

Chapter V

ACCEPTANCE OF DEPOSITS

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PRACTICAL QUESTION	
Question 1	<p>Excel Pvt. Ltd. received ₹50 lakh from Mr. Giver. Mr. Giver was a director of the company at the time of the transaction. However, Mr. Giver did not submit any written declaration stating that the amount was not given out of borrowed funds. The company utilized the said funds for business expansion and disclosed the receipt of money in the Board's report.</p> <p>Considering the provisions of the Companies Act, 2013, assess the following situations:</p> <ol style="list-style-type: none"> Was Excel Pvt. Ltd. compliant with the requirements w.r.t acceptance of the money from Mr. Giver? If Mr. Giver had given the money out of funds borrowed from another person, whether this amount will be considered as deposit? (RTP May 25)
Law:	<p>According to Rule 2(1)(c) of the Companies (Acceptance of Deposit) Rules, 2014, following categories of amounts, inter alia, are not considered as deposit:</p> <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>However, the director of the company or relative of the director of the private company, as the case may be, from whom money is received, is required to furnish to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report.</p>
Conclusion:	<p>Accordingly,</p> <ol style="list-style-type: none"> Excel Pvt. Ltd. failed to obtain a written declaration from Mr. Giver at the time of receiving the amount. The declaration is mandatory to confirm that the funds are not borrowed or sourced from loans or deposits from others. Therefore, Excel Pvt. Ltd. was not in compliance with the requirements w.r.t acceptance of the money from Mr. Giver. If Mr. Giver had given the money out of funds borrowed from another person, the transaction would not be eligible under an exempted category under the Companies Act, 2013. Consequently, Excel Pvt. Ltd. would treat such an amount as a deposit.

PRACTICAL QUESTION	
Question 2	<p>Mr. Romit is an employee of PQR Trading Private Limited. As per his contract of employment, his annual salary is ₹ 5,00,000. Mr. Romit paid to the company ₹ 5,30,000 in the nature of non-interest bearing security deposit. Referring to the provisions of the Companies Act, 2013, decide whether this amount received from Mr. Romit will be considered as deposit as per rule 2(1)(c)? (MTP Jan 25) (MTP May 24)</p>
Law:	<p>Rule 2(1)(c) of the Companies (Acceptance of Deposit) Rules, 2014, states various amounts received by a company which will not be considered as deposits. As per rule 2(1)(c)(x) any amount received from an employee of the company not exceeding his annual salary under a</p>

	contract of employment with the company in the nature of non-interest-bearing security deposit is not considered as deposit.
Conclusion:	In the instant case, ₹ 5,30,000 was received by PQR Trading Private Limited as a non-interest-bearing security deposit, from its employee, Mr. Romit, who draws an annual salary of ₹ 5,00,000 under a contract of employment. Accordingly, amount of ₹ 5,30,000 received from Mr. Romit, will be considered as deposit in terms of sub-clause (x) of Rule 2(1)(c) of the Act, as the amount received from Mr. Romit is more than his annual salary of ₹ 5,00,000.



PRACTICAL QUESTION

Question 3	The Promoters of J Limited contributed in the shape of unsecured loan to the company in fulfilment of the margin money requirements stipulated by State Industries Development Corporation Ltd. (SIDCL) for granting loan. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder whether the unsecured loan will be regarded as Deposit or not. What will be your answer in case the entire loan obtained from SIDCL is repaid? (MTP May 24)
Law:	According to Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014, the following amount is not considered as deposit: Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to the fulfillment of following conditions: <ul style="list-style-type: none"> i. the loan is brought because of the stipulation imposed by the lending institutions on the promoters to contribute such finance; ii. the loan is provided by the promoters themselves or by their relatives or by both; and iii. such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter.
Conclusion:	Hence, in the instant case, the unsecured loan contributed by promoters of J Limited will not be regarded as deposit as the unsecured loan is brought because of the stipulation imposed by the SIDCL and the loan is provided by the promoters themselves. In case the entire loan obtained from SIDCL is repaid, then the unsecured loan provided by promoters of J Limited will be regarded as deposit.



PRACTICAL QUESTION

Question 4	Define the term 'deposit' under the provisions of the Companies Act, 2013 and comment with relevant provisions that the following amount received by a company will be considered as deposit or not; (i) Rs.5,00,000 raised by Rishi Ltd. through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India.
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	<p>(ii) Rs.2,00,000 received from Mr. T, an employee of the company who is drawing annual salary of ₹ 1,50,000 under a contract of employment with the company in the nature of non-interest bearing security deposit.</p> <p>(iii) Amount of Rs.3,00,000 received by a private company from a relative of a Director, declared by the depositor as out of gift received from his mother. (NOV 2019)</p>
Conclusion:	<p>According to section 2 (31) of the Companies Act, 2013, the term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as prescribed in the Rule 2 (1) of the <i>Companies (Acceptance of deposit) Rules, 2014</i>, in consultation with the Reserve bank of India.</p> <p>(i) where ₹ 5,00,000 raised by the Rishi Ltd. through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub-clause (ixa) of the said rule.</p> <p>(ii) ₹ 2,00,000 was received from Mr. T, an employee of the company drawing annual salary of ₹ 1,50,000 under a contract of employment with the company in the nature of non-interest bearing security deposit. This amount received by company from employee, Mr. T will be considered as deposit in terms of sub-clause (x) of the said rule, as amount received is more than his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit.</p> <p>(iii) Amount of ₹ 3,00,000 received by a private company from a relative of a Director, declaring details of the amounts so deposited as out of gift received from his mother. This amount received by the private Company will not be considered as deposit in terms of sub-clause (viii) of the said rule. Here as per the requirement, the relative of the director of the private company, from whom money is received, furnished the declaration in writing to the effect that the amount is given out of gift received from his mother and not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.</p>

	5.Enumerate the amounts which when received by a company in the ordinary course of business are not to be considered as deposits.(ICAI Study Module)
	<p>According to Rule 2 (1) (c) (xii) of the Companies (Acceptance of Deposits) Rules, 2014, following amounts if received by a company in the course of, or for the purposes of, the business of the company, shall not be considered as deposits:</p> <p>(a) any advance for the supply of goods or provision of services to be appropriated within a period of three hundred and sixty-five days from the date of acceptance of such advance: However, in case any advance is subject matter of any legal proceedings before any court of law, the time limit of three hundred and sixty-five days shall not apply.</p> <p>(b) any advance in connection with consideration for an immovable property under an agreement or arrangement. However, such advance is required to be adjusted against such property in accordance with the terms of agreement or arrangement;</p> <p>(c) any security deposit for the performance of the contract for supply of goods or provision of services;</p> <p>(d) any advance under long term projects for supply of capital goods except those covered under item (b) above;</p> <p>(e) any advance towards warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent</p>

	<p>as per common business practice or five years, from the date of acceptance of such service whichever is less;</p> <p>(f) any advance and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;</p> <p>(g) any advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;</p> <p>However, if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules. the expiry of fifteen days from the date it became due for refund</p>
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	<p>6.State the procedure to be followed by companies for acceptance of deposits from its members according to the Companies Act, 2013. What are the exemptions available to a private limited company? (ICAI Study Module)</p>
	<p>As per section 73(2) of the Companies Act, 2013, a company may, subject to the passing Ordinary resolution in general meeting and Following Companies (acceptance of deposit) rules, 2014 accept deposits from member by complying with following conditions :-</p> <p>(a) Issuance of a circular to its members in DPT-1 including therein a statement showing the financial position of the company,</p> <ol style="list-style-type: none"> (i) the credit rating obtained, (ii) the total number of depositors and (iii) the amount due in respect of any previous deposits (iv) such other particulars may be prescribed; <p>(b) Filing a copy of the circular (DPT-1) along with the Registrar at least 30 days before the date of issue of the circular;</p> <p>(c) Maintain Liquidity - Depositing, on or before the thirtieth day of April each year, such sum which shall not be less than twenty per cent of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;</p> <p>(d) No subsisting Default - Certifying that the company has not committed any default in the repayment of deposits or interest accepted either before or after the commencement of this Act and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default; and</p> <p>(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</p> <p>Exemption to certain private companies</p> <p>sub-section (2) of section 73 with respect to issue of circular, filing the copy of such circular with the Registrar, depositing of certain amount and certification as to no default committed, shall not apply to a private company:</p> <p>(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</p> <p>(B) which is a start-up, for ten years from the date of its incorporation; or</p> <p>(C) which fulfils all of the following conditions, namely:</p>

	<p>(a) which is not an associate or a subsidiary company of any other company;</p> <p>(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</p> <p>(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section.</p> <p>However, such a company [as referred to in clauses (A), (B) or (C)] shall file the details of monies accepted to the Registrar in the specified manner (i.e. in Form DPT-3).</p>
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PRACTICAL QUESTION

Question 7	Ashish Ltd. having a net-worth of ` 80 crores and turnover of ` 30 crores wants to accept deposits from public other than its members. Referring to the provisions of the Companies Act, 2013, state the conditions and the procedures to be followed by Ashish Ltd. for accepting deposits from public other than its members. (RTP MAY 2019)
Law:	<p>According to section 76 of the Companies Act, 2013, a public company, having net worth of not less than 100 crore rupees or turnover of not less than 500 crore rupees, can accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to some extra conditions as follows –</p> <p>Extra Conditions to be followed by an Eligible Company for accepting Public Deposits</p> <ol style="list-style-type: none"> 1 Every eligible company shall be required to obtain the credit rating from a recognised credit rating agency which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits. 2 Every eligible company accepting secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders, failing which it shall be described as 'Unsecured Deposits'. <p>Note - In respect of creation of security, Rule 6 of the Companies (Acceptance of Deposit) Rule, 2014, states that the company accepting secured deposits shall create security by way of charge on its tangible assets only.</p> <ol style="list-style-type: none"> 3. An 'eligible company' intending to invite deposits is required to issue a circular in the form of an advertisement in DPT-1. Such advertisement shall be published in English in an English newspaper and in vernacular language in a vernacular newspaper. Both newspapers should have wide circulation in the State in which the registered office of the company is situated.
Conclusion:	Since, Ashish Ltd. has a net worth of ` 80 crores and turnover of ` 30 crores, which is less than the prescribed limits, hence, it cannot accept deposit from public other than its members. If the company wants to accept deposits from public other than its members, it has to fulfill the eligibility criteria of net worth or Turnover or both and then the other conditions as stated above.

PRACTICAL QUESTION	
Question 8	ABC Limited having a net worth of 120 crore rupees wants to accept deposit from its members. They have approached you to advise them regarding that if they fall within the category of eligible company, what special care has to be taken while accepting such deposit from members.(MTP MAY 2019)
Law:	<p>(i) “Eligible company” means a public company as referred to in sub-section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits:</p> <p>(ii) However, an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of section 180, may accept deposits by means of an ordinary resolution.</p> <p>(iii) An eligible company shall accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds ten per cent. of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.</p>
Conclusion:	<p>(i) ABC Limited is having a net worth of 120 crore rupees. Hence, it can fall in the category of eligible company.</p> <p>(ii) Thus, ABC has to ensure that acceptance deposits from members should not exceed 10% of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.</p>

PRACTICAL QUESTION	
Question 9	<p>State, with reasons, whether the following statements are True or False?</p> <p>(i)ABC Private Limited may accept the deposits from its members to the extent of ` 50.00 Lakh, if the aggregate of its paid-up capital; free reserves and security premium account is ` 50.00 Lakh.</p> <p>(ii)A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013 cannot accept deposits from public exceeding 25% of the aggregate of its paid- up capital, free reserves and security premium account.</p>
<p>(i)As per the provisions of Section 73(2) of the Companies Act, 2013 read with Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014, as amended by the Companies (Acceptance of Deposits) Amendment Rules, 2016, private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.</p> <p>Therefore, the given statement of eligibility of ABC Private Ltd. to accept deposits from its members to the extent of ` 50.00 lakh is True.</p> <p>(ii)A Government company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of</p>	

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

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

PRACTICAL QUESTION



<p>Question 10</p>	<p>Wiki Limited engaged in the business of consumer durables. It is managed by a team of professional managers. The Company has not made default in payment of statutory dues, and repayment of debenture/ Institutional loan with interest. The Company advertised a circular in the newspaper dated 20th September 2020 inviting the deposits from the members and public for the first time. The latest audited financial statement of the Company revealed the following data, as on 31.3.2020:</p> <p>Paid up share capital ` 70 Crores</p> <p>Securities Premium ` 20 Crores</p> <p>Free Reserves ` 20 Crores</p> <p>Long-term borrowings ` 50 Crores</p> <p>The Company in the advertisement invited public deposit for a period of 4 Months Plan A and Plan B for 36 Months.</p> <p>(i) Explain the term 'eligible company' and calculate the Maximum amount of Deposit that can be accepted from Public (Non-Member) for Plan A and Plan B based on latest audited Financial Statement under the provisions of the Companies Act, 2013.</p> <p>(ii) Calculate the maximum amount of deposit Viki Limited can accept from the public under Plan B in case it is a wholly owned Government Company under the provisions of the said Act. (6 Marks)(Nov 2020)</p>
<p>Law:</p>	<p>(i) According to Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014 "eligible company" means a public company as referred to in sub-section (1) of section 76 of the Companies Act, 2013, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits.</p> <p>Net worth of Viki Limited as per section 2(57) of the Companies Act, 2013 can be calculated as follows:</p> <p>Paid up share capital: ` 70 crores Free Reserves: ` 20 crores Securities premium: ` 20 crores Total: ` 110 crores</p> <p>Hence, Viki Limited is an eligible company, since its Net worth is in excess of ` 100 crores.</p> <p>Tenure for which Deposits can be Accepted: As per Rule 3(1)(a) of the Companies (Acceptance of Deposits) Rules, 2014, a company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty six months.</p> <p>Exception to the rule of tenure of six months: As per the proviso to the above rule, for the purpose of meeting any of its short-term requirements of funds, a company may</p>

	<p>accept or renew deposits for repayment earlier than six months subject to the condition that such deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.</p> <p>As per Rule 3(1)(b) of the Companies (Acceptance of Deposits) Rules, 2014, such deposits are repayable not earlier than three months from the date of such deposits or renewal thereof.</p> <p>Maximum Amount of Deposits: As per Rule 3(4)(b) of the Companies (Acceptance of Deposits) Rules, 2014, an eligible company is permitted to accept or renew deposits from persons other than its members. As per the law the amount of such deposit together with the amount of outstanding deposits (excluding deposits from members) on the date of acceptance or renewal can be maximum twenty-five per cent. of the aggregate of its paid-up share capital, free reserves and securities premium account of the company.</p>
Conclusion:	<p>For Plan A: Since the maximum period of deposits is 4 months, the maximum amount of deposits shall not exceed ten per cent. of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.</p> <p>Maximum amount of deposits: 10% of 110 crores (70 + 20 + 20) = 11 crores.</p> <p>For Plan B: Maximum amount of deposits: 25% of 110 crores (70 + 20 + 20) - 11 crores (outstanding deposit under plan A) = 16.5 crores.</p> <p>(ii) In terms of Rule 3(5) of the Companies (Acceptance of Deposits) Rules, 2014, in case Viki Limited is a wholly owned Government Company, so it can accept deposit together with the amount of other outstanding deposits as on the date of acceptance or renewal maximum up to thirty-five per cent. of the aggregate of its paid-up share capital, free reserves and securities premium account.</p> <p>For Plan Bif wholly owned govt co: Maximum amount of deposits: 35% of 110 crores (70 + 20 + 20) = 38.5 crores.</p>

PRACTICAL QUESTION

Question 11	<p>NOP Limited, since its incorporation in 2002, is engaged in the production of premium quality glass bottles. According to financial results of the company as on 31.3.2023 net worth of the company was ` 90 crore and turnover for the year 2022-23 was ` 510 crore. The company proposed to accept the deposits as on 1st February, 2024, which would be due for repayment on 30th September, 2028 from the public for expansion and redevelopment programs of company.</p> <p>Furthermore, the company has accepted a loan of ` 1.5 crore from Mr. P Kishore (Director) and the loan was to be repaid after 24 months. Company in its books of account, records the receipt as a loan under non-current liabilities. At the time of advancing loan, Mr. P Kishore affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and complete details of such loan transaction is furnished in the boards' report.</p> <p>On the basis of above facts answer the following questions:</p> <p>(i) Whether company was eligible to accept deposit from public? What is the criteria for acceptance of deposit and tenure for which deposit can be accepted? Whether the tenure decided by company was in accordance with provisions of</p>
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	<p>the Companies Act, 2013?</p> <p>(ii) With reference to the loan advanced by Mr. P Kishore to company, state whether the same is to be classified as a deposit or not? (RTP May 24)</p>
Law:	<p>(i) As per Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014, the term “eligible company” means a public company as referred to in section 76(1) of the Companies Act, 2013, which is ‘eligible’ to accept deposits from the public at large only if it meets the below-mentioned criteria. Accordingly:</p> <p>(i) It should be a public company.</p> <p>(ii) It should have net worth of minimum ₹ 100 crore or a turnover of minimum ₹ 500 crore.</p> <p>(iii) It has obtained the prior consent by means of a special resolution passed in general meeting.</p> <p>(iv) The special resolution has been filed with the Registrar of Companies.</p> <p>(v) An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under section 180 (1) (c).</p> <p>(ii) In terms of Rule 2(1)(c)(viii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received from a person who is director of the company at the time of giving loan to the company shall not be treated as deposit if such director furnishes to the company at the time of giving money, a written declaration to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and further, the company shall disclose the details of money so accepted in the Board's report</p>
Conclusion:	<p>(i) In the instant case, the turnover of NOP Limited is ₹ 510 crore, hence it is eligible to accept deposits from the public.</p> <p>Tenure for which Deposits can be Accepted: A company is not permitted to accept or renew deposits (whether secured or unsecured) which is repayable on demand or in less than six months. Further, the maximum period of acceptance of deposit cannot exceed thirty-six months.</p> <p>The tenure for the proposed deposits dated 1st February, 2024 which would be due for repayment on 30th September, 2028, is not valid, as the maximum period of acceptance of deposit cannot exceed 36 months. Hence, it is not in compliance with the provisions of the Companies Act, 2013.</p> <p>(ii) In the given case, the said deposits by Mr. P Kishore shall not be treated as deposit</p>

	12.Explain provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013.(MAY 2018)
	<p>Appointment of Trustee for Depositors [Rule 7 of the Companies (Acceptance of Deposits) Rules, 2014]:</p> <p>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 -</p> <ol style="list-style-type: none"> 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; is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company; has any material pecuniary relationship with the company; has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon; is related to any person specified in clause (a) above.

PRACTICAL QUESTION

Question 13	Samay Publishing Limited facing acute cash crunch wants to utilise a portion of 'Deposit Repayment Reserve Account' to pay off its short-term creditors who are pressing hard for repayment of ` 20,00,000. Is it justified to use funds lying in 'Deposit Repayment Reserve Account' in this manner? Give your answer as per the provisions of the Companies Act, 2013. (MTP Jan 25)
Law:	Rule 13 of the Companies (Acceptance of Deposits) Rules, 2014, states that the amount deposited in the 'Deposit Repayment Reserve Account' shall not be used by a company for any purpose other than repayment of deposits.
Conclusion:	In the given question, Samay Publishing Limited wants to utilise a portion of 'Deposit Repayment Reserve Account' to pay off its short-term creditors. Since there is a prohibition, Samay Publishing Limited is not permitted to utilise its 'Deposit Repayment Reserve Account' to pay off its short-term creditors.

PRACTICAL QUESTION

Question 14	<p><i>Discuss the following situations in the light of 'deposit provisions' as contained in the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014, as amended from time to time. (ICAI Study Module)</i></p> <p>(i) Samit, one of the directors of Zarr Technology Private Limited, a start-up company, requested his close friend Ritesh to lend to the company 30 lakh in a single tranche by way of a convertible note repayable within a period six years from the date of its issue. Advise whether it is a deposit or not.</p> <p>(ii) Polestar Traders Limited received a loan of ` 30 lakh from Rachna who is one of its directors. Advise whether it is a deposit or not.</p>
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	<p>(iii) <i>City Bakers Limited failed to repay deposits of ` 50 crore and interest due thereon even after the extended time granted by the Tribunal. Is the company or Swati, its officer-in-default, liable to any penalty?</i></p> <p>(iv) <i>Shringaar Readymade Garments Limited wants to accept deposits of ` 50 lakh from its members for a tenure which is less than six months. Is it a possibility?</i></p> <p>(v) <i>Is it in order for the Diamond Housing Finance Limited to accept and renew deposits from the public from time to time?</i></p>
<p>(i) In the given case, Zarr Technology Private Limited, a start-up company, received ` 30 lakh from Ritesh in a single tranche by way of a convertible note which is repayable within a period of six years from the date of its issue. In view of Rule 2 (1) (c) (xvii) which requires a convertible note of amount 25 lacs or more to be repayable within a period of ten years from the date of its issue, the amount of ` 30 lakh shall not be considered as deposit.</p> <p>(ii) In the given case, it is assumed that Rachna was one of the directors of Polestar Traders Limited when the company received a loan of ` 30 lakh from her. Further, it is assumed that she had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by her by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report. So all conditions of Rule 2 are satisfied, ` 30 lakh shall not be treated as deposit</p> <p>(iii) By not repaying the deposit of ` 50 crore and the interest due thereon even after the extended time granted by the Tribunal, City Bakers Limited has contravened the conditions prescribed under Section 73 of the Act. Accordingly, following penalty is leviable:</p> <p>Punishment for the company: fine which shall not be less than rupees one crore or twice the amount of deposit accepted by the company, whichever is lower but which may extend to rupees ten crore.</p> <p>Punishment for officer-in-default: Swati, being the officer-in-default, shall be punishable with imprisonment which may extend to seven years and with fine which shall not be less than rupees twenty-five lakh but which may extend to rupees two crore.</p> <p>Further, if it is proved that Swati had contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, she will be liable for action under section 447 (Punishment for fraud).</p> <p>(iv) In the given case of Shringaar Readymade Garments Limited, it wants to accept deposits of ` 50 lakh from its members for a tenure which is less than six months. It can do so if According to Rule 3</p> <ol style="list-style-type: none"> 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 such deposits are repayable only on or after three months from the date of such deposits or renewal. <p>5) In the given case, it is assumed that Diamond Housing Finance Limited is registered with the National Housing Bank and therefore, the 'Acceptance of Deposits' Rules shall not apply to it. because Proviso to Section 73 (1) states that nothing in this sub-section shall apply to a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987.</p>	

PRACTICAL QUESTION

Question 15	<p><i>Answer the following citing relevant provisions: (ICAI Study Module)</i></p> <p>(a) Prayas Electricals Limited having paid-up capital of ` 1 crore availed a term loan of ` 10,00,000 from Beta Bank Limited to purchase electrical items. Mr. Sambhav, one of the directors of the company, is of the opinion that it shall be considered as 'deposit'. Is his contention correct?</p> <p>(b) Eklavya Publishing Company Limited facing acute cash crunch wants to utilise a portion of 'Deposit Repayment Reserve Account' to pay off its short-term creditors who are pressing hard for repayment of ` 20,00,000. Is it justified to use funds lying in 'Deposit Repayment Reserve Account' in this manner?</p> <p>(c) Sanjiv is a shareholder in Utsah Textiles Private Limited holding 10,000 shares of ` 10 each. His wife Sneha and his three sons Aayush, Pranav and Himanshu are also shareholders in the company holding 1,000 shares each. In response to the invitation from the company inviting deposits from its members, Sanjiv wants to deposit ` 1,00,000 for 36 months jointly with his wife and three sons. Whether Utsah Textiles Private Limited can accede to the request of Sanjiv and accept deposit jointly in five names since all the depositors are shareholders of the company.(module)</p>
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(a) In terms of Rule 2 (1) (c) (iii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received as a loan or facility from any banking company shall not be considered as 'deposit'. In view of the above, the contention of Mr. Sambhav that the term loan of 10,00,000 availed by the company from Beta Bank Limited shall be considered as 'deposit' is not correct.

(b) Rule 13 of the Companies (Acceptance of Deposits) Rules, 2014, states that the amount deposited in the 'Deposit Repayment Reserve Account' shall not be used by a company for any purpose other than repayment of deposits. Since there is a prohibition, Eklavya Publishing Company Limited is not permitted to utilise its 'Deposit Repayment Reserve Account' to pay off its short-term creditors.

(c) Rule 3 (2) of the Companies (Acceptance of Deposits) Rules, 2014, provides that where depositors so desire, deposits may be accepted in joint names not exceeding three. In view of this provision, Sanjiv can deposit ` 1,00,000 with Utsah Textiles Private Limited jointly with two other persons only irrespective of the fact that all the five persons are members of the company.