

## Invitation and Acceptance of Deposits

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### Description of Module

Items	Description of Module
Subject Name	Law
Paper Name	Corporate Finance
Module Name /Title	Invitation and Acceptance of Deposits
Module No.	IX

### Invitation and Acceptance of Deposits

**Objective:** After reading this module, the learners will have a clear picture of :

Deposit includes any receipt of money by way of deposit or loan or in any other form by a company. A deposit is that there must be a liability to return it to the party by whom or on whose behalf it is made on the fulfillment of certain conditions.

#### Learning Outcomes:

A company may accept deposits from its members, subject to passing of a resolution in General Meeting, on such terms and conditions including the provision of security, if any, or the repayment of such deposits with interest as may be agreed upon between the company and its members on fulfillment of the conditions.

#### Introduction:

**Acceptance of Deposits:** Chapter V of the Act deals with Acceptance of Deposits by companies. It contains four sections viz. sections 73 to 76. Of which, section 73, 74(1) and 76 are operative from April 01, 2014. The Companies (Acceptance of Deposits) Rules, 2014 (Rules) have also been notified and they have come into force on 1/4/2014. These Rules are framed in consultation with RBI. It may be noted that these sections and the Rules apply to Public and Private Companies.

**Deposit:** A deposit is that there must be a liability to return it to the party by whom or on whose behalf it is made on the fulfillment of certain conditions. Section 2(31) of the Companies Act 2013, Deposit includes any receipt of money by way of deposit or loan or in any other form by a company, But does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India. A deposit is voluntarily placed in

the hand of an indifferent person a pledge and security are required from the parties who are interested.

### **Acceptance of Deposit from public by certain companies (eligible companies):**

**I Turnover:** Section 76(1) provides that, a public company, having net worth of Rs. 100/- Crores or more or turnover of Rs. 500/- crores or more may accept deposits from public on the condition that the prior consent of the company in general meeting by a special resolution has been obtained and the said resolution has been filed with the ROC before making any invitation to the public for acceptance of deposit.

**ii charge on its assets:** Every company accepting secured deposits from the public shall within thirty day of such acceptance create a charge on its assets.

### **Prohibition on Acceptance of Deposits from Public**

**I Resolution:** Section 73(2) provides that a company may accept deposits from its members, subject to passing of a resolution in General Meeting, on such terms and conditions including the provision of security, if any, or the repayment of such deposits with interest as may be agreed upon between the company and its members on fulfillment of the conditions.

**ii Financial Position:** Issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rate obtained the total number of depositors and the amount due towards deposits in respect of any previous previous deposits accepted by the company.

**iii Filing of copy:** Filing of copy of the circular along with such statement with the Registrar within thirty days.

**iii Deposits maturing:** Deposit such sum which shall not be less than fifteen percent of the amount of deposits maturing during the financial year kept in a separate bank.

**Iv Certifying:** Certifying that the company has not committed any default in the repayment of deposits accepted.

### **Preference in Payment:**

**Windup:** It is generally understood that the Company faces winding-up proceedings when its financial position is not good or it has become insolvent. most of the cases it may be true that only insolvent companies are wound-up in accordance with the provisions of the Companies Act, 1956. But, it is also true that a Company may be wound-up due to the serious difference of opinion among the groups in the Company.

**Official Liquidator:** when a Company is to be wound-up, the procedure for initiating winding-up proceedings, the role of the managerial personal if the company is wound-up by the Company Court and the liquidation process to be conducted by the Official Liquidator appointed by the Company Court.

**Preferential Payment:** The Companies Act, 1956 provides for a preferential payment to the secured creditor and for making a payment, their due is to be ascertained by the Official Liquidator normally.

**Recover the Amount:** These are payments or transfers of assets that gives a creditor a preference or advantage over other creditors. Any payments or transfers made to a creditor prior to the liquidation may be recovered by liquidators in certain circumstances. Preferences are usually payments of money, though a variety of transactions could be deemed preferential.

**Order of a Court:** In corporate insolvencies, only liquidators may recover preferential payments; however it may require an Order of a Court to perfect the entitlement to recovery. Recovering preferences is within the ambit of the liquidator and is not available to provisional liquidators, voluntary or deed administrators or receivers and managers.

What are the elements of a preferential payment?

Before a Court will Order the recovery of a preferential payment, it must be satisfied that:

- (a) a transaction was entered into (this is usually a payment of monies);
- (b) it was between the company and a creditor of the company;
- (c) it occurred at a time when the company was insolvent;
- (d) it occurred within the statutory period before the liquidation commenced;
- (e) the transaction gave the creditor an advantage over other creditors; and
- (f) the creditor suspected or had reason to suspect that the company was

insolvent

### **Rights in making company decisions affecting creditor's interest:**

The Administration of a company is vested in the Board of Directors and other officials who are answerable to the shareholders. In all meeting the decision taken by the majority is final and it is binding to all. But sometimes the majority view may affect the interests of the remaining minority shareholders. Than minority shareholders can protect their interests through law.

1. **Illegal or Ultra Vires Act:** A shareholder is entitled to bring an action against the company and its officers in respect of matter which are ultra vires.

2. **Prevention of oppression and mismanagement:** A member who complains that the affairs of the company are being conducted in a manner injury to public interest or any shareholders interest he may apply to tribunal for relief on the ground of mismanagement of the company under sec 241 of the companies Act.

3. **Class Action Sec 245:** Member or number of members, depositors or any class of them are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner injury to the interests of the company or

its members or depositors file an application before the Tribunal on behalf of the members. Or depositors

1. To restrain the company from committing an act which is ultra vires the articles or memorandum.
2. To restrain the company from committing breach of any provision of the company's memorandum.
3. To declare a resolution altering the memorandum or articles.
4. To restrain the company from taking action contrary to any resolution passed by the members.

### **Payment of Dividends:**

1. The payment of dividends is having two fundamental principles. The first dividends must never be paid out of capital.
2. The dividends shall be paid only out of profits.

Case: K.Madhava v Popular Bank,(AIR 1970 Ker.131): It has been held that payment of dividend out of capital is a breach of trust.However the directors may recover indemnity from he shareholders who have received the dividends out of capital.

Case: Flitcroft's case (i.e in re Exchange Banking Co,(1882) 21 Ch D 519) certain bad debts were credited to the accounts and not real profit created were paid away as dividends. The directors were held responsible.

### **Statutory Provisions for Dividends:**

#### **Declaration of Dividend (Sec.123)**

1. No dividend shall be declared or paid by a company for any financial year out of profit of the company for that year arrived at after providing for depreciation.
2. The Board of directors of a company may declare interim dividend during any financial year out of surplus in the profit and loss account.
3. The amount of the dividend including interim dividend shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.
4. Dividend shall be paid by a company in respect of any share therein except to the registered shareholders.