

DPT- 3 Compliance

BUDS Ordinance 2019

Recent Amendments in Companies Act



CA. PRAMOD JAIN

B. COM (H), FCA, FCS, FCMA, LL.B, MIMA, DISA, IP

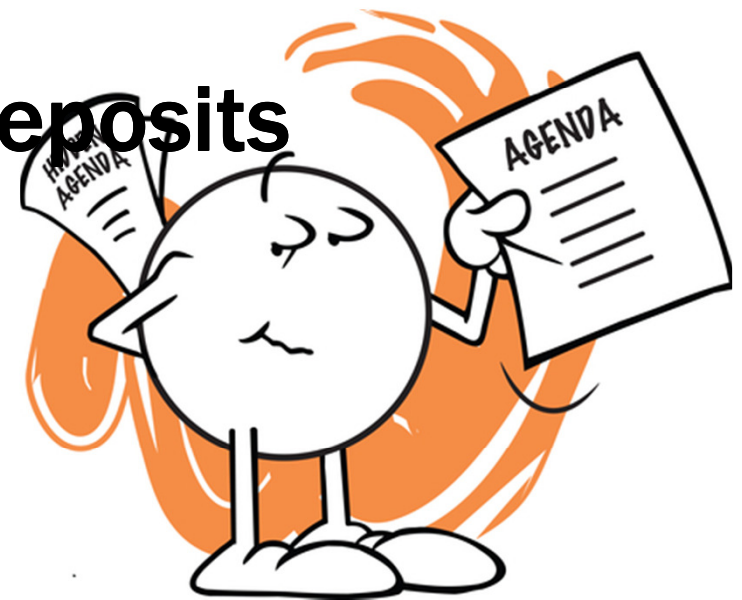
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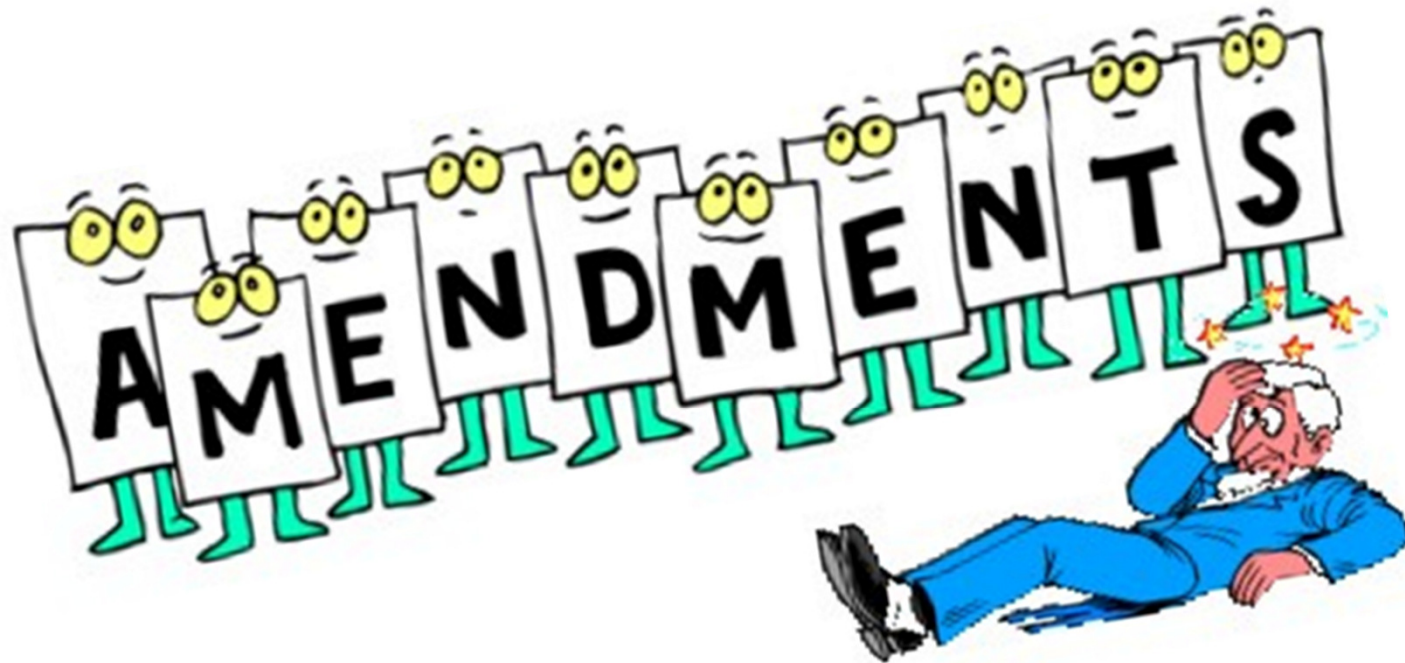
5th April 2019

CONTENTS

- ✘ **Companies (Amendment) Ordinance 2019**
- ✘ **DPT-3 Amendment**
- ✘ **Banning of Unregulated Deposits Scheme Ordinance 2019**



COMPANIES (AMENDMENT) ORDINANCE 2018/19



FINE REPLACED WITH PENALTY

- × **16 cases**
- × **Fine by NCLT, Penalty by RoC / RD**
 1. **S. 53(3) – Prohibition on issue of shares at discount**
 2. **S. 64(2) - Notice to be given to Registrar for alteration of share capital**
 3. **S. 92(5) – Annual Return**
 4. **S. 102(5) - Statement to be annexed to Notice**
 5. **S. 105 - Proxies**
 6. **S. 117(2) - Resolutions and Agreements to be filed**
 7. **S. 121(3) -Report on annual general meeting**

FINE REPLACED WITH PENALTY

- 8. S. 137(3) - Copy of financial statement to be filed with Registrar**
- 9. S. 140(3) - Removal, resignation of auditor and giving of special notice**
- 10. S. 157(2) - Company to inform DIN to Registrar**
- 11. S. 159 - Punishment for Contravention – in respect of DIN**
- 12. S. 165(6) - Number of Directorships**
- 13. S. 191(5) - Payment to Director for Loss of Office**
- 14. S. 197(15) - Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits**
- 15. S. 203(5) - Appointment of KMP**
- 16. S. 238(3) - Registration of the offer of scheme involving transfer of shares**

COMMENCEMENT OF BUSINESS

- ✘ **S. 10A introduced – reintroduction**
- ✘ **Earlier removed by amending s. 11 through Companies (Amendment) Act 2015.**
- ✘ **Any company incorporated on or after 2nd November 2018, shall not commence business or exercise any borrowing powers, unless:**
 - + **it files a declaration within 180 days of incorporation in Form INC 20A, confirming that every subscriber to the Memorandum has paid the value of shares agreed to be taken by him, AND**
 - + **files a verification of its registered office address with the RoC within 30 days of incorporation.**

COMMENCEMENT OF BUSINESS

- ✘ In case of default – penalty:
 - + Company – Rs. 50K
 - + OID – Rs. 1000/- per day subject to maximum Rs. 1 Lakh.
- ✘ Failure in filing and Registrar has reasonable cause to believe that company not carrying on any business – may initiate action for removal of name from Register of Companies u/s 248
- ✘ S. 248 also amended consequently.

S. 12(9) REGISTERED OFFICE

- ✘ S. 12(9) introduced.
- ✘ In case RoC has reason to believe that company is not carrying any business or operations , he may call for physical verification of registered office
- ✘ And if not found complying with s. 12(1):
 - ✘ RO should be capable of receiving and acknowledging all communications and notices as may be addressed to it.
- ✘ May initiate action for removal of name from Register of Companies u/s 248

S. 92 ANNUAL RETURN

- ✘ If filed within 60 days in MGT 7 – normal fee
- ✘ Upto 30.6.2018 additional fee till 300 days
- ✘ W.e.f. 1.7.2018 additional fee Rs. 100/- pd
- ✘ After that penalty (earlier fine w.e.f. 2nd November 2018):
 - + On Company and Officer in default
 - ✘ minimum 50K plus Rs. 100/- per day on continuous default.
 - ✘ maximum – 500K
 - + Imprisonment on Officer in default upto 6 months omitted

S. 137 FILING OF FS

- ✘ To be filed with ROC in Form AOC -4 within 30 days of AGM
- ✘ Upto 30.6.2018 additional fee till 300 days
- ✘ W.e.f. 1.7.2018 additional fee Rs. 100/- pd
- ✘ Penalty on
 - + Company – 1k p. d > 10 L;
 - + MD, etc in charge by Board- if no one – all directors
 - ✘ Penalty – 1L (Rs. 100/- per day if continuous default) to 5L
 - ✘ Imp. upto 6months (Omitted w.e.f. 2.11.18)

S. 117 FILING OF RESOLUTIONS

✘ Earlier for default – fine:

+ Company:

✘ Min. Rs. 1 Lakh; Max. Rs. 25 L

+ OID:

✘ Min. Rs. 50K; Max. Rs. 5 L

✘ Now – penalty:

+ Company:

✘ Min. Rs. 1 Lakh, continuing Rs. 500/- p.d.

✘ Max. Rs. 25 L

+ OID including liquidator:

✘ Min. Rs. 50K, continuing Rs. 500/- p.d.

✘ Max. Rs. 5 L

S. 140 AUDITOR RESIGNATION

✘ Earlier for default – fine:

- + Min. Rs. 50K or remuneration of auditor whichever is less
- + Max. Rs. 5 L

✘ Now – penalty:

- + Min. Rs. 50K or remuneration of auditor whichever is less; continuing Rs. 500/- p.d.
- + Max. Rs. 5 L

S. 164/165 DIRECTOR DISQUALIFICATION

- ✘ **Under s. 165, a person cannot be a director in more than 20 companies.**
- ✘ **The Ordinance provides that contravening this provision will be a ground for disqualification from directorship.**
- ✘ **S. 165 – non-compliance – fine was: Min 5K to 25K p.d.**
- ✘ **Now penalty – 5k p.d.**

S. 203 APPOINTMENT OF KMP

× Earlier for default – fine:

+ Company:

- × Min. Rs. 1 L; Max. Rs. 5 L

+ Director and KMP:

- × Upto 50K; continuing Rs. 1000/- p.d.

× Now – penalty:

+ Company:

- × Rs. 5 L

+ Director and KMP :

- × Min. Rs. 50K, continuing Rs. 1000/- p.d.
- × Max. Rs. 5 L

S. 441 COMPOUNDING

- ✘ **RD can compound offences with a fine up to Rs. 5 Lakhs.**
- ✘ **The Ordinance increases this ceiling to Rs 25 lakhs.**

S. 447 FRAUD

- ✘ Imprisonment not less than 6 months to 10 years
- ✘ + Fine not be less than amount involved in the fraud which may extend to 3 times.
- ✘ If fraud in question involves public interest then the imprisonment shall not be less than 3 years.
- ✘ If amount involved in fraud is less than Rs. 10L or 1% of turnover – imprisonment upto 5 years or fine upto Rs. 25 Lacs or with both. No minimum term or amount [-\(9.2.2018\)](#)
- ✘ Ordinance – Fine limit increased to Rs. 50 Lacs

S. 454A REPEATED DEFAULT

- ✘ New section introduced**
- ✘ If a company, or an officer, or other person commits a default again within three years of the previous case, the entity will be liable to twice the penalty as provided for such default.**



DPT-3

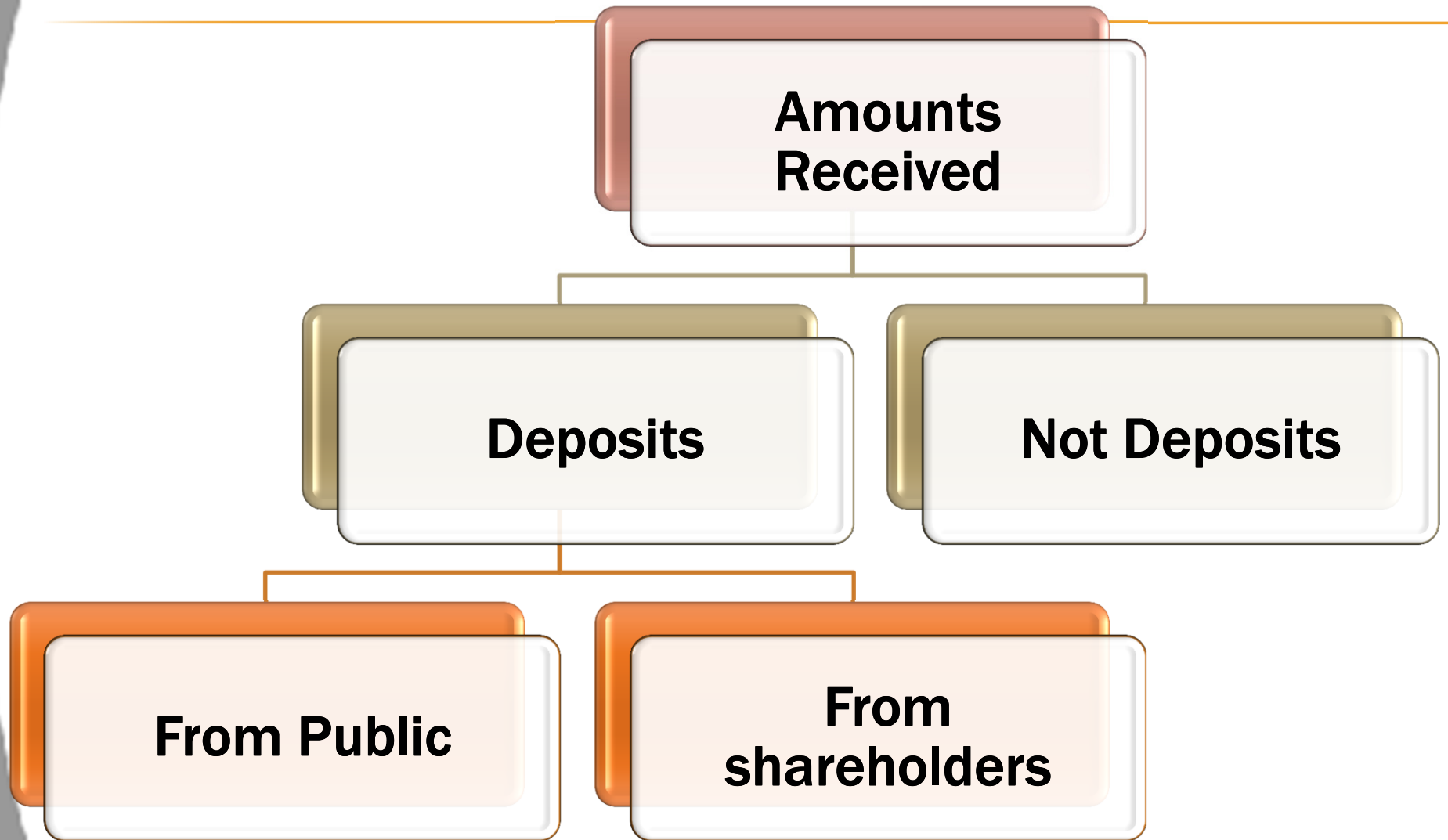
- ✘ To be filed annually by 30th June and furnish information as on 31st March of that year **duly audited by auditor of the company.**
- ✘ Was to be filed only by cos. accepting deposits
- ✘ Later companies accepting deposits from shareholders also covered w.e.f. **19th September 2017**
- ✘ Insertions made to Rule 16 and 16A of the Deposit Rules vide notification dated 22nd January 2019
- ✘ Form DPT-3 also amended.

DPT-3

- ✘ **Explanation to Rule 16 added – to clarify that DPT-3 is to be filed annually by every company other than Government company for :**
 - + **Deposit or**
 - + **Particulars of transaction not considered as deposit or**
 - + **Both**

DPT-3

- ✘ **Sub-rule (3) added to Rule 16A :**
 - + **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 rule 2(1)(c)**
 - + **from 1st April, 2014 to the date of publication of this notification (22.1.19),**
 - + **within 90 days from the date of said publication of this notification (22.1.19)**
 - + **along with fee.**



AMOUNTS NOT DEPOSITS

- × Amount received from CG, SG, L Auth., Stat. Auth.
- × Amount from Foreign Govt, Bank, etc as per FEMA
- × Amount received from Banks, PFIs, CPs
- × ICD
- × From director out of his own funds – to report in D.R. w.e.f. **15.9.15 – FS – 29.6.16**
- × From relative of director for Pvt. Co. out of his own funds – to report in D.R. w.e.f. **15.9.15 – FS – 29.6.16**
- × Convertible bond / debenture – shares within 5 years **10 from 29.6.16. & Listed unsecured NCD**
- × Interest free security deposit – employee – 1 yr salary

AMOUNTS NOT DEPOSITS

- Share appl. money, except not allotted / refunded
- ✘ Non-Interest bearing amt received & held in Trust
- ✘ Business advances:
 - + Supply of goods / services – within 365 days
 - + Against Immovable property – if adjusted as per agreement
 - + Security deposit for performance of contract for supply of goods or provision of services
 - + Under long term project-supply of capital goods

AMOUNTS NOT DEPOSITS

- + Advance for providing future services in form of warranty or maintenance contract (written) upto 5 years – **29.6.2016**
- + Advance received and as allowed by sectoral regulator as per CG or SG – **29.6.2016**
- + Advance for subscription towards publication – **29.6.2016**
- ✗ If Co. accepting money does not have necessary permission or approval to deal in goods or properties or services -Deposit
- ✗ Subscription to chit under Chit Fund Act– **29.6.16**

AMOUNTS NOT DEPOSITS

- ✘ **Rs. 25 Lakh or more by start up company in single tranche by convertible note (in equity or repayable within 5 years) – 29.6.16**
- ✘ **Promoters - stipulation of any FI or a banks:-**
 - + **Loan is brought in pursuance of stipulation imposed by lending institutions on promoters to contribute such finance; and**
 - + **Loan is provided by the promoters themselves and/or by their relatives.**
 - + **Exemption available only till loans are repaid**

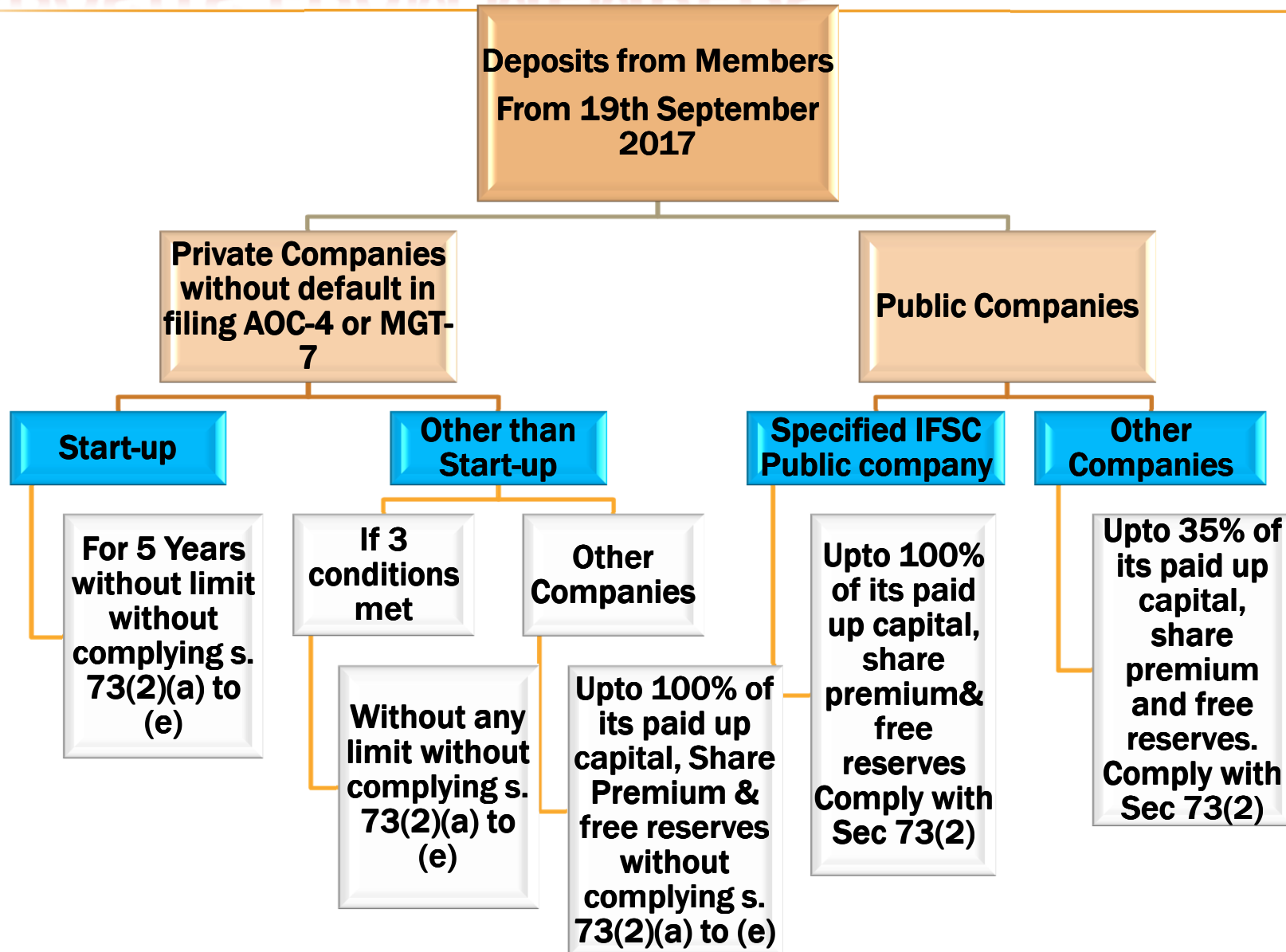
AMOUNTS NOT DEPOSITS

- ✘ Amount received by the company under any collective investment scheme in compliance with regulations framed by SEBI; **(29.6.2016)**
- ✘ Amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds, and Mutual Funds registered with the SEBI **(29.6.16)**.
 - + Infrastructure Investment Trusts **(11.5.2017)**
 - + Real Estate Investment Trusts **(22.01.2019)**

AMOUNTS NOT DEPOSITS

- ✘ Amt. received by Nidhi companies
- ✘ Specified IFSC Public company can accept from its members monies not exceeding 100% 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 ([w.e.f. 19.9.2017](#))
 - + However, they have to comply with provisions of Section 73(2) of Companies Act 2013 and Companies (Acceptance of Deposit) Rules 2014

DEPOSITS FROM MEMBERS



DEPOSITS FROM MEMBERS

- ✘ In the previous chart in case Private Company is in default in filing AOC-4 or MGT-7, then the limits for start-up and other than start-up companies remains same**
- ✘ However, they would have to comply with conditions of S. 73(2) on or after 19th September 2017**

DPT-3 - SUMMARY

- ✘ Every company receiving monies deposits, loans, ICD, advances, etc. to file DPT-3 annually
- ✘ 1 time return for all companies who have outstanding monies which are not deposits as per rule 2(1)(c)
- ✘ Point no. 14 of amended DPT-3 - Total amounts of outstanding money or loan received by a company but not considered as deposits in terms of rule 2(1)(c) as specified in rule 16(A)(3)
- ✘ Non- Compliance Fine – 5K – continuing Rs. 500/- per day – Rule 21



BANNING OF UNREGULATED DEPOSIT SCHEME 2019

- ✘ **Unregulated Deposits Schemes Bill 2019 was passed by Lok Sabha on 13th February 2019.**
- ✘ **Could not be passed by Rajya Sabha**
- ✘ **Hence, ORDINANCE w.e.f 21st February 2019**

OBJECT OF BUDS 2019

- ✘ **Central legislations such as the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and the Chit Funds Act, 1982 and the legislations enacted by the SG have not been able to completely address the issue of unregulated deposit schemes run by unscrupulous elements**

OBJECT OF BUDS 2019

- ✘ This regulatory gap was highlighted in the 21st Report of Parliamentary Related Standing Committee on Finance (16th Lok Sabha) titled as “Efficacy of Regulation of Collective Investment Schemes, Chit Funds, etc.”. – and recommended appropriate law

OBJECT OF BUDS 2019

- ✘ Presently, there are considerable differences among State laws in protecting intt. of depositors & many unregulated deposit taking schemes operate across State boundaries
- ✘ Hence this bill is to ensure a comprehensive ban on unregulated deposit taking activity and for its effective enforcement

OBJECT OF BUDS 2019

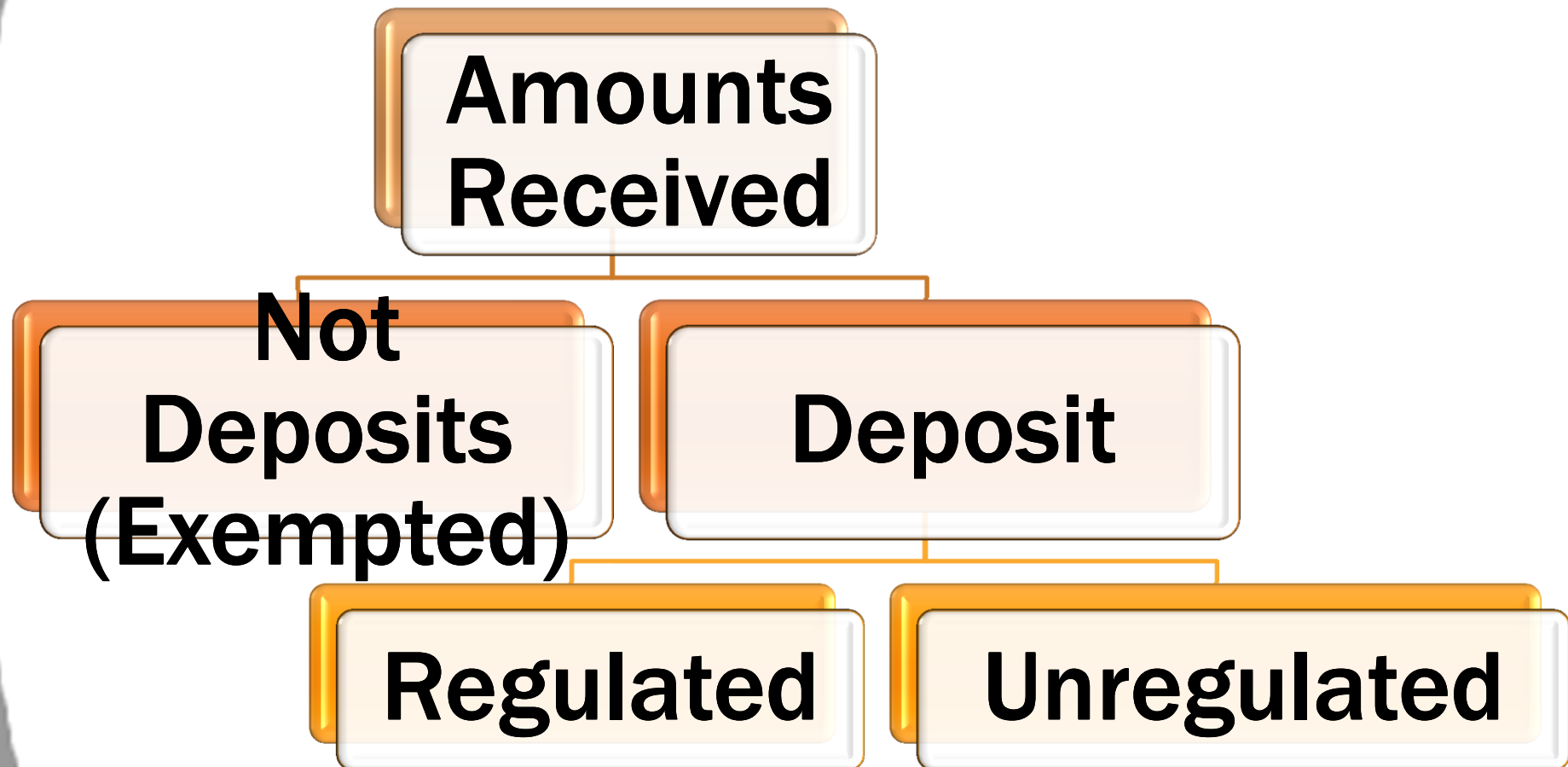
- ✘ **The proposed Bill, namely, the Banning of Unregulated Deposit Schemes Bill, 2018, aims to prevent such unregulated deposit schemes or arrangements at their inception and at the same time makes soliciting, inviting or accepting deposits pursuant to an unregulated deposit scheme as a punishable offence.**

OBJECT OF BUDS 2019

- ✘ **The Bill seeks to put in place a mechanism by which the depositors can be repaid without delay by attaching the assets of the defaulting establishments**

OTHER LAWS

- ✘ **Three other laws amended**
 - + **Explanation III added to s. 45-I (bb) of RBI Act**
 - + **S. 11(4)(e) of SEBI Act substituted**
 - + **Explanation 4 added to S. 28A of SEBI Act**
 - + **S. 67(1) of Multi-State Co-operative Societies Act amended**



CHARGING SECTION

- × Charging section 3.
- × Unregulated Deposit Schemes shall be banned
- × No deposit taker shall, directly or indirectly, promote, operate, issue any advertisement soliciting participation or enrolment in or accept deposits **in pursuance of an Unregulated Deposit Scheme**

DEFINITIONS

- ✘ **Section 2 - Definitions.**
- ✘ **S. 2(4) – Deposits**
- ✘ **S. 2(17) - ‘Unregulated Deposit Schemes’ means a Scheme or an arrangement under which deposits are accepted or solicited by any deposit taker **by way of business** and which is **not a Regulated Deposit Scheme****

REGULATED DEPOSIT SCHEMES

- × **1st Schedule - Schemes or arrangements by**
 - + **SEBI, RBI, IRDA**
 - + **SG or UT**
 - + **NHB**
 - + **PF Regulatory & Development Authority**
 - + **EPFO**
 - + **Multi-state co-operative society**
 - + **MCA**
 - × **Deposit Rules**
 - × **Nidhi cos. or Mutual Benefit Societies u/s 406**

SECTION 5

- ✘ No person by whatever name called shall **knowingly** make any statement, promise or forecast which is false, deceptive or misleading in material facts or deliberately conceal any material facts, to **induce** another person to invest in or become member or participant of any URDS

SECTION 6

- ✘ **A prize chit or money circulation scheme banned under Prize chits & Money Circulation Scheme (Banning) Act, 1978 would be URDS**

DFS TWEET

- ✘ **Banning of Unregulated Deposit Ordinance-2019, exempts Individual, Firm, Companies & LLP etc. for taking any loan and deposit for their course of business as per section 2(4) e, f, l and other provisions.**

SECTION 4

- ✘ **No deposit taker while accepting deposits pursuant to regulated deposit scheme shall commit any fraudulent default in:**
 - + **Repayment or return of deposit on maturity; or**
 - + **In rendering any specified service promised against such deposit**

DEPOSITS S. 2(4)

- ✘ **“Deposit” means an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include amounts received from —**
 - + Bank, Co-operative bank**
 - + PFI, NBFC, Insurance Companies**

DEPOSITS S. 2(4)

- ✘ Government or any source guaranteed by government
- ✘ Foreign bank, govt.. Etc as per FEMA
- ✘ Contributions towards capital by partners of any partnership firm or a LLP
- ✘ By an individual by way of loan from his relatives or by any firm by way of loan from the relatives of any of its partners
- ✘ As credit by buyer from a seller on sale of any property (whether movable or immovable)
- ✘ ARC

DEPOSITS S. 2(4)

- ✘ **Political Party**
- ✘ **Periodic payment made by members of the self-help groups operating within such ceilings as may be prescribed by SG or UTG**
- ✘ **Any other amount collected for such purpose and within such ceilings as may be prescribed by SG**
- ✘ **In course of, or for purpose of, business & bearing a genuine connection to such business including:**
 - + **payment, advance or part payment for supply or hire of goods or provision of services & is repayable in the event goods or services are not sold, hired or otherwise provided**

DEPOSITS S. 2(4)

- ✘ **In course of, or for purpose of, business & bearing a genuine connection to such business including:**
 - + **advance received in connection with consideration of an immovable property under an agreement or arrangement ...is adjusted ... in terms of agreement**
 - + **security or dealership deposited for performance of contract for supply of goods or provision of services**
 - + **advance under long-term projects for supply of capital goods**
 - + **In case above become refundable, such amounts shall be deemed to be deposits on expiry of 15 days from the date on which they become due for refund**

CENTRAL DATABASE

- ✘ **CG may designate an authority who shall create, maintain & operate online database for information on deposit takers in India (S. 9)**
- ✘ **Every deposit taker which commences or carries on its business on or after 21.2.19 to intimate about its business to such authority in such form and manner and within such time, as may be prescribed (S. 10)**
- ✘ **If authority believe deposits are being accepted / solicited pursuant to URDS – statement, information, particulars to be obtained (S. 10)**

CENTRAL DATABASE

- ✘ Intimation to be given by:
 - + Acceptance or soliciting Deposit as per s. 2(4)
 - + By Companies accepting deposits under Chapter V of Companies Act, 2013
- ✘ All information about URDS to be shared with CBI and other designated authority (S. 11)

COMPETENT AUTHORITY

- ✘ **Competent Authority would be one or more government officers, not below the rank of Secretary to the SG or CG.**
- ✘ **Police officers receiving information about offences committed under the Ordinance will report it to the Competent Authority.**
- ✘ **Police officers (not below the rank of an officer-in-charge of a police station) may enter, search and seize any property believed to be connected with an offence under the Bill, with or without a warrant.**

COMPETENT AUTHORITY

- ✘ **The Competent Authority may:**
 - + **Provisionally attach the property of the deposit taker, as well as all deposits received,**
 - + **Summon and examine any person it considers necessary for the purpose of obtaining evidence,**
 - + **Order the production of records and evidence.**
- ✘ **The Competent Authority will have powers similar to those vested in a civil court.**

DEPOSITORS

- ✘ **Other than SRFAESI Act, 2002 and IBC, 2016 amount due to depositors to be paid in priority over all debts and all revenues, taxes, cesses and other rates payable to government or local authority (S. 12)**
- ✘ **Competent authority attachment to extent of depositors due would have precedent attachment by any other authority (S. 13)**
- ✘ **Attachment of property of malafide transferee if transferred otherwise in good faith and not for commensurate consideration (S. 16)**

OFFENCES

× URDS

- + Soliciting deposits under URDS
- + Accepting deposits under URDS
- + Fraudulently defaulting in repayment of deposits accepted under URDS
- + Failure to render service promised against URDS
- + Wrongful inducements in relation to Unregulated Deposit Schemes

OFFENCES

× RDS

- + Fraudulently defaulting in repayment or return of deposit on maturity of regulated deposits.
 - + Failure to render service promised against regulated deposits
- × Failure to file intimation by deposit taker about its business, or to furnish statements, information or particulars to the competent authority

PUNISHMENT

- ✘ **Solicits deposits in contravention of S. 3**
 - + **Imprisonment**
 - ✘ **Minimum 1 yrs**
 - ✘ **Maximum 5 years**
 - + **AND Fine**
 - ✘ **Minimum Rs. 2 Lakhs**
 - ✘ **Maximum Rs. 10 Lakhs**

- ✘ **Accepts deposits in contravention of S. 3**
 - + **Imprisonment**
 - ✘ **Minimum 2 yrs**
 - ✘ **Maximum 7 years**
 - + **AND Fine**
 - ✘ **Minimum Rs. 3 Lakhs**
 - ✘ **Maximum Rs. 10 Lakhs**

PUNISHMENT

- ✘ **Accepts deposits in contravention of S. 3 and fraudently defaults in repayment or rendering promised service**
 - + **Imprisonment**
 - ✘ **Minimum 3 yrs**
 - ✘ **Maximum 10 years**
 - + **AND Fine**
 - ✘ **Minimum Rs. 5 Lakhs**
 - ✘ **Maximum 2 times the aggregate of amount of funds collected in URDS**
- + **Where terms of deposit scheme are entirely impracticable or unviable – would show intention of fraud**

PUNISHMENT

✘ Contravention of S. 4

+ Imprisonment

- ✘ Maximum 7 years

+ OR Fine

- ✘ Minimum Rs. 5 Lakhs
- ✘ Maximum Rs. 25 Crs or 3 times of the profit made out of fraudulent default whichever is higher

✘ Contravention of S. 5

+ Imprisonment

- ✘ Minimum 1 Year
- ✘ Maximum 5 years

+ AND Fine

- ✘ Maximum Rs. 10 Lakhs

✘ Failure to give information u/s 10 – fine upto Rs. 5 L

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