

**e-Form – ACTIVE  
DPT- 3 Compliance  
Companies(Amendment) Ordinance 2019**



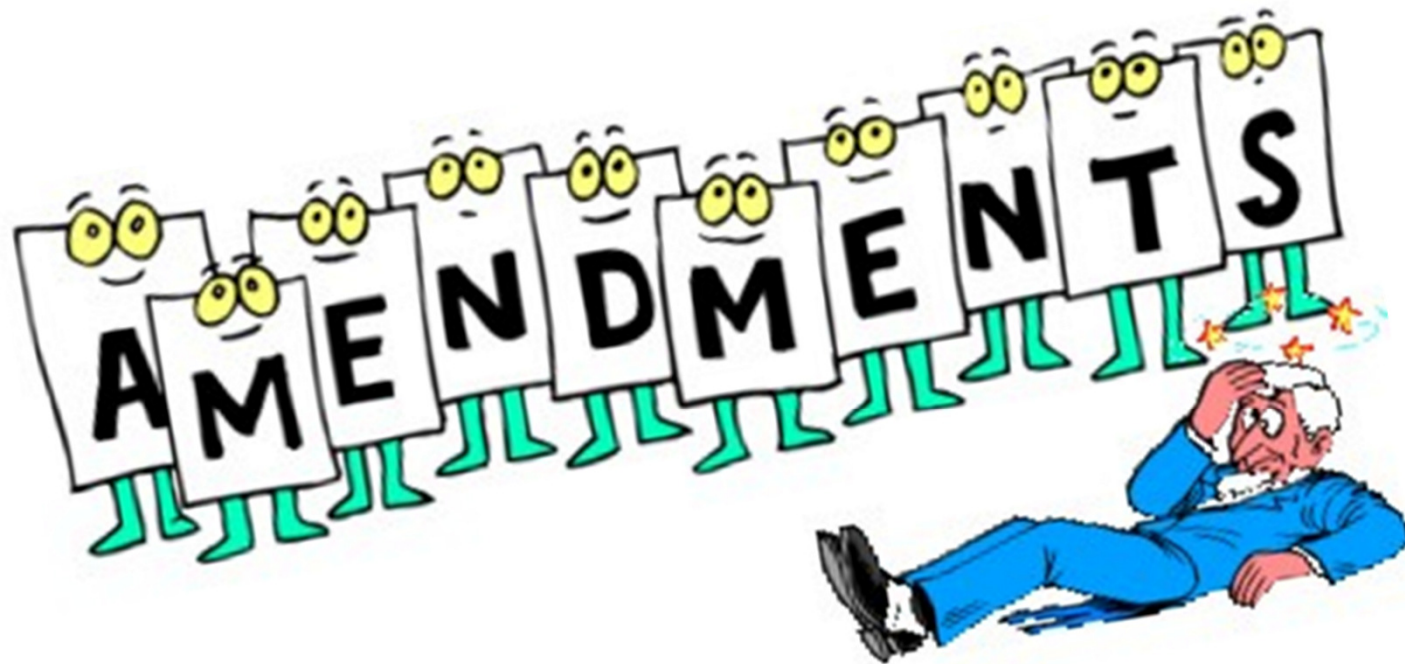
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**Shared at  
Society for Tax Analysis & Research (STAR)  
1<sup>st</sup> April 2019**

# **COMPANIES (AMENDMENT) ORDINANCE 2019**

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# **SUMMARY**

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- ✖ **Ordinance promulgated on 2<sup>nd</sup> November 2018**
- ✖ **Companies (Amendment) Bill 2019 to replace the ordinance passed by Lok Sabha on 4<sup>th</sup> January 2019; pending with Rajya Sabha**
- ✖ **Companies (Amendment) Ordinance 2018 will cease to operate on 21<sup>st</sup> January 2019**
- ✖ **Hence, Companies (Amendment) Ordinance 2019 promulgated on 12<sup>th</sup> January 2019 to be effective from 2<sup>nd</sup> November 2018**
- ✖ **32 amendments**

# **FINE REPLACED WITH PENALTY**

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- ✗ **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**

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- 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**

## **S. 2(41) FY & S. 14 CONVERSION**

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- ✘ **To have different Financial Year power given to CG from NCLT [S. 2(41)]**
- ✘ **Also, applications for conversion of a company from public to private (S. 14) are now to be made to the CG instead of the NCLT.**
- ✘ **Pending applications with the NCLT submitted prior to 2 November, 2018 in case of the above matters will be dealt by the NCLT.**

# **COMMENCEMENT OF BUSINESS**

- ✗ **S. 10A introduced – reintroduction**
- ✗ **Earlier removed by amending s. 11 through Companies (Amendment) Act 2015.**
- ✗ **Any company incorporated on or after 2<sup>nd</sup> 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**

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- ✗ **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**

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- ✗ **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**

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- ✖ 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. 2<sup>nd</sup> 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. 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. 137 FILING OF FS

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- ✗ 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. 140 AUDITOR RESIGNATION

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- ✖ 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

## SBO

- ✗ In case declaration is not made or it is not satisfactory, then company to apply within **15** days for restrictions on with regards to transfer of interest, suspension of all rights attached to such shares to NCLT u/s 90(7).
- ✗ A person aggrieved by order of such restriction u/s 90(8) may apply for relaxation – **time period applying for relaxation restricted to 1 yr from date of order. (Ordinance 2019)**
- ✗ **If no application made for relaxation within 1 year – shares shall be transferred to IPEF without any restrictions. (Ordinance 2019)**

## **PENALTY - 13.6.2018**

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- ✗ **S. 90 – Register of beneficial ownership to be maintained by co – file return.**

### **Penalty:**

- + **On person not making declaration**
  - ✗ **Min. 1 L to 10 L – continuing 1k p.d. or**
  - ✗ **imprisonment upto 1 yr or both (2.11.2018)**
- + **On Co. for not maintaining register and filing return Min. 10 L to 50 L – continuing 1k p.d.**
- + **Willfully False or incorrect information or suppress – s. 447**

## **S. 164/165 DIRECTOR DISQUALIFICATION**

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- ✗ 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. 454A REPEATED DEFAULT**

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- ✗ **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.**

# E-FORM - ACTIVE

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# **E-FORM - ACTIVE**

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- ✖ **Incorporation Rules amended w.e.f. 25<sup>th</sup> February 2019 to insert Rule 25A**
- ✖ **Active Company Tagging Identities and Verification (ACTIVE)**
- ✖ **Applicable to companies incorporated on or before 31.12.2017**
- ✖ **To file particulars of its registered office in e-Form – ACTIVE in INC 22A by 25<sup>th</sup> April 2019.**

# WHEN CANNOT FILE

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- ✗ If it has not filed its due:
  - + Financial Statements u/s 137; or
  - + Annual Return u/s 92; or
  - + Both
- ✗ To file INC 22A – file MGT -7 & AOC-4 first
- ✗ However, if company is under management dispute and ROC has recorded the same .. Then can file INC 22A

# WHO NEED NOT FILE

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- ✖ Companies being struck-off
- ✖ Are under process of striking-off
- ✖ Are under liquidation
- ✖ Are amalgamated
- ✖ Are dissolved

# REQUIREMENTS INC 22A

- ✕ **Photo of registered office of the company:**
  - + **Showing External building (with name plate – name & address)**
  - + **inside the registered office showing photo of at least 1 director / KMP who has signed the form with DSC**
  - + **Latitude and Longitude**

# REQUIREMENTS INC 22A

## ✗ Directors' details :

- +DIN should be active and approved status
- +Should not be deactivated due to non filing of DIR -3KYC
- +Should not be disqualified u/s 164(2)

## ✗ Details of statutory auditor

## ✗ Details of cost auditor, if required

# **REQUIREMENTS INC 22A**

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- ✖ **Details of MD, CEO, Manager or WTD**
- ✖ **Details of CS, if required**
- ✖ **Details of CFO, if applicable**
- ✖ **SRN of AOC-4 / MGT-7 for FY 2017-18**
- ✖ **Company's own e-mail id – OTP to be sent on this**



# REQUIREMENTS INC 22A

- ✗ **To be signed by**
  - + **1 director and 1 KMP, if KMP required**
  - + **2 directors**
  - + **1 director in case of OPC**
- ✗ **Verification by professional**

# CONSEQUENCES

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- ✖ Shall be marked as "ACTIVE-non-compliant" on or after 26th April, 2019; AND
- ✖ Liable for action u/s 12(9) – removal of name
- ✖ Fee for INC 22A on or after 26.4.2019 – Rs. 10000/-

# CONSEQUENCES

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✕ **Cannot file following forms – unless INC 22A filed:**

- + SH-07 (Change in Authorized Capital);**
- + PAS-03 (Change in Paid-up Capital);**
- + DIR- 12 (Changes in Director except cessation);**
- + INC-22 (Change in Registered Office);**
- + INC-28 (Amalgamation, de-merger)**



# DPT-3

- ✘ To be filed annually by 30<sup>th</sup> June and furnish information as on 31<sup>st</sup> 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. **19<sup>th</sup> September 2017**
- ✘ Insertions made to Rule 16 and 16A of the Deposit Rules vide notification dated 22<sup>nd</sup> January 2019
- ✘ Form DPT-3 also amended.

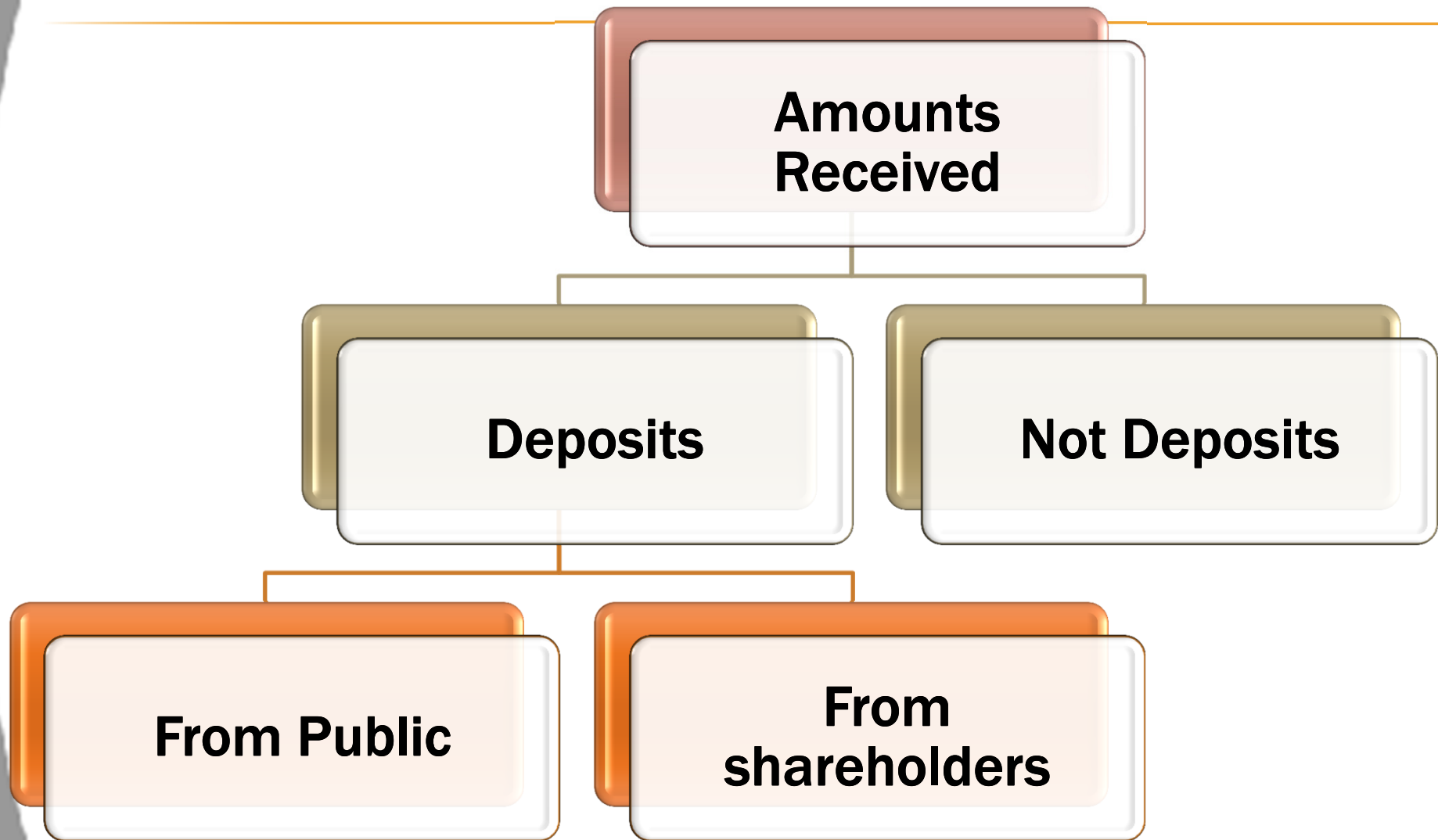
# DPT-3

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- ✖ **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**

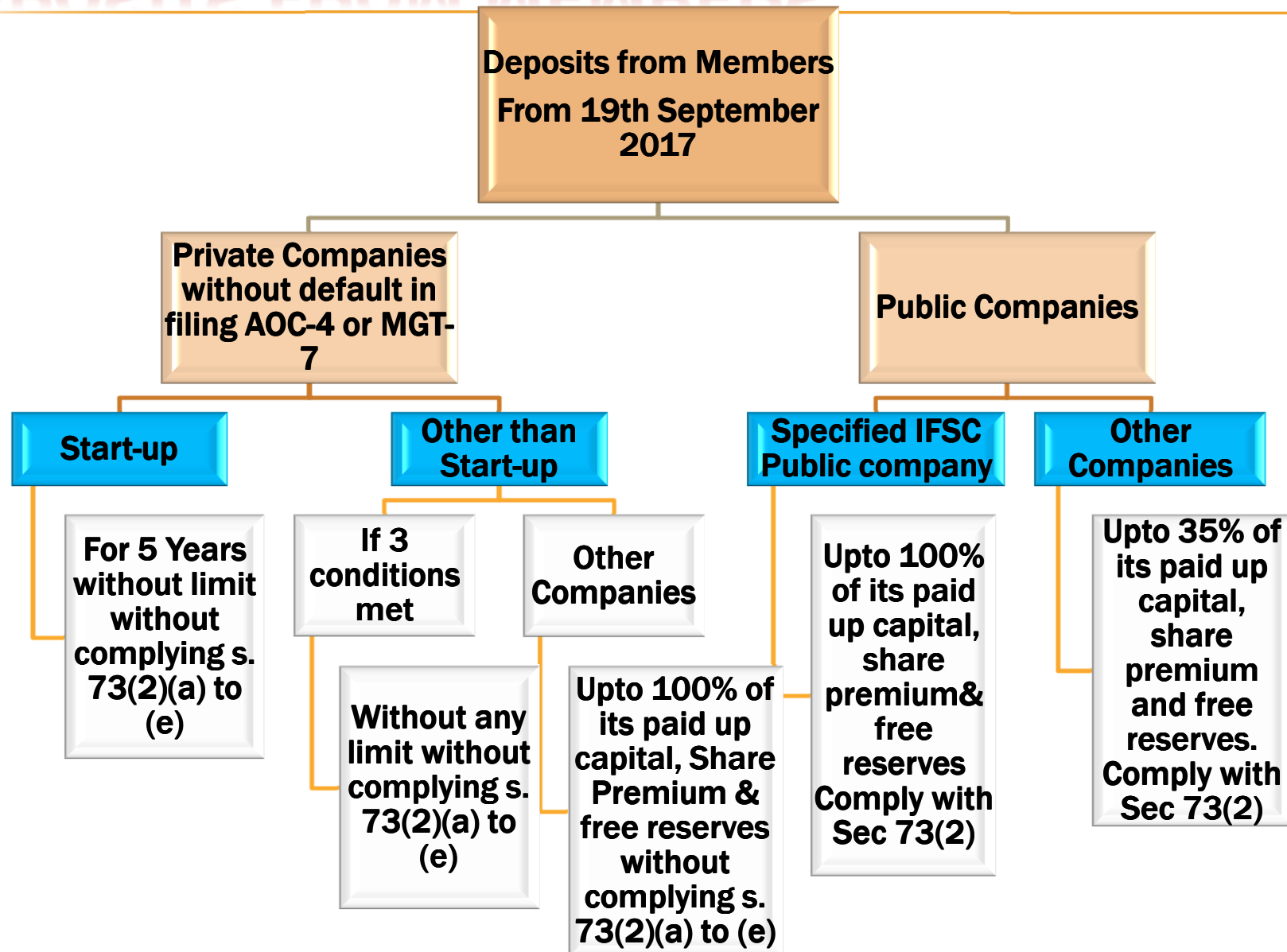
# AMOUNTS NOT DEPOSITS

- ✖ 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**

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- ✖ **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 19<sup>th</sup> 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

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




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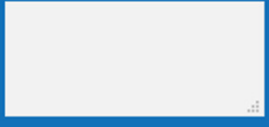
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# THANK YOU



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