

Acceptance of Deposits by Companies and Deposit Rules(Sec 73 to 76A) Provisions related to registration of charge (Sec 77-87)

Corporate Law Refresher Course

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Coverage



SEC – 2(31) Definition of Deposit



CHAPTER V- ACCEPTANCE OF DEPOSITS BY COMPANIES –(Sec 73- 76A)



CHAPTER VI – REGISTRATION OF CHARGES (Sec 77 – 87)



Companies (Acceptance of Deposit) Rules, 2014

Chapter V

Sec – 73 Prohibition on acceptance of deposit from Public

Sec – 74 Repayment of Deposit accepted before the commencement of this act

Sec – 75 Damages for the fraud

Sec – 76 Acceptance of Deposit from Public by certain Companies

Sec – 76A Punishment of contravention of 73 or 76

The Companies (Acceptance of Deposits) Rules, 2014



SEC – 2(31) Definition of Deposit

- “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

DEPOSIT

includes **any receipt of money**

by way of deposit or

loan or

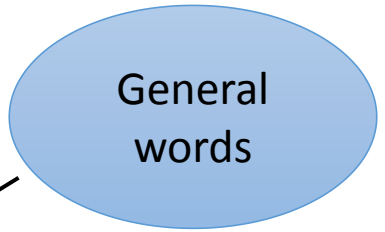
in **any other form by a company,**

but **does not include** such categories of amount **as may be prescribed** in consultation with the RBI

Read with excluded list provided under Rules

ejusdem generis - Interpretation of Law

- general words that following specific words are to be construed with reference to words that precedes them.
- Words = General /specific
- General words always follows specific words
- You are allowed to keep cat, dog, buffaloes and **other animals**
Cant keep Lion / Cheetas



General
words

Depositor - Rules 2 (1)(d)

- According to the Rules, “depositor” means,
- (i) **any member** of the company who has made a deposit with the company in accordance with the provisions of sub-section (2) of section 73 of the Act, or
- (ii) **any person** who has made a deposit with a public company in accordance with the provisions of section 76 of the Act;

APPLICABILITY

Provisions of Section 73 to 76A of the Companies Act 2013 and the Companies (Acceptance of Deposits) Rules, 2014 shall apply to all companies Except:-

- Banking Companies
- Non-Banking Finance Company
- Housing Finance Company
- Such other companies as Central Government may specify after consultation with Reserve Bank of India.

Exempted Deposits 2(1)(c)(i - vi)

any amount received from
the Government -
CG/SG/LOCAL GOVT

any amount received from
foreign banks foreign
citizens
(consider FEMA Regu)

any amount received from
foreign Governments

any amount received from
multilateral financial
institutions - ADB /IFC

any amount received as a
loan or financial assistance
from Public Financial
Institutions notified by the
Central Government

any amount received as a
loan from Bank / SBI / any
of its subsidiaries / Banking
Institution

any amount received
against issue of
commercial paper (CP)

any amount received by a
company from any other
company (ICD)

Application Money for subscription of Securities

2(1)(c)(vii)

- 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;
- Explanation.- For the purposes of this sub-clause, it is hereby clarified that -
 - (a) Without prejudice to any other liability or action, if the securities for which application money or advance for such securities was received cannot be allotted within sixty 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 fifteen days** from the date of completion of sixty days, such amount shall be treated as a deposit under these rules.

Exempted Deposits - 2(1)(c)(vii) – application/subscription money

Allotment W/I 60 days

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graph TD; A[Allotment W/I 60 days] --> B[Not Allotted]; B --> C[Refund W/I next 15 days]; C --> D[If not Refunded]; D --> E[It becomes Deposit and all regulation will apply];
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Not Allotted

Refund W/I next 15 days

If not Refunded

It becomes Deposit and all regulation will apply

Exempted Deposits — Amt received from Director and Relative (Rule 2 (1)(c)(viii))

Amount received from director of the company or a relative of the director of the Private company:

- 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

Bonds or Secured Convertible Debentures (Rule 2(1)(c)(ix))

amount raised by the issue of bonds or debentures

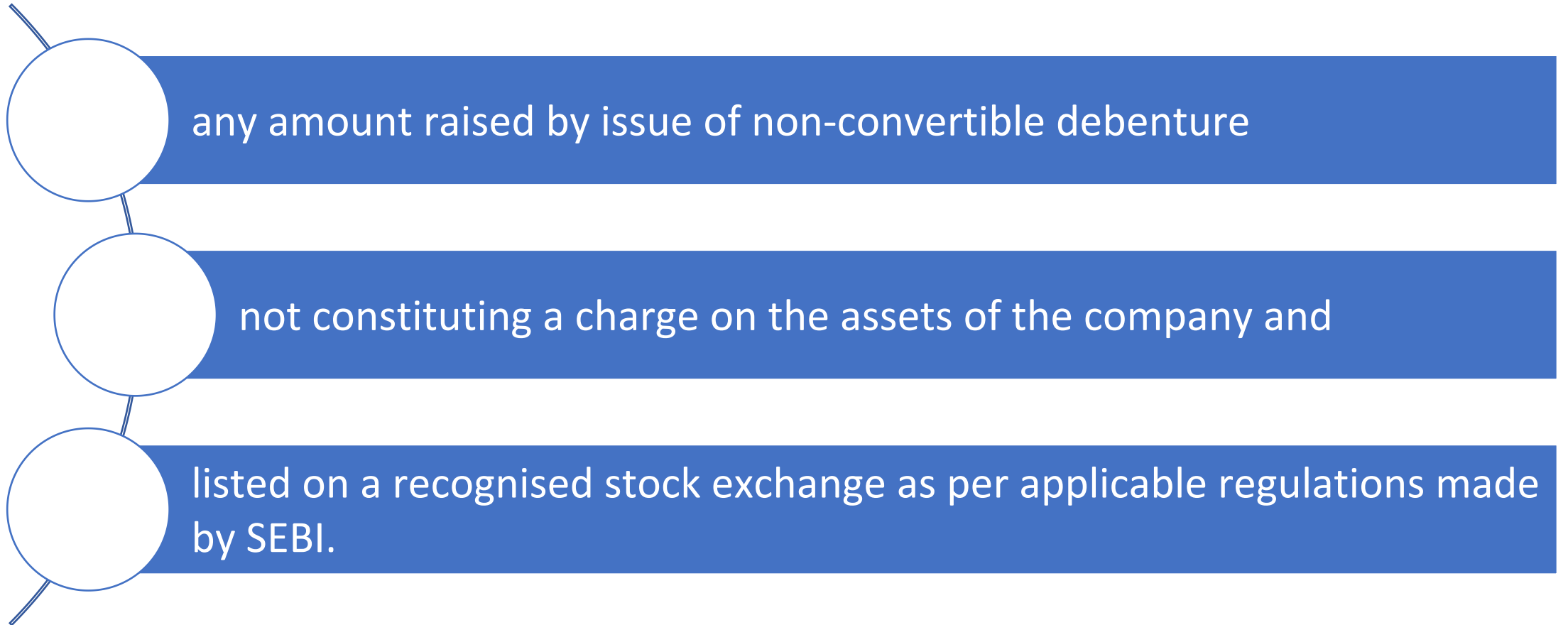
secured by a first charge or a charge ranking pari passu with the first charge on any assets of the Co

excluding intangible assets of the company or bonds or debentures

compulsorily convertible into shares of the company **within Ten years**

Provided amt raised by issue of bond and debenture does not exceed the Mkt Value of Assets as assessed by Registered Valuer.

Unsecured non convertible listed Debenture 2(1)(c)(ixa)



Debenture – Not Deposit

- Debenture
 - Unlisted → Convertible + Secured → Not Deposit
 - Listed → Non Convertible + Not Secured → Not Deposit

Employment Contract

Contract of employment
The rights and responsibilities
relationship between an em
mic, dependence an
kinds of pr

2(1)(c)(x – xi)

(Rule 2 (1)(c)(x and xi))

- (x) any amount received **from an employee** of the company not exceeding his **annual salary** under a contract of employment with the company in the nature of non-interest bearing **security deposit** 2(1)(c)(x)
- (xi) any **non-interest bearing amount** received and held in trust 2(1)(c)(xi)

Any amount received in the course of, or for the purposes of, the business of the company, 2(1)(c)(xii)

- (a) as an **advance for the supply of goods or provision of services** - 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:
- (b) as advance, accounted for in any manner whatsoever, received in connection with ²[**consideration for an immovable property**] under an agreement or arrangement, provided that such advance is adjusted ³[against such property] in accordance with the terms of agreement or arrangement;
- (c) as **security deposit** for the performance of the contract for supply of goods or provision of services;
- (d) as advance received under **long term projects for supply of capital goods** except those covered under item (b) above:
- ⁹[(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;
- (f) as an advance received and as allowed by any **sectoral regulator** or in accordance with directions of Central or State Government;
- (g) as an advance for **subscription towards publication**, whether in print or in electronic to be adjusted against receipt of such publications;”]
- **Provided that 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:**
- **Explanation.- For the purposes of this sub-clause the amount ⁴ & ¹⁰[Omitted] shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund.**

Any amount received in the course of, or for the purposes of, the business of the company, 2(1)(c)(xii)

advance for the supply of goods or provision of services and adjusted within 365 days – **subject to legal proceeding.**

Advance against the consideration for an immovable property under an agreement or arrangement

as security deposit for the performance of the contract for supply of goods or provision of services;

as advance received under long term projects for supply of capital goods

as an advance towards consideration for providing **future services** in the form of a warranty – CROMA

as an advance received and as allowed by any sectoral regulator

as an advance for subscription towards publication

Any amount received in the course of, or for the purposes of, the business of the company, 2(1)(c)(xii)

Advance received for

- ✓ Supply of Goods
- ✓ Immovable Properties
- ✓ Long term projects for supply of capital goods



Co does not have necessary aprvl/ per



Become Refundable



THEN IT BECOMES DEPOSIT



Amount brought in by the Promoters 2(1)(c)(xiii)

- 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 (eg Margin Money)
 - (a) the loan is brought in pursuance of the **stipulation imposed** by the lending institutions on the promoters to contribute such finance;
 - (b) the loan is provided by the **promoters themselves or by their relatives** or by both; and
 - (c) the **exemption** under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter;

Nidhi /Chit /
Collective
Investment
scheme Co.
2(1)(c)(xiv - xvi)

- any amount accepted by a Nidhi company in accordance with the rules made u/s [406](#) of the Act. 2(1)(c)(xiv)
- any amount received by way of subscription in respect of a chit under the Chit Fund Act, 1982 2(1)(c)(xv)
- any amount received by the company under any collective investment scheme in compliance with regulations framed by the SEBI. 2(1)(c)(xvi)

Amount received by start up 2(1)(c)(xvii)

- Amount received by START UP CO – 25 lacs and more (Pvt co + DIPP)
- Received in single tranche
- By way of convertible notes
- Converted in to equity shares **or**
- Repayable within 5 years from the date of issue
- From a person

Any amt received by Company from Funds 2(1)(c)(xviii)

- SEBI registered
 - REIT
 - InvIT
 - AIF
 - MF
 - Domestic VCF



Accepting Deposit



From Public (sec 76)



From Members (sec 73 (2))

Deposits

Public Deposits

Eligible Public Companies may accept deposits from Public as per the provisions of Section 76.

Deposits from its members

By a Public Company

By a private Limited Company

Accepting Deposit From Members (sec 73 (2))

- Passing ordinary resolution in General Meeting
- (a) Issuance of Circular
 - Financial Position
 - The credit rating
 - The total numbers of depositor
 - Amount due towards deposits – previous Deposit accepted
 - Deposit accepted
 - Other particulars as may be prescribed.
- (b) Filing a copy of the circular with the ROC w/l 30days before the date of issue of circular.
- (c) 20 % of the amt of its deposits maturing during the following financial year and kept in Deposit Repayment reserve .
- (d) deleted
- (e) Certificate that Co has not defaulted in repayment of deposit in the past and if default has occurred than, than co has made good of the default and period of 5 years had lapsed.
- (f) Providing security for repayment of Deposit + int. , creation of charge – if no security than it should be termed as “UNSECURED DEPOSIT”



Exemption Notification for Pvt Ltd Co.(2015)

Sec 73 (2) (a) to
(e) Not applicable
to Pvt. Co

Subject to Pvt Co
pass special
resolution.

Other terms

- Deposit shall be repaid with interest in accordance with T/C.(sec 73(3))
- Co fails – Depositor may apply to NCLT for repayment (sec 73(4))
- Deposit Repayment Reserve shall be utilized only for repayment of deposits. (sec 73(5))

Eligible Company 2(1)(e)

- "eligible company" means a
 - **public company** as referred to in sub-section (1) of [section 76](#), having a
 - **net worth** of 100 crore rupees or
 - **turnover** of 500 crore rupees and
 - **prior consent** of the company in general meeting by means of a special resolution and
 - filed the said resolution with the ROC before making any invitation
 - Provided that an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of [section 180](#), may accept deposits by means of an ordinary resolution;

Accepting Deposit From Public (sec 73-76)

Only eligible co
can accept Deposit
from Public

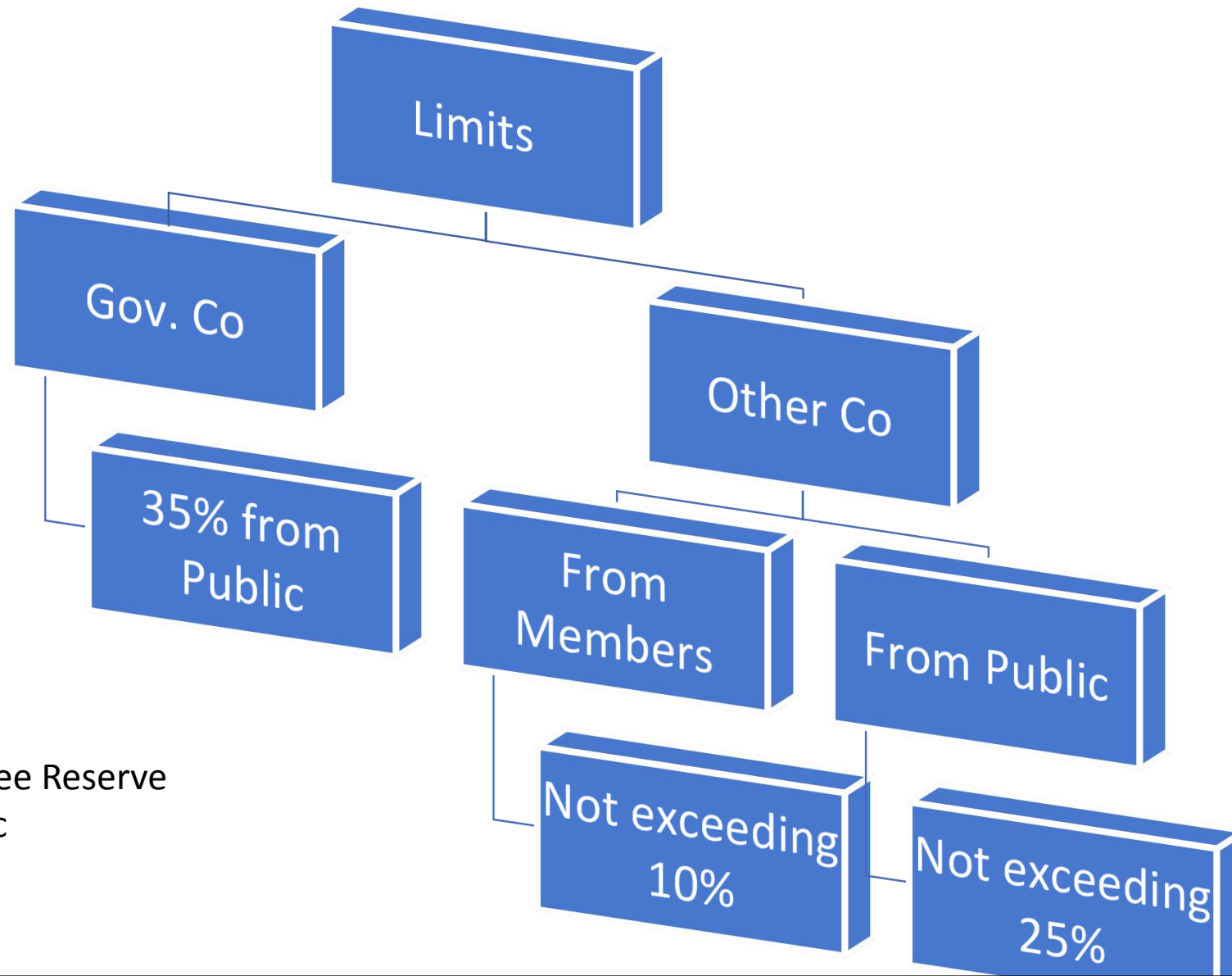
Public Co

Networth \geq 100
crores

Turnover \geq 500
crores

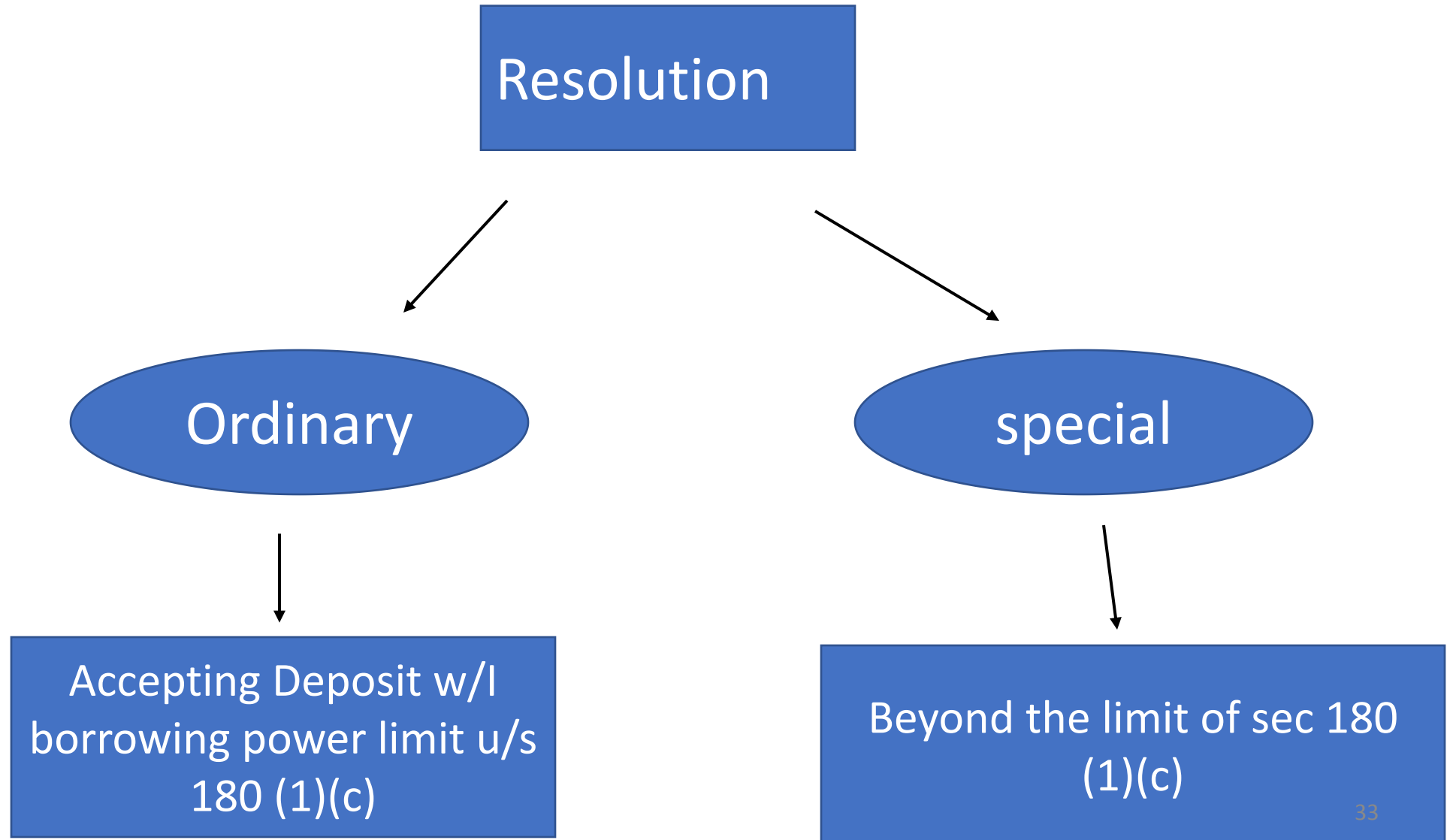
Prior consent of
Members in Co is
obtained

Deposit Limit under sec 76



% of Share Capital + Free Reserve
+ Security Premium a/c

Consent of Members



Terms and Conditions of Acceptance of Deposits by Eligible Companies (Rule 3)

Deposit can be SECURED / UNSECURED.

No Demand Deposit – Repayable on demand

Tenure 6 months – 36 months

- **Exception** – Short term deposit for less than 6 mts can be accepted
 - Tenure can not be less than 3 mts.
 - Such deposit do not exceed 10% of SC+Free Res. +SP AC

Penal Interest @18% pa for amt overdue period for deposit

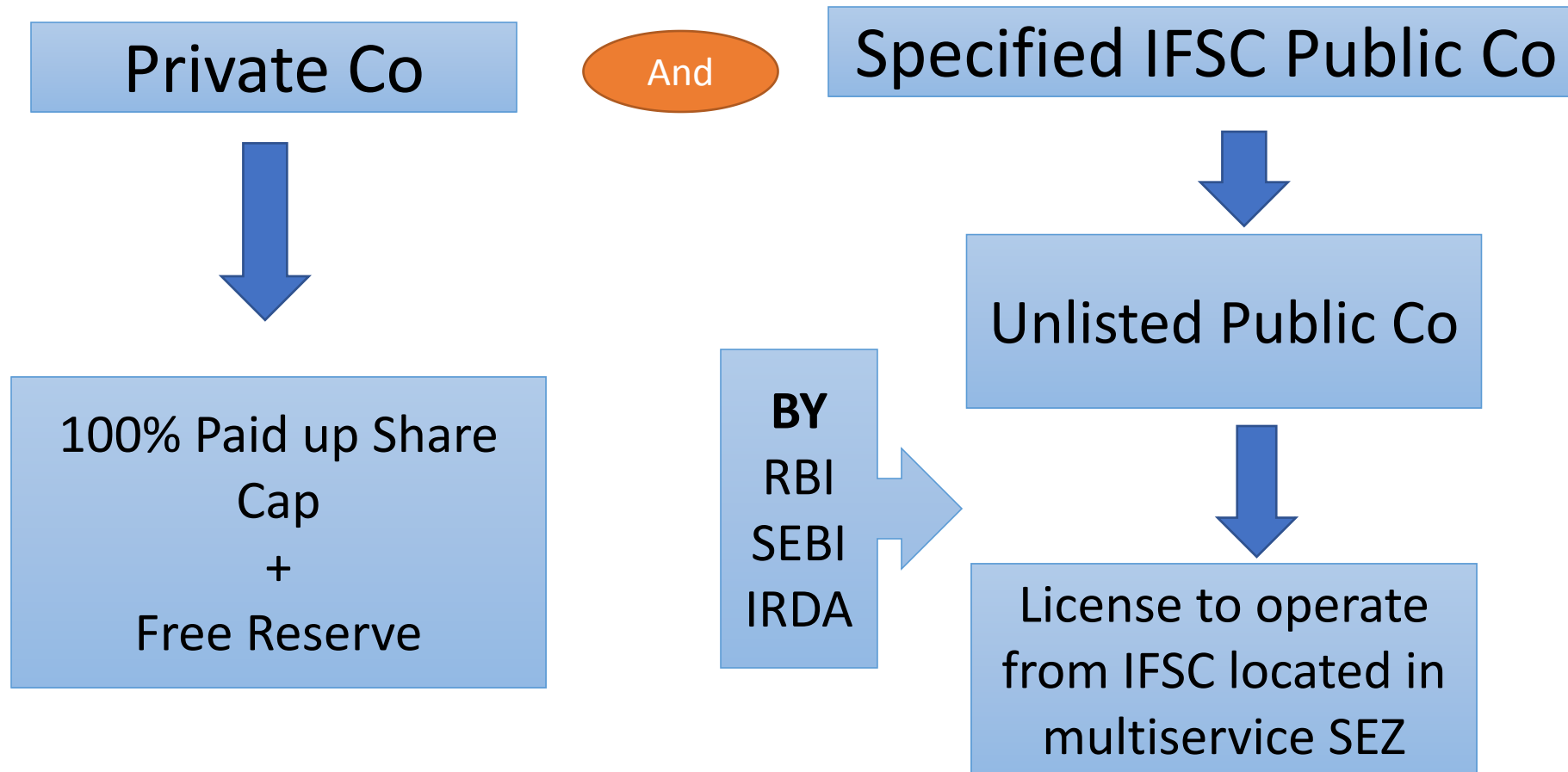
- Matured
- Claimed and
- Unpaid

Joint Depositors – not exceed 3

OVERVIEW - Deposit Limit u/s 73

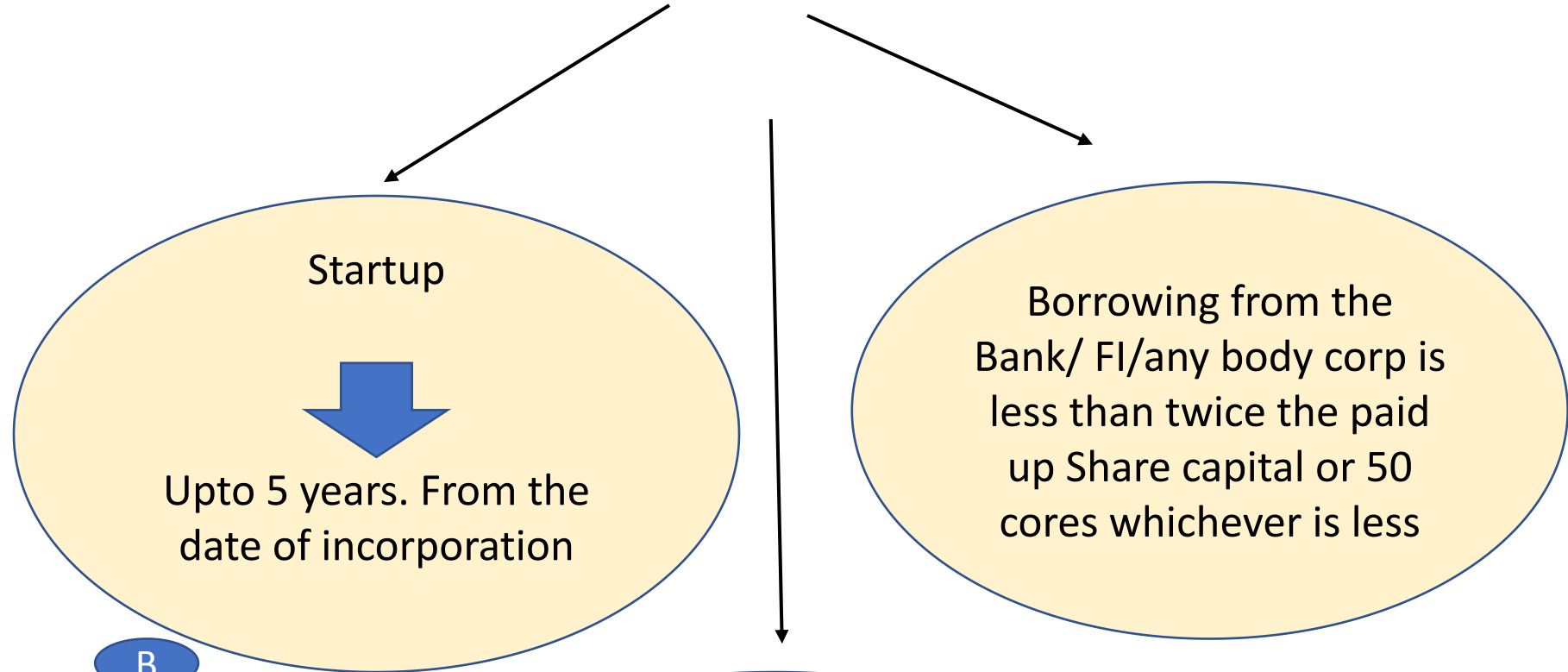
%	Deposit
10% of SC+FR+SP	Short Terms Deposit
35% of SC+FR+SP	Public Companies
100% of SC+FR	Private Co (sp exep & Sp Resolution) & Specified IFSC Public Co
NO LIMIT	Private Co. Start up Specified Conditions

Deposit Limit u/s 73



PRIVATE COMPANY

No Limit



	A	B
Paid up Cap	40	10
Max Limit	50	50
Twice	80	20

Content and procedure of Circular / Advertisement(Rule 4)

- Circular in **DPT – 1**
- Circulated to all the members by Reg Post with ackng /speed post / electronic mode.
- Circular – publish in news papers
- Certificate from Statutory auditor to be attached with DPT -1 certifying that company has not made any default .
- upload a copy of the circular on its website
- Circular on behalf of Board of Director
- Copy of circular to be filed with ROC before advertising .
- Circular valid until the expiry of six months from the date of closure of the financial year
- Declaration – Deposit is not made out of any money borrowed by him from any other persons

Deposit Receipt (Rule – 12)



Issue Deposit Receipt w/l 21 days



Signed by officer duly authorised by Board



Name Address of Depositor



Amt Received as Deposit



Rate of Interest



Maturity date

Creation of Securities (Rule 6)



Create Charge on its Assets other than intangible .



In favour of trustee





Market Value of Assets
charge = Deposit Accepted

Register of Deposits (Rule 14)

- Entry in the register w/l 7 days of issuance of Deposit Receipt
- Name and address of Depositor
- Deposit Receipt No.
- Nominee
- Date and amt of Deposit
- Duration
- Rate of Interest
- Due date of Interest
- Particulars of Security
- Preserved for 8 years

Disclosure in Financial statements by way of notes

- Private Co  Money received from Director and Relatives
- Other Co  Money received from Director

Return of Deposit

To be filed with ROC

In form DPT – 3

On or before 30th
june every year –
Deposit as of 31st
March

PENAL RATE OF INTEREST

- A company shall have to pay an interest of 18% p.a. for the overdue period of deposits, matured and claimed but remaining unpaid.

PUNISHMENT FOR CONTRAVENTION

<p>On the Company</p>	<p>In addition to the payment of the amount of deposit or part thereof and the interest due, a fine of minimum INR. 1 crore or twice the amount of deposit so accepted, whichever is lower, which may extend to INR.10 crore; and</p>
<p>On the officers of the Company</p>	<p>Who is in default: imprisonment up to 7 years and with a fine of not less than INR 25 lakh which may extend to INR.2 crore: or both</p> <p>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 (fraud).</p>

Other remedies -**Class Action Sec 245 –** ***Who may be sued through class action suits?***

- A company or its **directors** for any fraudulent, unlawful or wrongful act or omission;
- **an auditor including audit firm** of a company for any improper or misleading statement of particulars made in the audit report or for any unlawful or fraudulent conduct.
- **an expert or advisor or consultant** for an incorrect or misleading statement made to the company.





Who are entitled to file class action suits?

The number of depositors shall not be less than 100 or

not less than 10% of the total number of its depositors, whichever is less or

any depositor or depositors singly or jointly holding not less than 10% of the total value of outstanding deposits of the company.

Which reliefs may be claimed through class action suits?

claim damages or compensation on demand any other suitable action against :

- i) the company or its **directors** for any fraudulent, wrongful or unlawful act;
- ii) an **auditor including audit firm** of a company for any improper or misleading statement of particulars made in the audit report or for any unlawful or fraudulent conduct.
- iii) an **expert or advisor** or consultant for an incorrect or misleading statement made to the company.

Rules 7 Appointment of trustee for depositors // Rules 8 Duties of trustees.

• Rules 7 - Appointment

- Appointment of Trustee if secured Deposit
- Written consent obtained from Trustee
- execute a deposit trust deed in [Form DPT-2](#) at least seven days before issuing the circular
- Requirements of Trustee – not related / indebted / Not kmp / employee – any HC,SC,AC
 - Not related
 - No Pecuniary relationship
 - No Guarantee Arrangement
- Can not be removed unless all directors aprl

• Rules 8 – Duties

- ensure - assets of the company are sufficient
- Ensure - circular or advt. inviting deposits does not contain any information which is inconsistent
- ensure that the company does not commit any breach of trust deed
- Call the meeting of depositor as when it is ask / required.
- protection of the interest of depositors
- to resolve their grievances.

COMPLIANCES FOR ACCEPTING DEPOSITS FROM **MEMBERS OF PRIVATE COMPANIES** WHICH ARE COVERED UNDER THE EXEMPTION NOTIFICATION:

- **Board of Directors** at their Meeting shall pass a resolution for obtaining deposit from its Members subject to approval of Members at the General Meeting. The Board of Directors shall also approve the Application Forms for accepting deposits (containing a declaration that deposit is not made out of borrowed fund), format of Receipt of Deposit and format of Register of Deposits. The Board shall convene General Meeting of Members for the said approval.;
- Company shall **obtain approval of members** by Passing Ordinary resolution in General Meeting;
- Company shall accept the Application Forms for accepting deposits containing the aforesaid declaration;
- Furnish a **deposit receipt** to the depositors within 21 days from the date of receipt of money or realisation of cheques.
- Company shall maintain **register of deposit** and make entries within 7 days from the date of issuance of the deposit receipt and such entries authenticated by a directors and company secretary of the company
- No company shall accept deposits from members which are repayable on demand or upon receiving a notice within a **period** of less than 6 months or more than 36 months from the date of acceptance or
- Private Company accepting deposit is required to file **Form DPT-3 with ROC**, annually on or before 30th June, of every year and furnish the information contained therein as on the 31st day of the march of that year duly audited by auditor of the company.

COMPLIANCE AS PER THE COMPANIES ACT 2013 FOR ACCEPTING DEPOSITS **FROM PUBLIC**

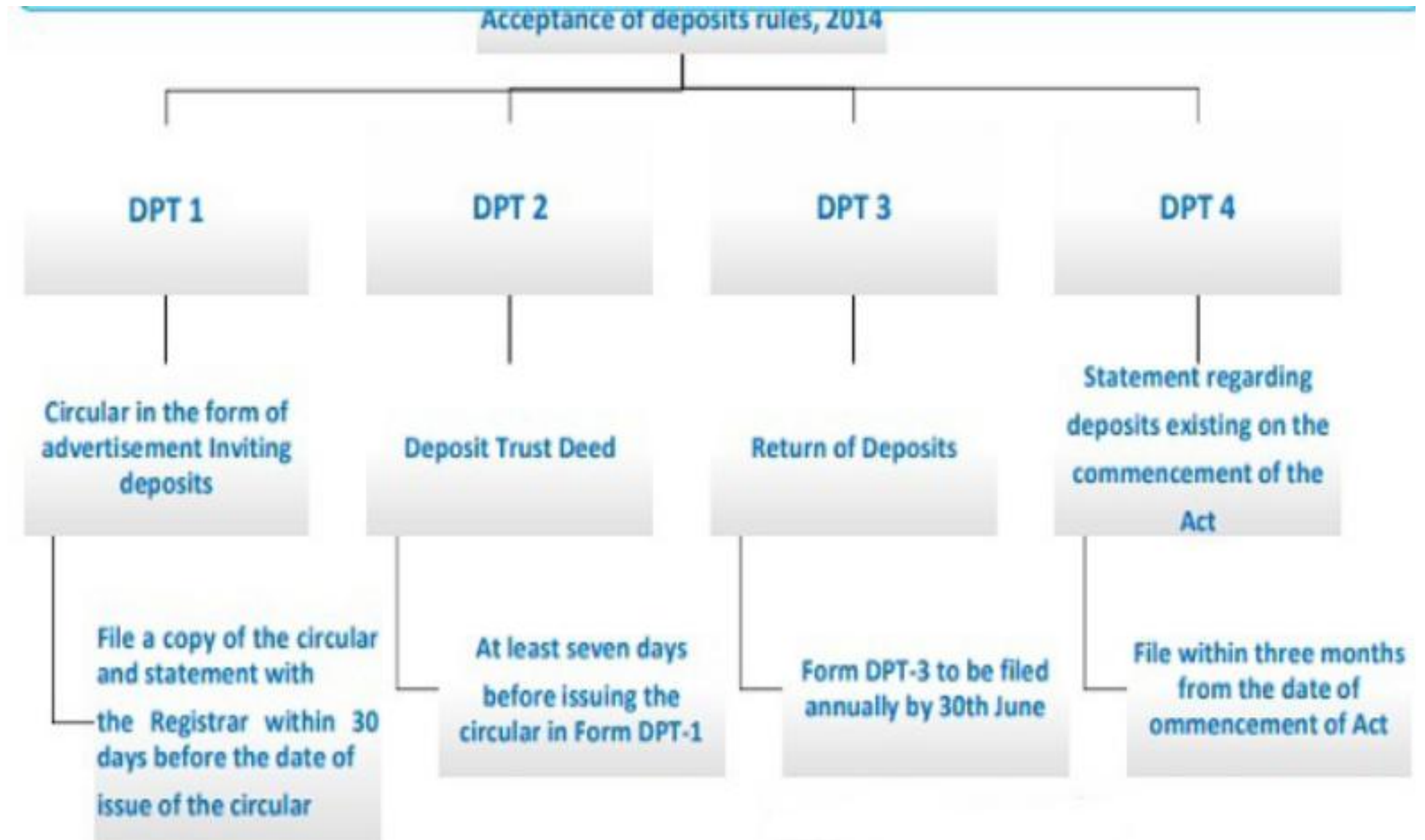
- **Pass special resolution** and file the same with ROC before making any invitation to the Public.
- **Obtain credit rating** and file with ROC along with DPT 3.
- **Create Charge within 30 days** of such acceptance on its assets of an amount not less than the amount of deposits accepted.
- **Issue a circular in Form DPT-1** in English language and in vernacular language and shall place such circular on its website, if any

- The company shall **execute a deposit trust deed** in Form DPT-2 at least seven days before issuing the circular.
- Furnish **receipt within 21 days** of amount received to the depositor. Deposit sum which shall not be less than **20% of the deposits maturing** during a financial year and the financial year next following, and keep in a scheduled bank in a separate bank account to be called as deposit repayment reserve account.
- No 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 NBFC norms

Other Provisions of Companies (Acceptance of Deposit) Rules, 2014

- Rule 7: Appointment of trustee for depositors
- Rule 8: Duties of trustees.
- Rule 9: Meeting of depositors
- Rule 10: Form of application for deposits.
- Rule 11: Power to nominate.
- Rule 12: Furnishing of deposit receipts to depositors
- Rule 13: Maintenance of liquid assets and creation of deposit repayment reserve account
- Rule 14: Registers of deposits
- Rule 15: General provisions regarding premature repayment of deposits.
- Rule 16: Return of deposits to be filed with the Registrar.
- Rule 16A Disclosures in the financial statement
- Rule 17: Penal rate of interest
- Rule 18: Power of Central Government to decide certain questions.
- Rule 19: Applicability of sections 73 and 74 to eligible companies.
- Rule 20: Statement regarding deposits existing as on the date of commencement of the Act
- Rule 21: Punishment for contravention

FORMS





**Thank
You!**