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PUBLIC DEPOSITS – ANALYSIS & COMPARISION AS PER COMPANIES ACTS 1956 & 2013 (INDIA)

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1. ABSTRACT

The manufacturing sector is the backbone of a country's economy and its people.The entire economic activity revolves around the investments & the number of people employed in the manufacturing sector, the value of products manufactured in the sector and the entire stream of revenues received by the government in the form of direct and indirect taxes.The manufacturing sector of a country also helps in the growth of other sectors like agriculture, science & technology, employment and the services sector.Indian Manufacturing Sector is one of the largest sectors of Indian economy and contributes substantial revenues to the Government thereby helping tremendously in the growth of the nation. According to the latest data of CII (Confederation of Indian Industry), the manufacturing sector contributes 15-16% to the GDP of India (2015). Besides, this important sector contributes to providing 12% employment of the entire work force in the country. The contribution of Indian industry to the global manufacturing output is 2.2% which is on par with the developed economies.Thus the manufacturing sector occupies prominent place in the national economic space.The manufacturing sector utilises an array of financial instruments in financing its manufacturing needs or requirements ---Working Term Loan, Letter of Credit, Commercial Paper, Debentures, Factoring, Trade Credit & Public Deposits; and there are different regulations governing the various instruments of finance utilised by the corporate sector.

Public Deposits is one of the important sources of working capital for the manufacturing sector in India.The Government of India has brought in several legislations to protect the interests of investors and also to regulate the manufacturing sector in raising the finances through Public Deposits.

The present study focusses on the public deposits and how they are regulated from time to time. They were under the purview of Companies Act 1956, Section 56. Later on, there were tremendous changes in the Companies Act 2013 to protect the interests of innocent investors. This paper makes a detailed analysis and comparision of public deposits as per the Companies Acts, 1956 and 2013 with respect of issuance of public deposits by the manufacturing sector.

2. **Key Words**

Public Deposits, Manufacturing Sector, Rating, Regulations, Default, Companies Act

3. Introduction

Public Deposits (PDs) constitute one of the important sources of finance for the companies to meet their medium and long term financial needs. 'Public Deposit' is a loan or a deposit invited from the public and does not include the money received in the form of share capital or debentures. In the last two decades, the companies have raised about 5000 crores through the issue of Public deposits. There were many companies which defaulted with the payments to the depositors. The Government of India has formulated various legislations to regulate the issue of Public Deposits by the companies and also to protect the interests of the depositors. This study compares the relevant provisons and guidelines in the Companies Acts 1956 and 2013 in detail.

4. Advantages of PDs

The PDs accord numerous benefits to the company or firm:

- Public Deposits are easily available to the firm and are convenient during times of credit squeeze.
- The administrative cost of raising PDs is low when compared to shares and debentures.
- The procedures are simple and less formal. The firm is subjected to fewer formalities.

- The rate of interest incurred on PDs is less when compared to the interest rate charged by banks and other financial institutions. Besides, it is also tax deductible. The firm need not depend on the banks and financial institutions for its financial needs.
- It enables the firm to establish a contact with potential investors.
- PDs of long duration enable the firm to have flexible capital structure. The firm can avoid the risk of over capitalization because it is free to repay the amount whenever is not needed.
- The best thing that can happen to a firm is that it can have access to funds without diluting the control. Persons investing in a company's PDs cannot interfere in the management.
- The PDs are not backed by any charge. However, if a company borrows money from a bank or a financial institution, they assume charge on the fixed assets of the company.

5. **Limitations of PDs**

- PDs are affected by the overall performance of the economy. When the economy is poor the performance of the company is also affected. The response to PDs from the public may not be encouraging to the company when it is not performing well and does not disclose positive results.
- Public withdraws the amount when the results are poor. It puts additional burden on the firm.
- There is a tendency for the firms to divert the funds raised through PDs to other irrelevant and unimportant purposes.
- Professional investors and people seeking high returns may not be interested in PDs because there is no appreciation in the value of PDs.
- The risk element for PDs is very high as they are unsecured.
- The availability of PDs may wean the firms away from the capital markets for their fund requirements. It may therefore affect the capital markets.
- There are a number of legal restrictions on raising PDs. The company cannot raise money as and when it wants and as much as it wants. There are certain guidelines to invite public deposits.
- It is usually meant for financing the short term needs of the company.

The analysis and comparision of public deposits is made based on the following important parameters in the Companies Acts of 1956 an 2013.

1. Relevant Provisions
2. Credit Rating
3. Security
4. Scope of Deposits
5. Deposit Insurance
6. Filing Documents with ROC (Registrar of Companies)
7. Members Resolution
8. Penalities for Default\Contravention of Rules
9. Eligible Company

1. Relevant Provisions

Section 58A, 58AA and 58AAA under Companies Act 1956 deal with the 'default' by the companies in the repayment of the public deposits upon maturity. A default by a company is treated as a 'cognizable offence' under the sections 58A and 58AA. The courts take cognizance of the offence only when a complaint is filed by an Officer duly authorized by the Central Government.

The key aspect of the Section 73 to 76 Companies Act 2013 is that it brought the private limited companies under the purview of the CA 2013. The private limited companies were earlier allowed to borrow money or raise deposits from the directors, friends and relatives of the directors.In the present Act, only the Director of the company can extend loan to a private limited company provided he gives a declaration that he did not borrow money from external persons or sources. Further, Section 76 of the CA 2013 clearly defines the 'eligibility criteria' for a company which are as follows:

1. The company should have a networth of 100 crores and a turnover of 500 crores
2. The company should get the consent by passing a 'Special Resolution'in the General Body Meeting of the company.
3. The 'Special Resolution'so passed in the general body meeting should be submitted to the 'Registrar of Companies' (ROC) before inviting the public deposits.

Stringent penalities will be imposed on the companies defaulting and the fine or penality may range from one crore to ten crores.Every officer of the company is also liable to pay a fine of 25 lakhs to two crores and face an imprisionment of 7 years or both.

2. Credit Rating

The companies did not bother to get a credit rating to issue the public deposits and there was no provision in the CA 1956 with respect to the credit rating.CA2013 makes it mandatory for all companies to obtain a good ‘credit rating’ from a ‘reputed credit rating agency’.The people should choose only those companies that are rated by top-rated agencies like CRISIL(Credit Rating Information Services of India Limited), CARE(Credit Analysis & Research), ICRA (Investment Information and Credit Rating Agency), India Ratings or Fitch. Recently CARE rated DHFL at AAA which indicates a highest degree of safety, with respect to meeting the financial obligations on\in time. HDFC is rated MAAA by ICRA and FAAA by CRISIL which indicates that HDFC is a highest credit quality institution with the lowest credit risk for the deposit scheme. GATI is rated moderately safe at BBB+ by CARE; whereas Godrej & Boyce is rated FAA by CRISIL indicating a high degree of safety. Similarly, KCP is rated FA by CRISIL indicating a negative opinion of the company; Prism Cement is rated ‘adequately safe’ (IND tA) by India Ratings indicating that it is a safe investment for the depositors whereas CEAT is given a stable rating of IND tA+ by India Ratings.

Corporate fixed deposit rates

COMPANIES*	RATING	RETURNS (%)		
		1-YEAR	2-YEAR	3-YEAR
Gati	CARE BBB+	11	11.5	12
KCP	Crisil FA-	10.5	10.75	11
Prism Cement	India Rating IND tA	10.25	10.25	-
Ceat	India Rating IND tA+	9.5	10	10.5
Dewan Housing Finance	Crisil AA +	9.5	9.75	9.75
DHFL	CARE AAA	9.5	9.75	9.75
Bajaj Finance	Crisil AAA / ICRA MAAA	9.25	9.4	9.65
PNB Housing Finance	Crisil FAAA	9.25	9.25	9.25
HDFC	ICRA MAAA / Crisil FAAA	9.25	9.25	9.3
Sundaram Finance	ICRA MAAA	9.25	9.5	9.5
Sundaram Home Finance	ICRA MAA +	9.25	9.5	9.5
Apollo Hospital	Crisil FAA+	9	9.25	9.50
Gruh Finance	ICRA MAAA / Crisil FAAA	9	9.25	9.5
M&M Financial Services	Crisil FAAA	9	9.25	9.5
ICICI Home Finance	ICRA MAAA / CARE AAA	9	9.25	9
Shriram City Union Finance	CARE AA+	8.95	9.41	10.11
LIC Housing Finance	Crisil FAAA	8.9	9	9.2
Shriram Transport Finance	Fitch TAAA	8.88	9.34	10.03
National Housing Bank	Crisil FAAA / Fitch TAAA	8.75	8.75	9

Source: Bluechip India & FundsIndia

**Except KCP, all deposit schemes are rated stable to high*

Source:[http://articles.economictimes.indiatimes.com/2015-01-2/news/57982875_1_deposit-scheme-fixed-deposit-stable-rating\September7](http://articles.economictimes.indiatimes.com/2015-01-2/news/57982875_1_deposit-scheme-fixed-deposit-stable-rating), 2015

3. Security

As per the provisions of the CA 1956, the public deposits were or have been unsecured instruments of finance for the companies to raise finance from and the companies used them extensively. The new act ie CA 2013 mandates the company to mention in its advertisements whether the public deposits are secured or unsecured.The company shall prominently mention the word ‘unsecured’, in any circular, advertisement, newspaper or any other document that is used to promote the public deposits issued by the company. The sections in the CA 2013 provide for a lot of enhancement in the investor protection measures like raising the eligibility limit, opening ‘Deposit Repayment Reserve Account’ wherein the company has to make a deposit of 15% of the amount raised as public deposit. The company has to furnish the details of the financial summary for the last or previous three years

4. Scope of Deposits

The definition of “Deposit” has undergone a tremendous change when compared to the CA 1956 and CA 2013. Under the old law compliance rules were not very stringent but the new CA 2013 has widened the scope of public deposits. Differenet financial arrrangements that were made by the companies to raise funds have been brought under the ‘scope of public deposits’. The CA 2013 brings under its purview the following amounts as public deposits.

a. Loans received from the relatives of directors

b. Loan received from the director if he does not give it from his own funds

c. All loans received from the members

d. Share application money received by the company and if the share allotment is not completed within 60 days of the public issue of shares. The pending amounts of share application money after 60 days will be treated as public deposits.

e. Debentures (which are secured) and compulsorily convertible debentures are also treated as public deposits if they are convertible with in five years from the date of issue.

5. Deposit Insurance

The old act of CA 1956 did not mandate the insurance of public deposits. The new act of CA 2013 safeguards the interests of the public to a large extent by mandating the managements of the companies to ensure ‘Deposit Insurance’. Of course, the deposit insurance in a way increases the compliance cost to the companies but it is essential that the interests of the deposits are protected.The deposit insurance contract executed by and between the company and the insuror should clearly specify that the deposit amount along with the interest accrued thereon will be paid by the insurer, upto the monetary ceiling, if the company fails or defaults in the repayment.In a way the deposit insurance is a positive move to ensure investor protection.

6. Filing Documents with ROC (Registrar of Companies)

As per the CA 1956 each company had to submit a statement of advertisement\advertisement copy to the ROC before issuing an advertisement to the general public calling for public deposits. However, as per the CA 2013, a company is mandatd to file or submit a circular or a copy of the advertisement to the ROC 30 days before the actual date of issue to invite the public deposits from the general public. It has to be signed by a majority of the Board of Directors. Further, the sub-section (2) of Section 73 of CA 2013 states that a company has to send the circular to the members by "registered post with acknowledgement due" or by "Speedpost". The circular or Form DPT-1 issued should contain relevant information about the company, reasons for raising the deposits, amount of deposit, duration of deposit, interest rate, information about the directors, declaration by the directors, credit rating of the company, financial details of the company, amounts outstanding, and if the company had earlier defaulted on its payments. A copy of the circular should also be posted on the website of the company. The validity of the circular is upto six months from the date of closure of financial year or the date on which the financial statement is presented at the Annual General Body Meeting (AGM) of the company. The date of issue of the newspaper is the actual date of issue of the advertisement\ or the actual date of dispatch of the circular. The advertisement is to be released in popular English daily or a vernacular daily with a good circulation in the State in which the registered office of the company is situated.

7. Members Resolution

The CA 1956 did not mandate the companies to obtain prior resolution from the shareholders to raise funds in the form of public deposits. The companies were free to issue public deposits without any permission from the shareholders in the form of passing appropriate 'resolutions' for this purpose. As per the CA 2013, the company issuing public deposits has to obtain an "Ordinary Resolution" from the shareholders if it raises funds from its members. The company should obtain the permission from the shareholders in the form of a "Special Resolution" if it has to go to the public for raising funds in the form of public deposits.

8. Penalities for Default\Contravention of Rules

As per the CA 1956, if a company contravenes the RBI guidelines in the issue of public deposits, the public\depositor can approach the CLB (Company Law Board) to seek a redressal of their grievance, if any. The company has to return the deposit collected within 30 days from the date of issue. It is also subjected to a fine of Rs 500=00 and a penality of Rs 50=00 per day till the amount is paid\returned to the aggrieved depositor. As per the CA 2013, a contravening company has to pay a fine of Rs 10000=00 along with a penality of Rs 1000=00 per each day till the deposit is paid\returned. The penalities and fines are very severe in case of companies defaulting in repayment of the deposits. In addition to deposit amount and the interest accrued thereon, the company may be imposed a fine of Rupees one crore to 10 crores. Every officer of the company in default may be imposed a fine of rupees 25 lakhs to 2 crores, besides an imprisonment of 7 years.

9. Eligible Company

The CA 1956 permitted only those companies having a networth not less than one crore to issue public deposits. Then eligibility criteria for issue of public deposits by a company have been revised in the new Companies Act to protect the interests of the people subscribing to the public deposits. Any company cannot issue public deposits as per its whims ans and fancies. As per the CA 2013, a company is eligible to issue public deposits only if it has a networth of not less than 100 crores or if it has a turnover of not less than 500 crores.

The following table illustrates the important points relating to public deposits as per the Companies Acts1956 and 2013.

SNo	Parameter	CA 1956	CA 2013
1	**Relevant provisionsProvisions**	Default by a company is treated as a 'cognizable offence' under the sections 58A and 58AA…… Section 58A, 58AA and 58AAA under Companies Act 1956 deal with the 'default'	Section 73 to 76 of the Companies Act 2013 brought the private limited companies under the purview…. Section 76 clearly defines the 'eligibility criteria' for a company
2	**Credit Rating**	No provision for credit rating	obtain a good 'credit rating' from a 'reputed credit rating agency'. People should choose only those companies that are rated by top-rated agencies like CRISIL, CARE, ICRA,

			India Ratings or Fitch.
3	**Security**	unsecured instruments of finance	Company should mention in advt whether PD is secured or not… Eligibility limit raised… open 'Deposit Repayment Reserve Account'wherein the company has to make a deposit of 15% of the amount raised as public deposit \
4	**Scope of Deposits**	Not very wide	Scope \definition wider…. Loans received from the relatives of directors… Loan received from the director if he does not give it from his own funds…. All loans received from the members…. Share application money received by the company and if the share allotment is not completed within 60 days of the public issue of shares. The pending amounts of share application money after 60 days will be treated as public deposits.
5	**Depsot Insurance**	'Deposit Insurance'-Not needed	'Deposit Insurance' needed
6	**Filing Documents with ROC**	submit a statement of advertisement\advertisement copy to the ROC before issuing an advertisement to the general public	Circular or a copy of the advertisement to the ROC 30 days before the actual date of issue… Form DPT-1 issued should contain relevant information …. validity of the circular is upto six months from the date of closure of financial year … advertisement is to be released in popular English daily or a

			vernacular daily with a good circulation
7	**Members Resolution**	No prior resolution from the shareholders	Mandates a "Special Resolution" if it has to go to the public for raising funds… obtain an "Ordinary Resolution" from the shareholders if it raises funds from its members
8	**Penalities for Default**	fine of Rs 500=00 and a penality of Rs 50=00 per day till the amount is paid\returned	A contravening company has to pay a fine of Rs 10000=00 along with a penality of Rs 1000=00 per each day till the deposit is paid\returned… A defaulting company to pay fine of Rupees one crore to 10 crores… Every officer of company to pay fine of rupees 25 lakhs to 2 crores, besides an imprisonment of 7 years.
9	**Eligible Company**	Only companies having a networth not less than one crore	Companies with networth of not less than 100 crores or with a turnover of not less than 500 crores.

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