount. The debenture holder cannot demand payment as long as the company is a going concern and does not make default in making payment of the interest. But all debentures, whether redeemable or irredeemable become payable on the company going into liquidation. Irredeemable (non-redeemable) debentures, on the other hand, do not hold the issuer liable to repay in full by a certain date. Because of this, irredeemable debentures are also known as perpetual debentures. However, after the commencement of the Companies Act, 2013, now a company cannot issue perpetual or irredeemable debentures.

On the basis of Registration

- (a) *Registered Debentures*: Registered debentures are made out in the name of a particular person, whose name appears on the debenture certificate and who is registered by the company as holder on the Register of debenture holders. Such debentures are transferable in the same manner as shares by means of a proper instrument of transfer duly stamped and executed and satisfying the other requirements specified in Section 56 of the Companies Act, 2013.
- (b) *Bearer debentures*: Bearer debentures on the other hand, are made out to bearer, and are negotiable instruments, and so transferable by mere delivery like share warrants. The person to whom a bearer debenture is transferred become a "holder in due course" and unless contrary is shown, is entitled to receive and recover the principal and the interest accrued thereon. [*Calcutta Safe Deposit Co. Ltd. v. Ranjit Mathuradas Sampat (1971) 41 Com Cases 1063*]

Pari Passu Clause in case of Debentures

Debentures are usually issued in a series with a *pari passu* clause and it follows that they would be on an equal footing as to security and should the security be enforced, the amount realised shall be divided pro-rata, i.e., they are to be discharged rateably. In the event of deficiency of assets, they will abate proportionately. The expression '*pari passu*' implies with equal step, equally treated, at the same rate, or at par with. When it is said that existing debentures shall be issued at *pari passu* clause, it implies that no difference will be made between the old and new debentures.

If the words *pari passu* are not used, the debentures will be payable according to the date of issue, and if they are all issued on the same day, they will be payable accordingly to their numerical order. However, a company cannot issue a new series of debentures so as to rank *pari passu* with prior series, unless the power to do so is expressly reserved and contained in the debentures of the previous series.

Debenture Stock

A company, instead of issuing debentures, each in respect of separate and distinct debt, may raise one aggregate loan fund or composite stock known as 'debenture stock'. Accordingly, a debenture stock is a borrowed capital consolidated into one mass for the sake of convenience. Instead of each lender having a separate bond or mortgage, he has a certificate entitling him to a certain sum being a portion of one large loan. It is generally secured by a trust deed. As in the case of shares, a person may subscribe for, or transfer any amount even a fraction amount. Debenture stock is the indebtedness itself, and the debenture stock certificate furnishes evidence of the title or interest of the holder in the indebtedness. Debenture is the document which furnishes evidence of the debt. Debenture stock must be fully paid, while debenture may or may not be fully paid.

ISSUE AND REDEMPTION OF DEBT SECURITIES

- Section 71(1) of the Act states that a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. Further, the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.
- No company shall issue any debentures carrying any voting rights [Section 71(2)].
- Section 71(3) read with Rule 18(1) of Companies (Share Capital and Debentures) Rules, 2014 provides that the secured debentures may be issued only when the following conditions are complied with: -
 - *Redemption Clause* - The date of redemption of Secured Debentures shall not exceed ten years from the date of issue.

The following classes of Companies may issue secured debentures for a period exceeding 10 years but not exceeding 30 years,

- (i) Companies engaged in setting up of infrastructure projects;
 - (ii) Infrastructure Finance Companies as defined in clause (viiia) of sub direction (1) of direction 2 of Non-Banking Financial (Non-deposit accepting or holding) Companies Prudential Norms (Reserve Bank) Directions, 2007;
 - (iii) Infrastructure Debt Fund Non-Banking Financial Companies' as defined in clause (b) of direction 3 of Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions, 2011;
 - (iv) Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory authority to issue debentures for a period exceeding ten years.
- *Appointment of Debenture Trustee & execution of Debenture Trust deed* - The company shall appoint the debenture trustee before the issue of prospectus or letter of offer for subscription of its

debentures and not later than 60 days after the allotment of the debentures, execute a debenture trust deed to protect the interest thereon.

- *Creation of security* - In terms of Rule 18(1)(b) of Companies (Share Capital and Debentures) Rules, 2014, an issue of secured debentures shall be secured by the creation of a charge on the properties or assets of the company or its subsidiaries or its holding company or its associates companies, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon.

In terms of Rule 18(1)(d) of Companies (Share Capital and Debentures) Rules, 2014, the security for the debentures by way of charge or mortgage shall be created in favour of the debenture trustee on:

- i. any specific movable property of the company or its holding company or subsidiaries or associate companies or otherwise;
- ii. any specific immovable property wherever situated, or any interest therein.

In case of a non-banking financial company, the charge or mortgage as aforesaid may be created on any movable property.

In case of any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State Government or by both, the requirement for creation of charge under this sub-rule shall not apply.

In case of any loan taken by a subsidiary company from any bank or financial institution, the charge or mortgage may also be created on the properties or assets of the holding company.

The term “Creation of Security” means mortgaging the property in favour of Debenture Trustee for the benefit of debenture holders. This is an incidence of ownership of property and creation of security has to be done by the owner of the property. However, the debenture holders are beneficiaries and they have no access to mortgaged property. The debenture trustee holds the secured property on behalf of issuer of security and for benefit of debenture holders. In the event of default by the issuer of security, the Debenture Trustee will have the power and authority to bring the secured property to sale following the procedure in the Transfer of Property Act and the proceeds of sale will have to be applied to redeem the debentures.

To sum-up: Issue of Debentures

Sl. No.	Particulars	Time Frame
1.	Obtain a valuation report from the registered valuer with respect to the Convertible Debentures to be issued. In case of Non-Convertible Debenture, there is no dilution of share-holding in the share capital of the company, valuation of securities and justification of price are not applicable.	-
2.	Hold a meeting of Board: <ol style="list-style-type: none"> (i) To consider and approve issue of Debentures including the terms and conditions of issue (ii) To identify the group of persons to whom debentures are proposed to be offered (iii) To approve the offer letter (iv) To fix day, date and time and agenda for General Meeting for passing Special Resolution (v) To approve draft notice of General Meeting. 	-

<i>Sl. No.</i>	<i>Particulars</i>	<i>Time Frame</i>
3.	In case of a Public Company, a copy of Board Resolution for issue of debentures with ROC is required to be filed by the company.	File E-Form MGT-14 within 30 days of passing of Board Resolution
4.	Convene and hold Extra-Ordinary General Meeting to consider and approve the following items: – (i) Increase in the Borrowing power of the Board of Directors by passing Special Resolution, in case it exceeds the limit, in terms of Section 180(1)(c) (ii) Issue of Debentures	File E-Form MGT-14 along with explanatory statement within 30 days of passing of Special Resolution.
5.	Open a separate Bank Account in a scheduled bank for keeping monies received on the application.	-
6.	Prepare the list of such persons to whom offer to subscribe debenture will be given in draft offer letter under Form PAS-4.	-
7.	Offer letter shall be accompanied by an application form serially numbered and addressed specifically to the person to whom the offer is made.	-
8.	Dispatch of Letter of Offer to identified persons.	-
9.	Maintain a complete record of persons to whom offer letter is sent in Form PAS-5.	-
10.	Receiving of Application Money through cheque or demand draft or other banking channel and not by cash. Keep the record of the bank account from where such payments for subscriptions have been received.	-
11.	Convene Board meeting within a period of 60 days from the date of receipt of subscription money: a. to consider the allotment of Debentures . b. Approval of draft agreement for Charge creation & authorizing the director for signing the same, if applicable. c. Approval of the draft of Debenture Trust Deed [SH-12], if applicable. d. Issue of Debentures Certificate and authorize two directors and a person to sign the same.	Filing of Form CHG-9 within 30 days from the date of creation of charge in case of Secured Debenture. Filing Return of Allotment in Form PAS-3 within 15 days of allotment.
12.	Make necessary entries in the Register of Debenture holders in Form MGT-2. Make necessary entries in the Register of Charges in Form CHG-7; if applicable.	within 7 days of the Board Meeting in which allotment of debentures was approved forthwith after the registration of creation of charge.
13.	Issue of Debenture Certificate.	Within 6 months from date of allotment of debentures.
14.	Stamp Duty settlement as per provisions & rates of Stamp Act.	-

To sum-up: Redemption of Debenture

- Conduct Board Meeting for the redemption of debentures
- Intimate the debenture holders about the redemption
- Coordinate with banks for refund
- Changes in debenture register
- Changes in charge register, if any charge created on debentures
- Further in case of Compulsory/Optionally Convertible Debentures, if at the time of issue the shareholders approval was not taking for the conversion part, then the approval of shareholders is necessary while such conversion. Also if the debentures are redeemed out of the profits of the company, the shareholders approval is required to be taken
- The redemption of secured debentures not to exceed 10 years from issue date.

Note : Board resolution under clause (c) of subsection (3) of section 179 would be adequate, in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in clause (c) of Section 180(1).

Further, in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation exceeds the limit as specified in clause (c) of sub-section (1) of section 180, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year.

CONVERSION OF DEBENTURES INTO SHARES

Section 71(1) of the Act states that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

As per section 71 (1) of the Companies Act 2013, a company has the power to issue debentures with an option of Conversion of Debentures into Shares wholly or partly. However, the same shall be approved by a special resolution passed at a general meeting. There being no prescribed rule under the Companies Act 2013 governing the procedure for the same, hence the provisions of section 42 and 62 of the Companies Act 2013 read with applicable rules governing the provisions for issue of shares / security must be taken into consideration.

DEBENTURE REDEMPTION RESERVE (DRR)**Meaning of DRR:**

Debenture Redemption Reserve (DRR) is a fund maintained by companies who have issued debentures. Its purpose is to minimize the risk of default on repayment of debentures. The DRR ensures availability of funds for meeting obligations towards debenture holders on maturity. The DRR involves two components. The first component is setting aside a portion of the profit. The allocation of profit is done in a process known as 'earmarking of funds'. It ensures that adequate profits are available for repaying the debentures. The second component involves an investment of funds. It ensures that the company has enough liquidity to make the repayment.

Purpose and Uniqueness:

Companies which have borrowed money through debentures may at the time of maturity not have the funds to make a repayment. To minimize the chances of default, the Government introduced the concept of a Debenture

Redemption Reserve. The primary reasons for default on maturity are a lack of profitability and a lack of liquidity. To address both these concerns, the concept of a DRR provides for two requirements:

- Annually, a portion of the profit is 'earmarked' for transfer to the DRR. Such earmarked amount cannot be used until repayment of the debentures is made. The effect of this strategy is that the dividend available to shareholders is reduced. When dividends are lowered, enough funds are retained in the company to enable a future settlement to debenture-holders. Thus, the chance that the company may make a default due to profitability related issues is minimized.
- Every year, investments are purchased for an amount equal to the transfer made to the DRR. Only securities approved by the government can be purchased for investments. The investments cannot be sold for any purpose other than meeting the liability toward the debenture holders. The effect of this strategy is that a part of the company's assets is reserved for repaying the debenture liability. Thus, the chance that the company may make a default due to profitability related issues is minimized.

Creation of Debenture Redemption Reserve under Companies Act, 2013 and its Adequacy

Section 71(4) of the Companies Act 2013 states that where debentures are issued by a company, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilized by the company except for the redemption of debentures.

Rule 18(7) of the Companies (Share Capital and Debenture) Rules, 2014 states that the company shall comply with the requirements with regard to Debenture Redemption Reserve (DRR) and investment or deposit of sum in respect of debentures maturing during the year ending on the 31st day of March of next year, in accordance with the conditions given under said Rule.

Rule 18(7)(a) of the Companies (Share Capital and Debenture) Rules, 2014 states that Debenture Redemption Reserve shall be created out of profits of the company available for payment of dividend.

Rule 18(7)(b) of the Companies (Share Capital and Debenture) Rules, 2014 states that the limits with respect to adequacy of Debenture Redemption Reserve and investment or deposits, as the case may be, shall be as under:

S. No.	Classes of Company	Condition
1	All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies	No DRR for debentures issued by for both public as well as privately placed debentures
2	Financial Institutions (FIs) within the meaning of clause (72) of section 2 of the Companies Act, 2013	DRR shall be as applicable to NBFCs registered with RBI
3	For NBFCs registered with the RBI under Section 45-IA of the RBI Act, 1934 and Housing finance companies registered with the National Housing Bank:	
3A	Listed NBFCs and Housing Finance Companies	No DRR required for debentures issued for both public as well as privately placed debentures
3B	Unlisted NBFCs and Housing Finance Companies	No DRR is required in case of privately placed Debentures

4A	Listed Companies	No DRR required for debentures issued for both public as well as privately placed debentures
4B	Unlisted companies	Adequacy of DRR shall be 10% of the value of outstanding debentures.

Investments / Deposits from DRR

In case of public issue of debentures by Listed Companies including NBFCs registered with Reserve Bank of India under section 45- IA of the RBI Act, 1934 and for Housing Finance Companies registered with National Housing Bank and / or issue of debentures by unlisted companies, (other than All India Financial Institutions and Banking Companies and NBFCs registered with Reserve Bank of India under section 45- IA of the RBI Act, 1934 and for Housing Finance Companies registered with National Housing Bank), such Companies shall on or before the 30th day of April in each year, in respect of debentures issued by such a company, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent., of the amount of its debentures maturing during the year, ending on the 31st day of March of the next year.

It may be noted that the amount remaining invested or deposited, as the case may be, shall not any time fall below fifteen percent of the amount of the debentures maturing during the year ending on 31st day of March of that year. The company may choose any of the below given methods:-

Methods of investments/ Deposits:

- (A) in deposits with any scheduled bank, free;
- (B) in unencumbered securities of the Central methods of deposits or from any charge or lien; Government or any State Government;
- (C) in unencumbered securities mentioned in sub-clause (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882;
- (D) in unencumbered bonds issued by (D) other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882.

Creation of Debenture Redemption Reserve in case of partly convertible debentures:

Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with said rule.

Utilization :

The amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above.

The amount credited to Debenture Redemption Reserve shall not be utilized by the company except for the purpose of redemption of debentures.

Disclosure in Directors Report:

The amount which is transferred as Debenture Redemption Reserve is to be disclosed in Directors' Report.

CASE LAWS

- (1) The Regional Director has filed an affidavit on behalf of the central government in which two observations have been made. The first observation of the Regional Director is that at the meeting of the shareholders of the petitioner company, nine shareholders together holding 527 equity shares voted against the scheme. The second observation of the Regional Director is that in terms of section 117C(1) of the Companies Act, 1956 where a company issues debentures, it has to create a debenture redemption reserve for redemption of such debentures to which adequate amount has to be credited from out of its profits every year until such debentures are redeemed. [*Britannia Industries Ltd vs. Unknown(2010)*]
- (2) The apex court has considered as to whether the debenture redemption reserve is a reserve within the meaning of the Companies Act. The Supreme Court has held in the said case that any amount set apart in the accounts of the company to redeem the debentures must be treated as monies set apart to meet a known liability. The debentures will have to be shown in the company's balance sheet of the year as liability.

Merely because the debentures are not redeemable during the accounting period, the liability of redeemed debenture does not cease to exist. The Supreme Court further held that the debenture redemption Reserve must be regarded as a provision made by the assessee-company to enable it to redeem the said debentures when they become due for redemption. The Supreme Court further stated that the amounts set apart for redemption of debentures are not in the nature of charge against profit but are merely appropriation of profits. The said debenture redemption reserve account cannot be held to be a reserve on that ground itself. [*Rayon Corpn. Ltd. (supra)*]

- (3) The mere fact that a Debenture Redemption Reserve is labeled as a reserve will not render it as a reserve in the true sense or meaning of that concept. An amount which is retained by way of providing for a known liability is not a reserve. Consequently, the Tribunal was correct in holding that the amount which was set apart as a Debenture Redemption Reserve is not a reserve within the meaning of Explanation (b) to Section 115JA of the Income Tax Act, 1961. [*Alembic Limited, Baroda vs. Dy. Cit., Circle-1(1)(2016)*]

DEBENTURE TRUSTEES & DEBENTURE TRUST DEED

No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees. The names of the debenture trustees shall be stated in letter of offer inviting subscription for debentures and also in all the subsequent notices or other communications sent to the debenture holders;

Appointment of Debenture Trustee:

The Company shall before the appointment of debenture trustee or trustees obtain a written consent from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures;

The conditions governing the appointment of debenture trustee or trustees is prescribed under Rule 18(2)(c) the Companies (Share Capital and Debenture) Rules, 2014.

A person shall not be appointed as a debenture trustee, if he-

- (i) beneficially holds shares in the company;
- (ii) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;

- (iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
- (iv) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
- (v) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
- (vi) has any pecuniary relationship with the company amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- (vii) is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel.

Casual Vacancy and Removal:

In terms of Rule 18(2)(d) of the Companies (Share Capital and Debenture) Rules, 2014, the Board may fill any casual vacancy in the office of the trustee but while any such vacancy continues, the remaining trustee or trustees, if any, may act: Provided that where such vacancy is caused by the resignation of the debenture trustee, the vacancy shall only be filled with the written consent of the majority of the debenture holders.

In terms of Rules 18(2)(e) of the Companies (Share Capital and Debentures) Rules, 2014, any debenture trustee may be removed from office before the expiry of his term only if it is approved by the holders of not less than three fourth in value of the debentures outstanding, at their meeting.

Duties of Debenture Trustee

The duties of debenture trustee or trustees prescribed under Rule 18(3) of the Companies (Share Capital and Debenture) Rules, 2014 is as follows:

- (a) To satisfy himself that the letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed;
- (b) To satisfy himself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders;
- (c) To call for periodical status or performance reports from the company;
- (d) To communicate promptly to the debenture holders defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee therefor;
- (e) To appoint a nominee director on the Board of the company in the event of-
 - (i) two consecutive defaults in payment of interest to the debenture holders; or
 - (ii) default in creation of security for debentures; or
 - (iii) default in redemption of debentures.
- (f) To ensure that the company does not commit any breach of the terms of issue of debentures or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach;
- (g) To inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed;
- (h) To ensure the implementation of the conditions regarding creation of security for the debentures, if any, and debenture redemption reserve;

- (i) To ensure that the assets of the company issuing debentures and of the guarantors, if any, are sufficient to discharge the interest and principal amount at all times and that such assets are free from any other encumbrances except those which are specifically agreed to by the debenture holders;
- (j) To do such acts as are necessary in the event the security becomes enforceable;
- (k) To call for reports on the utilization of funds raised by the issue of debentures;
- (l) To take steps to convene a meeting of the holders of debentures as and when such meeting is required to be held;
- (m) To ensure that the debentures have been converted or redeemed in accordance with the terms of the issue of debentures;
- (n) To perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders.

Meetings of Debenture holders

In terms of Rule 18(4) of the Companies (Share Capital and Debenture) Rules, 2014, the meeting of all the debenture holders shall be convened by the debenture trustee on-

- (a) requisition in writing signed by debenture holders holding at least one-tenth in value of the debentures for the time being outstanding;
- (b) the happening of any event, which constitutes a breach, default or which in the opinion of the debenture trustees affects the interest of the debenture holders.

DEBENTURE TRUSTEE DEED

A debenture trust deed is an instrument that a company executes in favour of a debenture trustee, thereby appointing them and defining their role and duties to protect the interest of debenture holders before debentures are offered for public subscription.

No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding 500 for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed under the rule.

The company shall not later than sixty days after the allotment of the debentures, execute a debenture trust deed to protect the interest thereon.

A debenture trust deed shall be in **Form No. SH.12** or as near thereto as possible and shall be executed by the company issuing debentures in favour of the debenture trustees within three months of closure of the issue or offer.

Section 71 (8) of the Companies Act 2013 puts an obligation on the company to pay interest and redeem the debentures in accordance with the terms and conditions of their issue.

Trust Deed in Form SH-12 contains the following:

- Description of Debenture issue
- Details of charge created
- Particulars of the appointment of Debenture Trustee
- Events of defaults
- Obligations of the company
- Miscellaneous

Conflicting Provisions in the Trust Deed:

Section 71(7) of the Companies Act, 2013 states that any provision contained in a trust deed for securing the issue of debentures, or in any contract with the debenture-holders secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he fails to show the degree of care and due diligence required of him as a trustee, having regard to the provisions of the trust deed conferring on him any power, authority or discretion.

Liability of the debenture trustee:

The liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding not less than three-fourths in value of the total debentures at a meeting held for the purpose.

Rights to inspect Trust Deed:

In terms of Rule 18(8) of the Companies (Share Capital and Debenture) Rules, 2014, a trust deed for securing any issue of debentures shall be open for inspection to any member or debenture holder of the company, in the same manner, to the same extent and on the payment of the same fees, as if it were the register of members of the company. A copy of the trust deed shall be forwarded to any member or debenture holder of the company, at his request, within 7 days of the making thereof, on payment of fee.

Power of debenture trustee to file petition before the Tribunal in event of insufficient assets:

In terms of Section 71(9) of the Companies Act 2013, where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders.

Power of debenture holders to file petition before the Tribunal:

In terms of Section 71(10) of the Companies Act 2013, where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.

A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014 not to apply under certain circumstances:

In terms of Rule 18(9),18(10) and 18(11) of the Companies (Share Capital and Debentures) Rules, 2014, nothing contained above shall apply ;

- To any amount received by a company against issue of commercial paper or any other similar instrument issued in accordance with the guidelines or regulations or notification issued by the Reserve Bank of India.
- In case of any offer of foreign currency convertible bonds or foreign currency bonds issued in accordance with the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or regulations or directions issued by the Reserve Bank of India, the provisions of this rule shall not apply unless otherwise provided in such Scheme or regulations or directions.
- To rupee denominated bonds issued exclusively to overseas investors in terms of A.P. (DIR Series) Circular No. 17 dated September 29, 2015 of the Reserve Bank of India.”

CASE LAWS

The following kinds of documents have been held to be treated as debentures:

- a) A series of income-bonds by which a loan to the company was repayable only out of its profits [*Lemon vs. Austin Friars Investment Trust Ltd. 1926 Ch 1 (CA)*].
- b) A receipt or a certificate for a deposit made with a company (other than a bank) when the deposit was repayable after affixed period after it was made, [*United Dominions Trust Ltd. vs. Kirkwood, (1966) 2QB43*].
- c) The definition of debenture is so wide as to include any security of a company whether constituting a charge on the company's assets or not [*Cf. Pearl Assurance Co. Ltd. v. West Midlands Gas Board, (1950) 2 All ER 844 (ChD)*].

PART B**OVERVIEW OF COMPANY DEPOSITS**

Funds can be raised by the Company by issuing shares, debentures, or by taking loan or by inviting deposits from public. Companies have always been attracted towards financing through deposits and, at times, problems have arisen in the context of such deposits. In order to control the malpractices, the Companies Act, 2013 has introduced strict provisions under the deposit regime. Sections 73 to 76 of the Companies Act 2013 read with the Companies (Acceptance of Deposits) Rules, 2014 made under Chapter V of Companies Act, 2013 regulate the receipt of money not to be considered as deposit, invitation, acceptance and repayment of deposits by Companies. The Deposits Rules provide an exhaustive definition of deposits which is exclusionary in nature and exclude certain amounts received by a company, from the ambit of deposits.

Meaning of Deposits:-

Section 2(31) of the Companies Act, 2013 read with Rule 2(1)(c) of Companies (Acceptance of Deposits) Rules, 2014, 'deposit' includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include the followings –

(i)	any amount received from the Central Government or a State Government , or any amount received from any other source whose repayment is guaranteed by the Central Government or a State Government or any amount received from a local authority, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature;
(ii)	any amount received from foreign Governments , foreign or international banks, multilateral financial institutions (including, but not limited to, international Finance Corporation, Asian Development Bank, Commonwealth Development Corporation and International Bank for Industrial and Financial Reconstruction), foreign Governments owned development financial institutions, foreign export credit agencies, foreign collaborators, foreign bodies corporate and foreign citizens, foreign authorities or persons resident outside India subject to the provisions of Foreign Exchange Management Act, 1999 and rules and regulations made there under;
(iii)	any amount received as a loan or facility from any banking company or from the State Bank of India or any of its subsidiary banks or from a banking institution notified by the Central Government under section 51 of the Banking Regulation Act, 1949, or a corresponding new bank as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or in clause (b) of section (2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or from a co-operative bank as defined in clause (b-ii) of section 2 of the Reserve Bank of India Act, 1934;

(iv)	any amount received as a loan or financial assistance from Public Financial Institutions notified by the Central Government in this behalf in consultation with the Reserve Bank of India or any regional financial institutions or Insurance Companies or Scheduled Banks as defined in the Reserve Bank of India Act, 1934;
(v)	any amount received against issue of commercial paper or any other instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India;
(vi)	any amount received by a company from any other company;
(vii)	<p>any amount received and held pursuant to an offer made in accordance with the provisions of the Act 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;</p> <p>(a) 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.</p> <p>(b) any adjustment of the amount for any other purpose shall not be treated as refund.</p>
(viii)	<p>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:</p> <p>Provided that the director of the company or relative of the director of the private company, as the case may be, from whom money is received, furnishes 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;</p>
(ix)	<p>any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking <i>pari passu</i> with the first charge on any assets referred to in Schedule III of the Act excluding intangible assets of the company or bonds or debentures compulsorily convertible into shares of the company within Ten years.</p> <p>Provided that if such bonds or debentures are secured by the charge of any assets referred to in Schedule III of the Act, excluding intangible assets, the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer;</p>
(ixa)	any amount raised by 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;
(x)	<p>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;</p> <div style="border: 1px solid black; padding: 5px;"> <p>Test Yourself:</p> <p>The salary of Mr. Rahul is Rs. 20 lacs per annum of the ABC Ltd.. The company has the requirement of fund of Rs. 50 lacs. However, Rs. 30 lacs is shortfalling for the working capital requirement. The remaining amount is agreed to be funded by Mr. Rahul. Please comment whether the fund will be treated as deposit or not.</p> </div>

(xi)	any non-interest bearing amount received and held in trust;
(xii)	<p>any amount received in the course of, or for the purposes of, the business of the company,-</p> <p>(a) as an advance for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of three hundred and sixty five days from the date of acceptance of such advance, Provided that in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of three hundred and sixty five days shall not apply;</p> <p>(b) as advance, accounted for in any manner whatsoever, received in connection with [consideration for an immovable property] under an agreement or arrangement, provided that such advance is adjusted [against such property] in accordance with the terms of agreement or arrangement;</p> <p>(c) as security deposit for the performance of the contract for supply of goods or provision of services;</p> <p>(d) as advance received under long term projects for supply of capital goods except those covered under item (b) above;</p> <p>(e) 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;</p> <p>(f) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;</p> <p>(g) as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications.</p> <p>If the amount received under (a) (b) and (d) above becomes refundable (with or without interest) because 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.</p> <p><i>Explanation:</i> For the purpose of sub-clause the amount shall be deemed to be deposits on the expiry of 15 days from the date they become due for refund.</p>
(xiii)	<p>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 fulfillment of the following conditions, namely:-</p> <p>(a) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance;</p> <p>(b) the loan is provided by the promoters themselves or by their relatives or by both; and</p> <p>(c) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter.</p>

(xiv)	<p>any amount accepted by a Nidhi company in accordance with the rules made under section 406 of the Act.</p> <p><i>Explanation.-</i> For the purposes of this clause, any amount.-</p> <p>(a) received by the company, whether in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, or</p> <p>(b) any additional contributions, over and above the amount under item (a) above, made by the company as part of such promise or offer, shall be considered as deposits unless specifically excluded under this clause.</p>
(xv)	any amount received by way of subscription in respect of a chit under the Chit Fund Act, 1982.
(xvi)	any amount received by the company under any collective investment scheme in compliance with regulations framed by the Securities and Exchange Board of India.
(xvii)	an amount of twenty five lakh rupees or more received by a start-up company, 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.
(xviii)	any amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds, “Infrastructure Investment Trusts”, “Real Estate Investment Trusts” and Mutual Funds registered with the Securities and Exchange Board of India in accordance with regulations made by it.

Meaning of depositor:-

In terms of Rule 2(1)(d) of the Companies (Acceptance of Deposits) Rules 2014 ‘Depositor’ means –

- (i) any member of the company who has made a deposit with the company in accordance with section 73(2) of the Act; or
- (ii) any person who has made a deposit with a public company in accordance with section 76 of the Act.

Meaning of Eligible Company

‘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. 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.

Prohibition on Acceptance of Deposits from public

In terms of Section 73(1) of the Companies Act, 2013, on and after the commencement of this Act, no company shall invite, accept or renew deposits under the Companies Act, 2013 from the public except in a manner provided under Chapter V of the Act.

CASE LAW:

In Re Ind-Swift Ltd. Vs. Registrar of Companies (Punjab & Haryana), New Delhi NCLAT Company Appeal (AT) No.52 - 53 of 2018, it was held that, once in view of weak financial condition of the company, the CLB has given relief of huge extension of time as well as reduced interest rate while sanctioning scheme of repayment of deposit, no further extension of time could be allowed to company.

In Re Bimla Kothari Vs. Unitech Ltd. (2017) 136 CLA 74 (NCLT-New Delhi), it was held that there is no categorisation or difference between deposits accepted prior to or after the Companies Act, 2013

Companies exempted from Sec. 73 of the Companies Act 2013

The provisions under Sections 73 to 76 of the Companies Act 2013 and Rule 1 of the Companies (Acceptance of Deposits) Rules, 2014 shall apply to all companies except –

A banking company;

A non-banking financial company as defined in the Reserve Bank of India Act, 1934;

A housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987; and

Such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf. [Section 73(1) read with Rule 1(3)].

Terms and Conditions for Acceptance of Deposits from its Members - Section 73(2)

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 Form DPT 1 and in such manner prescribed under Rule 4 of the Companies (Acceptance of Deposits) Rules 2014;
- 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 30th day of April each year, such sum which shall not be less than 20% of the amount of 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 has occurred, the company made good the default and a period of five years had elapsed 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.

It is to be noted that where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as “unsecured deposits” and shall be quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

In case of Specified IFSC Public Company - Clauses (a) to (e) of subsection (2) of section 73 Shall not apply to a Specified IFSC public company which accepts from its members, monies not exceeding one hundred per cent. of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified. - Notification Date 4th January, 2017.

As per Notification dated 13th June, 2017

Clause (a) to (e) of Sub-section 2 of Section 73 shall not apply to private Companies :

- (A) 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
- (B) which is a start-up, for five years from the date of its incorporation; or
- (C) 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:

Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.”

Acceptance of deposits based on time period - Rule 3 of the Companies (Acceptance of Deposits) Rules 2014

No company referred to in section 73 (2) and no eligible company shall accept or renew any deposit, whether secured or unsecured, which is repayable on demand or upon receiving a notice within a period of less than six months or more than thirty-six months from the date of acceptance or renewal of such deposit.

However, a company may, for the purpose of meeting any of its short-term requirements of funds, accept or renew such deposits for repayment earlier than six months from the date of deposit or renewal, as the case may be, subject to the condition that-

- (a) 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
- (b) such deposits are repayable not earlier than three months from the date of such deposits or renewal thereof.

Can deposits be accepted in joint names?

Where depositors so desire, deposits may be accepted in joint names not exceeding three, with or without any of the clauses, namely, “Jointly”, “Either or Survivor”, “First named or Survivor”, “Anyone or Survivor”.

Acceptance Limits for Deposits

<p>➤ No company u/s section 73(2) shall accept or renew any deposit from its members, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds thirty five per cent of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.</p>
<p>➤ No 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.</p>
<p>➤ No eligible company shall accept or renew any other deposit, if the amount of such deposit together with the amount of such other deposits, other than the deposit referred above, outstanding on the date of acceptance or renewal exceeds twenty-five per cent. of aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.</p>
<p>➤ No Government company eligible to accept deposits under section 76 shall accept or renew any deposit, 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.</p>

The Quantum of deposits in nutshell:

Type of company	Members	Public
Eligible Company	Upto 10% of aggregate of the paid up share capital, free reserves and securities premium account	Upto 25% of aggregate of the paid up share capital, free reserves and securities premium account
Company referred in section 73(2) i.e. Non-eligible Companies	Upto 35% of aggregate of the paid up share capital, free reserves and securities premium account	Prohibited
Government Company (eligible under section 76)	–	Upto 35% of aggregate of the paid up share capital, free reserves and securities premium account

Exemptions to Specified IFSC Public company and Private Company

A Specified IFSC Public company and 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.

Explanation.- A Specified IFSC Public company means an unlisted public company which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act 2005 (28 of 2005) read with the Special Economic Zones Rules, 2006:

The maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies, namely:-

- (i) a private company which is a start-up, for ten years from the date of its incorporation;
- (ii) a 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:

Provided also that all the companies accepting deposits shall file the details of monies so accepted to the Registrar in Form DPT-3.

Rate of interest of deposits/payment of brokerage –Rule 3(6)

No company referred to in sub-section (2) of section 73 or any eligible company shall invite or accept or renew any deposit in any form, carrying a rate of interest or pay brokerage thereon at a rate exceeding the maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by non-banking financial companies.

It is explained that the person who is authorised, in writing, by a company to solicit deposits on its behalf and through whom deposits are actually procured shall only be entitled to the brokerage and payment of brokerage to any other person for procuring deposits shall be deemed to be in violation of these Rules.

Rights to alter terms & conditions-Rule 3(7)

The company shall not reserve to itself either directly or indirectly a right to alter, to the prejudice or disadvantage of the depositor, any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract after circular or circular in the form of advertisement is issued and deposits are accepted.

Credit Rating-Rule 3(8)

- (a) Every eligible company shall obtain, at least once in a year, credit rating for deposits accepted by it and a copy of the rating shall be sent to the Registrar of Companies alongwith the return of deposits in Form DPT-3.
- (b) The credit rating referred to in clause (a) shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits, 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, issued by the Reserve Bank of India, as amended from time to time.

Form and Particulars of Advertisements or Circulars – Rule 4

- (1) Every company referred to in section 73(2) intending to invite deposit from its members shall issue a circular to all its members by registered post with acknowledgement due or speed post or by electronic mode in Form DPT-1.

Provided that in addition to issue of such circular to all members in the manner specified above, the circular may be published in English language in an English newspaper and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.

Further a certificate of the statutory auditor of the company shall be attached in Form DPT-1, stating that the company has not committed default in the repayment of deposits or in the payment of interest on such deposits accepted either before or after the commencement of the Act and in case a company had committed a default in the repayment of deposits accepted either before or after the commencement of the Act or in the payment of interest on such deposits, a certificate of the statutory auditor of the company shall be attached in Form DPT-1, stating that the company had made good the default and a period of five years has lapsed since the date of making good the default as the case may be.

- (2) Every eligible company intending to invite deposits shall issue a circular in the form of an advertisement in Form DPT-1 for the purpose in English language in an English newspaper having country wide circulation and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated, and shall also place such circular on the website of the company, if any.”
- (3) Every company inviting deposits from the public shall upload a copy of the circular on its website, if any.
- (4) No company shall issue or allow any other person to issue or cause to be issued on its behalf, any circular or a circular in the form of advertisement inviting deposits, unless such circular or circular in the form of advertisement is issued on the authority and in the name of the Board of directors of the company.
- (5) No circular or a circular in the form of advertisement shall be issued by or on behalf of a company unless, not less than thirty days before the date of such issue, there has been delivered to the Registrar for registration a copy thereof signed by a majority of the directors of the company as constituted at the time the Board approved the circular or circular in the form of advertisement, or their agents, duly authorised by them in writing.
- (6) A circular or circular in the form of advertisement issued shall be valid until the expiry of six months from the date of closure of the financial year in which it is issued or until the date on which the financial statement is laid before the company in annual general meeting or, where the annual general meeting for any year has not been held, the latest day on which that meeting should have been held in accordance with the provisions of the Act, whichever is earlier, and a fresh circular or circular in the form of advertisement shall be issued, in each succeeding financial year, for inviting deposits during that financial year.

Explanation: For the purpose of this rule, the date of the issue of the newspaper in which the advertisement appears shall be taken as the date of issue of the advertisement and the effective date of issue of circular shall be the date of dispatch of the circular.

Repayment of Deposits

How to repay deposits?	Sec. 73(3)	Every deposit accepted by a company under section 73(2) shall be repaid with interest in accordance with the terms and conditions of the agreement.
If Company fails to repay deposits?	Sec. 73(4)	where a company fails to repay the deposit or part thereof or any interest thereon under section 73(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.
Utilization of Deposit Repayment Reserve	Sec. 73(5)	The deposit repayment reserve account referred to section 73(2)(c) shall not be used by the company for any purpose other than repayment of deposits.
Repayment of Deposits accepted before commencement of the Act	Sec. 74(1)	<p>(1) Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall—</p> <p>(a) file, within a period of three months from such commencement or from the date on which such payments, are due, with the Registrar a statement of all the deposits accepted by the company and sums remaining unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment, notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law; and</p> <p>[(b) repay within three years from such commencement or on or before expiry of the period for which the deposits were accepted, whichever is earlier:</p> <p>Provided that renewal of any such deposits shall be done in accordance with the provisions of Chapter V and the rules made thereunder.</p>
Power of Tribunal to allow further time to repay deposits	Sec. 74(2)	The Tribunal may on an application made by the company, after considering the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.
Liability of Company & officers in case of failure to comply with Sec. 74(1) and 74(2)	Sec. 74(3)	If a company fails to repay the deposit or part thereof or any interest thereon within the time specified in section 74(1) or such further time as may be allowed by the Tribunal under section 74(2), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

		<p>Illustration:</p> <p>ABC Ltd, accepted Rs. 2 cr deposit in 2012. It failed to repay the deposit in time mentioned under section 74 and no request is made to the NCLT to allow some reasonable time for repayment of deposit. It is liable for fine not less than Rs. 1 Crore but which may extend to Rs. 10 Crores.</p>
<p>Liability of officers in case of failure to repay deposits with intent of fraud</p>	<p>Sec. 75(1) & 75(2)</p>	<p>(1) Where a company fails to repay the deposit or part thereof or any interest thereon referred to in section 74 within the time specified in sub-section (1) of that section or such further time as may be allowed by the Tribunal under sub-section (2) of that section, and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the provisions contained in sub-section (3) of that section and liability under section 447, be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.</p> <p>(2) Any suit, proceedings or other action may be taken by any person, group of persons or any association of persons who had incurred any loss as a result of the failure of the company to repay the deposits or part thereof or any interest thereon.</p>

CASE LAW

19/09/2018	<i>M/s Ind-Swift Limited (Appellant) v. Registrar of Companies (Respondent)</i>	NCLAT
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Repayment of Deposits accepted before Commencement of the Companies Act, 2013

The Company filed application before CLB and obtained relief under Section 58AA read with Section 58A(9) of the Companies Act, 1956 and got instalments fixed to repay deposits, Appellant sought re-fixing of periods, instalments and rate of interest from NCLT, New Delhi under Section 74 of the Companies Act, 2013 which was rejected by NCLT, New Delhi bench. This Appeal is against rejection of the application/s.

The NCLAT observed that the NCLT considered that the Appellant had at the time of first grant of time got relief of huge extension and that there was no reason to accept the plea for further extension. The NCLT appears to have found that when big relief had already been granted to the Company, further extension was not justified.

Section 76 makes it clear that legislature has put in many safeguards when deposits are to be taken from public. One of the important provisions is to ensure that the Company creates a charge of its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders.

Section 76(2) read with Sections 73 and 74 would apply to acceptance of deposits from public by eligible Companies but it saves the Company which had accepted or invited public deposits under the relevant provisions of the old Act and Rules thereunder and has been repaying such deposits and interests thereon in accordance with such provisions, then the provisions of Clause (b) of Sub-Section (1) of Section 74 of the

new Companies Act, 2013 shall be deemed to have been complied with. This is, however, subject to the fact that the Company complies with the requirements under the Act and the Rules and “continues to repay such deposits and interest due thereon on due dates for the remaining period” as per the terms and conditions.

Considering these provisions, it appears to us that Section 74(1)(b) was attracted and when it appears from record that the Appellant defaulted, the penal provisions would get attracted.

Thus, when once a scheme had been got settled, from CLB, default on the part of the Appellant would attract penal provisions as the earlier scheme itself laid down. Hence, present appeal for further extension is dismissed.

Creation of Security - Rule 6 of the Companies (Acceptance of Deposits) Rules, 2014

- (1) For the purposes of providing security, every company referred to in sub-section (2) of section 73 and every eligible company inviting secured deposits shall provide for security by way of a charge on its assets as referred to in Schedule III of the Act excluding intangible assets of the company for the due repayment of the amount of deposit and interest thereon for an amount which shall not be less than the amount remaining unsecured by the deposit insurance:

Provided that in the case of deposits which are secured by the charge on the assets referred to in Schedule III of the Act excluding intangible assets, the amount of such deposits and the interest payable thereon shall not exceed the market value of such assets as assessed by a registered valuer.

Explanation. 1 - For the purposes of this sub-rule it is clarified that the company shall ensure that the total value of the security either by way of deposit insurance or by way of charge or by both on company's assets shall not be less than the amount of deposits accepted and the interest payable thereon.

- (2) The security (not being in the nature of a pledge) for deposits as specified in sub-rule (1) shall be created in favour of a trustee for the depositors on:
- (a) specific movable property of the company, or
 - (b) specific immovable property of the company wherever situated, or any interest therein.

Acceptance of Deposits from Public by certain Companies - Section 76

Section 76(1) states that notwithstanding anything contained in section 73, a public company, (Eligible Company) having:

- a net worth of not less than one hundred crore rupees, or
- turnover not less than five hundred crore rupees,

may 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 amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

The provisions of this Chapter shall, *mutatis mutandis*, apply to the acceptance of deposits from public under this section.

Punishment u/s 76A for contravention of section 73 or section 76

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

Company	In addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than Rs. 1 Crore or twice the amount of deposit accepted by the company, whichever is lower rupees but which may extend to Rs. 10 Crores; and
Officer of the company who is in default	Imprisonment which may extend to 7 years and with fine which shall not be less than Rs. 25 Lakhs but which may extend to Rs. 2 Crores.
Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.	

Trustee for Depositors

Rule 7 of the Companies (Acceptance of Deposits) Rules, 2014

Appointment of Trustee for Depositors :

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:

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.

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.

Persons who cannot be appointed as Deposit trustees :

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.

Removal of deposit trustees:

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

Duties of Trustees for Depositors –

Rule 8 of the Companies (Acceptance of Deposits) Rules, 2014

To ensure that the assets of the company on which charge is created together with the amount of deposit insurance are sufficient to cover the repayment of the principal amount of secured deposits outstanding and interest accrued thereon

To satisfy himself that the circular or advertisement inviting deposits does not contain any information which is inconsistent with the terms of the deposit scheme or with the trust deed and is in compliance with the rules and provisions of the Act

To ensure that the company does not commit any breach of covenants and provisions of the trust deed

To take such reasonable steps as may be necessary to procure a remedy for any breach of covenants of the trust deed or the terms of invitation of deposits

To take steps to call a meeting of the holders of deposits as and when such meeting is required to be held

To supervise the implementation of the conditions regarding creation of security for deposits and the terms of deposit insurance

To do such acts as are necessary in the event the security becomes enforceable and carry out such acts as are necessary for the protection of the interest of depositors and to resolve their grievances

Meeting of Depositors

Rule 9 of the Companies (Acceptance of Deposits) Rules, 2014

The trustee for depositors shall call a meeting of all the depositors on-

- (a) requisition in writing signed by at least one-tenth of the depositors in value for the time being outstanding;
- (b) the happening of any event, which constitutes a default or which, in the opinion of the trustee for depositors, affects the interest of the depositors.

Form of Application for Deposits

Rule 10 of the Companies (Acceptance of Deposits) Rules, 2014

- (1) On and from the commencement of these rules, no company shall accept, or renew any deposit, whether secured or unsecured, unless an application, in such form as specified by the company, is submitted by the intending depositor for the acceptance of such deposit.
- (2) The form of application, shall contain a declaration by the intending depositor to the effect that the deposit is not being made out of any money borrowed by him from any other person.

Power to Nominate

Rule 11 of the Companies (Acceptance of Deposits) Rules, 2014

Every depositor may, at any time, nominate any person to whom his deposits shall vest in the event of his death and the provisions of section 72 shall, as far as may be, apply to the nomination made under this rule.

Furnishing of Deposit Receipts to Depositors

Rule 12 of the Companies (Acceptance of Deposits) Rules, 2014

- (1) Every company shall, on the acceptance or renewal of a deposit, furnish to the depositor or his agent a receipt for the amount received by the company, within a period of twenty one days from the date of receipt of money or realisation of cheque or date of renewal.
- (2) The receipt referred to in sub-rule (1) shall be signed by an officer of the company duly authorised by the Board in this behalf and shall state the date of deposit, the name and address of the depositor, the amount received by the company as deposit, the rate of interest payable thereon and the date on which the deposit is repayable.

Maintenance of Liquid Assets and Creation of Deposit Repayment Reserve Account.

Rule 13 of the Companies (Acceptance of Deposits) Rules, 2014

Every company referred to in sub-section (2) of section 73 and every eligible company shall on or before the 30th day of April of each year deposit the sum as specified in clause (c) of the said sub-section with any scheduled bank and the amount so deposited shall not be utilised for any purpose other than for the repayment of deposits:

Provided that the amount remaining deposited shall not at any time fall below 20% of the amount of deposits maturing during the financial year.

Registers of Deposits

Rule 14 of the Companies (Acceptance of Deposits) Rules, 2014

- (1) Every company accepting deposits shall maintain at its registered office one or more separate registers for deposits accepted or renewed, in which there shall be entered separately in the case of each depositor the following particulars, namely:

- (1) name, address and PAN of the depositor/s;
- (2) particulars of guardian, in case of a minor;
- (3) particulars of the nominee;
- (4) deposit receipt number;
- (5) date and the amount of each deposit;
- (6) duration of the deposit and the date on which each deposit is repayable;
- (7) rate of interest or such deposits to be payable to the depositor;
- (8) due date for payment of interest;
- (9) mandate and instructions for payment of interest and for non-deduction of tax at source, if any;
- (10) date or dates on which the payment of interest shall be made;
- (11) particulars of security or charge created for repayment of deposits;
- (12) any other relevant particulars.

- (2) The entries specified, shall be made within seven days from the date of issuance of the receipt duly authenticated by a director or secretary of the company or by any other officer authorised by the Board for this purpose.
- (3) **Preservation of Registers-** The register referred to in sub-rule (1) shall be preserved in good order for a period of not less than eight years from the financial year in which the latest entry is made in the register.

General Provisions Regarding Premature Repayment of Deposits

Rule 15 of the Companies (Acceptance of Deposits) Rules, 2014

Where a company makes a repayment of deposits, on the request of the depositor, after the expiry of a period of six months from the date of such deposit but before the expiry of the period for which such deposit was accepted, the rate of interest payable on such deposit shall be reduced by one per cent. from the rate which the company would have paid had the deposit been accepted for the period for which such deposit had actually run and the company shall not pay interest at any rate higher than the rate so reduced :

Provided that nothing contained in this rule shall apply to the repayment of any deposit before the expiry of the period for which such deposit was accepted by the company, if such repayment is made solely for the purpose of—

- (a) complying with the provisions of rule 3; or
- (b) providing war risk or other related benefits to the personnel of the naval, military or air forces or to their families, on an application made by the associations or societies formed by such personnel, during the period of emergency declared under Article 352 of the Constitution :

Provided further that where a company referred to in under sub-section (2) of section 73 or any eligible company permits a depositor to renew his deposit, before the expiry of the period for which such deposit was accepted by the company, for availing of a higher rate of interest, the company shall pay interest to such depositor at the higher rate if such deposit is renewed in accordance with the other provisions of these rules and for a period longer than the unexpired period of the deposit.

Explanation: For the purposes of this rule, where the period for which the deposit had run contains any part of a

year, then, if such part is less than six months, it shall be excluded and if such part is six months or more, it shall be reckoned as one year.

Return of Deposits to be Filed with the Registrar

Rule 16 of the Companies (Acceptance of Deposits) Rules, 2014

Every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3 along with the fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company and declaration to that effect shall be submitted by the auditor in Form DPT-3.

Explanation.- It is hereby clarified that Form DPT-3 shall be used for filing return of deposit or particulars of transaction not considered as deposit or both by every company other than Government company.

Disclosures in the financial statement –

Rule 16A of the Companies (Acceptance of Deposits) Rules, 2014

- (1) Every company, other than a private company, shall disclose in its financial statement, by way of notes, about the money received from the director.
- (2) Every private company shall disclose in its financial statement, by way of notes, about the money received from the directors, or relatives of directors.”
- (3) Every company other than Government company shall file a onetime return of outstanding receipt of money or loan by a company but not considered as deposits, in terms of clause (c) of sub-rule 1 of rule 2 from the 01st April, 2014 to 31st March 2019, as specified in Form DPT-3 within ninety days from 31st March, 2019 along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

Penal Rate of Interest

Rule 17 of the Companies (Acceptance of Deposits) Rules, 2014

Every company shall pay a penal rate of interest of 18% per annum for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.

Power of Central Government to Decide Certain Questions

Rule 18 of the Companies (Acceptance of Deposits) Rules, 2014

If any question arises as to the applicability of these rules to a particular company, such question shall be decided by the Central Government in consultation with the Reserve Bank of India.

Applicability of Sections 73 and 74 to Eligible Companies

Rule 19 of the Companies (Acceptance of Deposits) Rules, 2014

Pursuant to provisions of sub-section (2) of section 76 of the Act, the provisions of sections 73 and 74 shall, *mutatis mutandis*, apply to acceptance of deposits from public by eligible companies.

Explanation.- For the purposes of this rule, it is hereby clarified that in case of a company which had accepted or invited public deposits under the relevant provisions of the Companies Act, 1956 and rules made under that Act (hereinafter known as “Earlier Deposits”) and has been repaying such deposits and interest thereon in

accordance with such provisions, the provisions of clause (b) of sub-section (1) of section 74 of the Act shall be deemed to have been complied with if the company complies with requirements under the Act and these rules and continues to repay such deposits and interest due thereon on due dates for the remaining period of such deposit in accordance with the terms and conditions and period of such Earlier Deposits and in compliance with the requirements under the Act and these rules.

Provided further that the fresh deposits by every eligible company shall have to be in accordance with the provisions of Chapter V of the Act and these rules.

Statement Regarding Deposits Existing as on the Date of Commencement of the Act –

Rule 20 of the Companies (Acceptance of Deposits) Rules, 2014

The statement shall be in Form DPT-4.

Punishment for Contravention–

Rule 21 of the Companies (Acceptance of Deposits) Rules, 2014

Companies u/s 73(2) / Eligible Cos. inviting deposits or any other person contravenes any provision of these rules for which no punishment is provided in the Act	The company and every officer of the company who is in default - Punishable with fine which may extend to Rs. 5000/- and where the contravention is a continuing one, with a further fine which may extend to Rs. 500/- for every day after the first day during which the contravention continues.
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Disclosure in Board Report

Sec. 134 of the Companies Act 2013 read with Rule 8 of the Companies (Accounts) Rules, 2014

Following shall be disclosed in the Board Report-

- I. Details relating to deposits, covered under Chapter V of the Act
 - (a) accepted during the year;
 - (b) remained unpaid or unclaimed as at the end of the year;
 - (c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved-
 - (i) at the beginning of the year;
 - (ii) maximum during the year;
 - (iii) at the end of the year.
- II. Details of deposits which are not in compliance with the requirements of Chapter V of the Act.

CASE LAW

In the case of **Reflektion Media Software (India), Private limited, ROC Karnataka** imposed a penalty on the Company and officers in default when the Board failed to provide the required information about the company's subsidiaries, internal complaint committee compliance, expense records, and business nature changes was not included in the board report in accordance with Section 134(3) of the Companies Act, 2013 read with Rule 8 of the Companies (Accounts) Rules, 2014.

SPECIMEN RESOLUTION**BOARD RESOLUTION FOR ISSUE AND ALLOTMENT OF UNSECURED-CONVERTIBLE DEBENTURES AND/ OR OTHER DEBT SECURITIES ON PRIVATE PLACEMENT BASIS**

“RESOLVED THAT subject to the authorisation by the Company in the general meeting and pursuant to section 42, 71 of the Companies Act 2013 and all other applicable provisions, if any, of the Companies Act, 2013, (including any statutory modification(s) or re-enactment(s) thereof, for the time being in force) read with the Rules made thereunder along with Companies (Prospectus and Allotment of Securities) Rules, 2014, as may be amended from time to time _____ Unsecured-Convertible debenture of Rs. _____ each of the Company be and are hereby allotted to the persons mentioned in the allotment list placed before the meeting and initialled by the Chairman so that each allottee receives the number of debentures specified against his name in the list.

RESOLVED FURTHER THAT the draft letter of allotment placed before the meeting and initialled by the Chairman for the purpose of identification be and are hereby approved and the Company Secretary Mr. _____ of the Company be directed to issue the said letters of allotment or letter of regret with refund vouchers as the case may be.

RESOLVED FURTHER THAT the _____ (Bank Name), _____ Branch, _____ (City), in which the Company has opened an account “_____ Limited Debenture Account” be and is hereby authorized to receive debenture allotment monies and to credit the said account with such amount.

RESOLVED FURTHER THAT the said Bank be and is hereby authorized to honour debenture refund vouchers from and out of the credit balance in the said account.”

RESOLVED FURTHER THAT Mr./Mrs. _____ (Designation) of the company, be and is hereby authorized to do all other acts, deeds and things necessary to give effect to the said resolution.

BOARD RESOLUTION FOR ACCEPTANCE OF DEPOSIT FROM THE MEMBERS OF THE COMPANY

“RESOLVED THAT, pursuant to the provisions of section 73 of the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, including any statutory modification(s) and re-enactment (s) thereof for the time being in force, subject to article number _____ of Articles of Association of the company and subject to such approvals, consents, sanctions and permissions from any appropriate authority(ies) as may be necessary, and subject to the members approval by way of ordinary resolution, the consent of the board be and is hereby given to invite and accept unsecured deposits from members subject to the maximum aggregate of not more than Rs. _____/- outstanding at any point of time or an amount equal to 100% of aggregate of paid up share capital, free reserves and securities premium account (As per the latest audited balance sheet), whichever is less.

RESOLVED FURTHER THAT the forms of application and fixed deposit receipt a draft of which is placed before the meeting duly initiated by the Chairman for the purpose of identification, be and are hereby approved.

RESOLVED FURTHER THAT Mr./Mrs. _____ and Mr./Mrs. _____ (designation) of the company, be and are hereby authorized to sign the fixed deposit receipts and other documents on the behalf of company and to issue the same to the depositors of the company and Mr. _____ be and is hereby authorized to make necessary entries in the register maintained for this purpose.

RESOLVED FURTHER THAT for the purpose of giving effect to this Resolution, the Board of Directors be and is hereby authorized to do such acts, deeds, matters and things as Board of Directors may in its absolute discretion consider necessary, proper, expedient, desirable or appropriate for such invitation/acceptance/ renewal/receipts as aforesaid and matters incidental thereto.”

LESSON ROUND-UP

- All companies are given power to borrow by their articles which fix the maximum limit of borrowings.
- The power to borrow monies and to issue debentures (whether in or outside India) can only be exercised by the Directors at a duly convened meeting.
- Where the company borrows without the authority conferred on it by the Articles or beyond the amount set out in the Articles, it is an *ultra-vires* borrowing and hence void. Ultra vires borrowings cannot even be ratified by a resolution passed by the company in general meeting. In case of *ultra-vires* borrowings the lender has the following remedies: (a) Injunction and Recovery, (b) Subrogation, (c) Suit against Directors.
- A debenture is a document given by a company under its seal as an evidence of a debt to the holder usually arising out of a loan and most commonly secured by a charge.
- Debentures may be of different kinds, viz. redeemable debentures, registered and bearer debentures, secured and unsecured or naked debentures, convertible debentures.
- A debenture stock is a borrowed capital consolidated into one mass for the sake of convenience.
- A loan creates a right in the creditor to demand repayment, and the substance of a debt is a liability upon the debtor to repay the money.
- A debenture trust deed is one of the several instruments required to be executed to secure redemption of debentures and payment of interest on due dates.
- Section 71(4) of the Act required every company to create a debenture redemption reserve account to which adequate amount shall be credited out of its profits available for payment of dividend until such debentures are redeemed and shall utilize the same exclusively for redemption of a particular set or series of debentures only.
- Certificate of deposit is a document of title to a time deposit.
- Commercial paper refers to unsecured promissory notes issued by credit worthy companies to borrow funds on a short term basis.
- Section 73 prohibits a company to invite, accept or renew deposits from public except in the manner provided under Chapter V. This prohibition however shall not apply in case of banking company and non-banking financial company and such other company as the Central Government may specify.
- A company can invite deposits from its members subject to the passing of a resolution in general meeting subject to some conditions.
- No company under 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 deposit trustees for creating security for the deposits.
- The Company accepting deposits shall, on or before 30th day of April each year, deposit a sum not less than twenty percent of the amount of deposits maturing during the following year in a scheduled bank in a separate bank account to be called deposit repayment reserve account. The said reserve shall not be used by the Company for any purpose other than repayment of deposits.
- The company accepting deposits shall maintain at its registered office one or more registers for deposits accepted or renewed.
- The Return of Deposits shall be filed in Form DPT-3 with the Registrar.
- There are stringent penal provisions (Section 75 and 76A) to safeguard the interest of depositors.

GLOSSARY

- **Injunction:** an official order from a court of law to do/not do something.
- **Subrogation:** the substitution of one person or group by another in respect of a debt or insurance claim, accompanied by the transfer of any associated rights and duties.
- **Redeemable securities:** Redeemable securities are those types of securities issued to lender/ shareholders with/without option implanted, meaning they are redeemed or repurchased later by the company.
- **Irredeemable securities:** The irredeemable securities are unlike redeemable securities. They cannot get money back invested in the company. Therefore the amount is generally redeemed only at the time of the company's liquidation.
- **Encumbered:** a mortgage or other claim on property or assets.
- **Casual vacancy:** Casual Vacancy is when a one's office is vacated before the expiry of his tenure.
- **Tribunal:** The National Company Law Tribunal.
- **Doctrine of estoppels:** It precludes a person from denying or to negate anything to the contrary of that which has been constituted as truth, either by his own actions, by his deeds or by his representations or by the acts of judicial or legislative officers.
- **Void ab initio:** A *void ab initio* is Latin for "void from the beginning i.e having no legal effect from inception.
- **Earmark:** Earmarking is the practice of setting particular money aside for a specific purpose.
- **Pari-passu:** Latin for "equal footing"—is a financing arrangement that gives multiple lenders equal claim to the assets used to secure a loan.
- **Charge:** An interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation).

1. What are the restrictions imposed on the borrowing powers of the Board of Directors? If a company borrows beyond its powers, examine the remedies open to such creditor:
 - (i) When the money has not been spent;
 - (iii) When the money has been spent to pay the debts of the company.
2. What is the difference between debenture and a loan? Is fixed deposit a Debenture or Loan?
3. What is debenture? What are the kinds of debentures?
4. What is a convertible debenture? What are the provisions of the Companies Act, 2013 regarding convertible debentures or loans?
5. Is it compulsory to maintain a Debenture Redemption Reserve Account? If yes, how?

6. Write short notes on the following:
 - (i) Ultra vires borrowings
 - (ii) Intra vires borrowings
 - (iii) Security for borrowings
 - (iv) Types of borrowings
 - (v) Commercial Papers
7. Who is a debenture trustee? Why is it compulsory to appoint a trustee in connection with the issuance of debentures? What are the duties of a trustee?
8. Whether the following can be appointed as Debenture Trustee:
 - (i) A shareholder who has no beneficial interest
 - (ii) A creditor whom the Company owes Rs. 500 only
 - (iii) Spouse of Mr. X, director of the Company
 - (iv) A person who has given a guarantee for repayment of amount of debentures issued by the Company?
9. Which of the following Companies can accept deposits from Public:
 - a. XYZ Private Limited having a net worth of 200 Crore
 - b. A Limited having a turnover of 550 Crore
 - c. B Limited having a net worth of 90 Crore and turnover of 440 Crore
10. Write short note on the following:
 - (i) Depositor
 - (ii) Eligible Company
 - (iii) Secured and Unsecured Deposits
 - (iv) Return of Deposits
 - (v) Deposit Repayment Reserve Account
 - (vi) Register of Deposits
11. What are the consequences of failure to invite or accept deposits or repay deposits by a Company in contravention of manner or conditions prescribed under the provisions under Chapter V.
12. Prepare a checklist of secretarial compliance to be made by a company secretary for acceptance of deposits.
13. What is the procedure for accepting deposits from members?
14. What are the exemptions available to companies for not complying with provisions under Chapter V. Name the class of companies exempted and which conditions are to be fulfilled for availing such exemptions?

15. Aada Ltd. has accepted deposits from the public for three years with interest payable at 8% p.a annually or at the end of three years at 9% p.a. One depositor “D” has requested the company for repayment of deposit after one year. Is the depositor eligible to get repayment before maturity period? Choose the answer with legal provisions.

- (a) As per Rule 31 of the Companies (Acceptance of Deposits) Rules, 2014, D can get repayment of deposit after one year of deposit with reduction of 1% i.e., 7% per annum from Aada Ltd.
- (b) As per Rule 15 of the Companies (Acceptance of Deposits) Rules, 2014, D can get repayment of deposit after one year of deposit with reduction of 2% i.e., 6% per annum from Aada Ltd.
- (c) As per Rule 15 of the Companies (Acceptance of Deposits) Rules, 2014, D can get repayment of deposit after one year of deposit with reduction of 1% i.e., 7% per annum from Aada Ltd.
- (d) As per Rule 15 of the Companies (Acceptance of Deposits) Rules, 2014, D can get repayment of deposit after one year of deposit with reduction of 0.5 % annum from Aada Ltd.

LIST OF FURTHER READINGS

- Company Law Exploring Procedural Dimensions VOL I / II / III – by ICSI
- ICSI Premier on Company Law
- Bare Act- the Companies Act, 2013

OTHER REFERENCES (Including Websites/Video Links)

- <https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==>