

e-Form – ACTIVE
DPT- 3 & MSME Compliance
Recent Amendments in Companies Act



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

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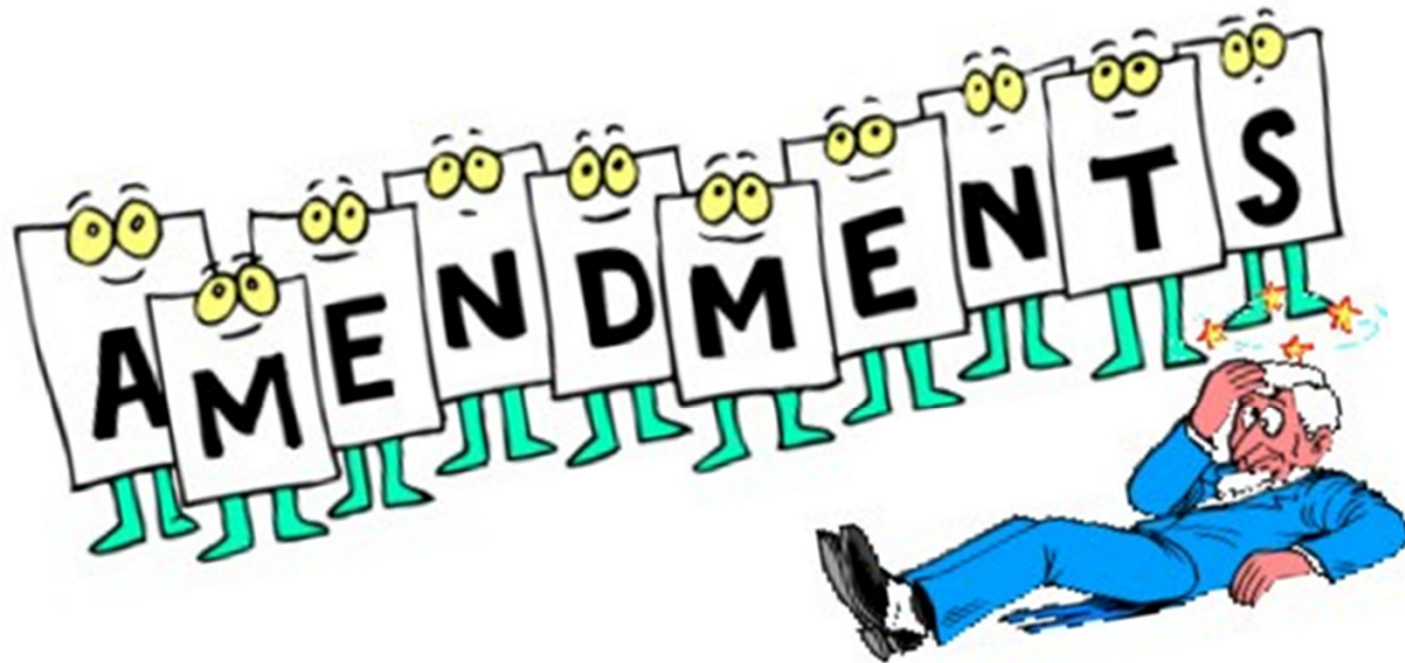
16th May 2019

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COMPANIES (AMENDMENT) ORDINANCE 2018/19



SUMMARY

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

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**

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

- ✘ **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 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. 77 CHARGES

- ✘ Earlier charge to be registered within 30 days of creation. RoC may permit reg. within 300 days of creation. If registration is not completed within 300 days, company to seek extension .
- ✘ Now:
 - + If the charge is created before the Ordinance - within 300 days - If not registered, to be completed within 6 months from the date of Ordinance on paying fee
 - + If the charge is created after the Ordinance- Within 60 days. If not registered - RoC may grant another 60 days on application on payment of advalorem fee.

S. 86 CHARGES

- ✘ **Sub-section (2) inserted**
- ✘ **If a person wilfully**
 - + **furnishes false or incorrect information, or**
 - + **suppresses material information**
- ✘ **which is required to be registered under this provision, he will be liable for fraud under section 447.**

S. 87 RECTIFICATION OF CHARGES

- ✘ **S. 87 substituted - CG has power to rectify any omission or misstatement.**
- ✘ **Omission to file creation – no longer can be rectified**
- ✘ **Time of intimation of payment or satisfaction can be extended on CG satisfaction**
- ✘ **Omission or misstatement can be rectified on CG satisfaction**
- ✘ **Just and equitable ground for grant of relief – no longer allowed**

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

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

- × **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

- ✘ **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.**

MSME
MICRO, SMALL & MEDIUM ENTERPRISES
सूक्ष्म, लघु एवं मध्यम उद्यम

MSME FORM 1

- ✘ **Notification dated 2nd November 2018**
- ✘ **All companies who get supplies of goods or services from micro and small enterprises **and** whose payments to them exceed 45 days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of the Act, shall submit a half yearly return to MCA stating the following:**
 - + **(a) The amount of payments due; and**
 - + **(b) The reasons of the delay.**

MSME FORM 1

- ✘ MCA notified Specified Companies (Furnishing of information about payment to micro and small enterprises suppliers) Order 2019 on 22nd January 2019
- ✘ 1st Return with 30 days of notification – 30th May 2019
- ✘ MSME Form 1 to be filed half-yearly by Specified Companies by 31st October / 30th April - 30th May 2019
- ✘ Reason for Delay to be given
- ✘ Director / CEO / CS (employed) to certify

MSME FORM 1

- ✘ **Applicable if goods / services received from micro and small enterprises who have filed memorandum with MSME Authorities.**
- ✘ **To be filed only:**
 - + for the **outstanding amount due** ; and
 - + to registered Micro & Small Enterprises – Udyog Aadhar
- ✘ **Medium Enterprises – not covered**
- ✘ **Only manufacturers and services providers covered**

MSME FORM 1

- ✘ **Default if payment not made:**
 - + **If date agreed upon in writing - within that date (can't agree beyond 45 days)**
 - + **If not agreed in writing within 15 days of date of acceptance – appointed day**
- ✘ **Interest compound interest with monthly rest from the appointed day or from the date immediately following the date agreed upon, @ 3 times the Bank Rate**
- ✘ **Interest is not allowable under Income Tax**



DPT-3

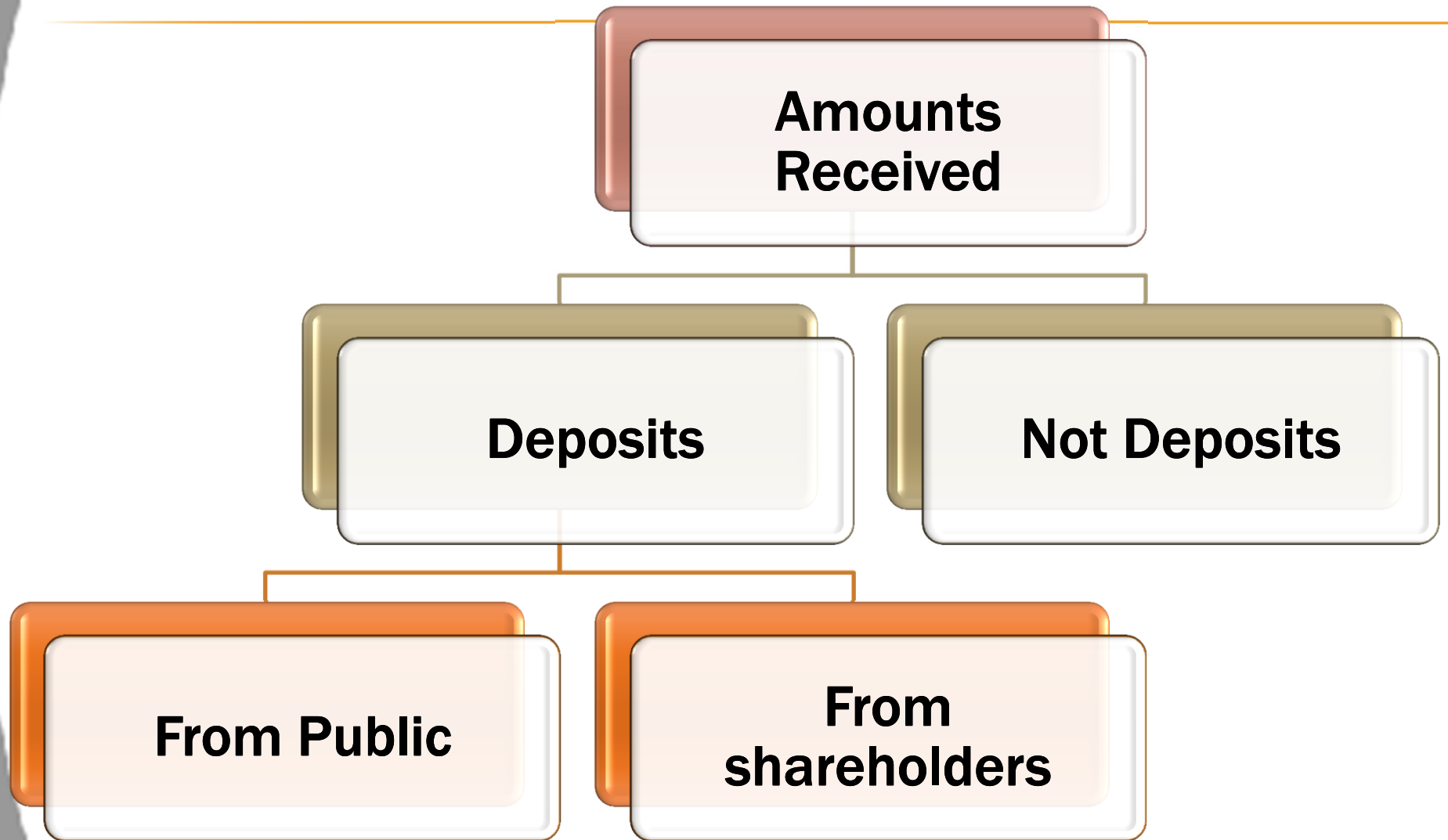
- ✘ To be filed annually by 30th June and furnish information as on 31st March of that year **duly audited by auditor of the company.**
- ✘ Was to be filed only by cos. accepting deposits
- ✘ Later companies accepting deposits from shareholders also covered w.e.f. **19th September 2017**
- ✘ Insertions 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 (31.3.2019),**
 - + **within 90 days from the date of said publication of this notification (29.6.2019)**
 - + **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**

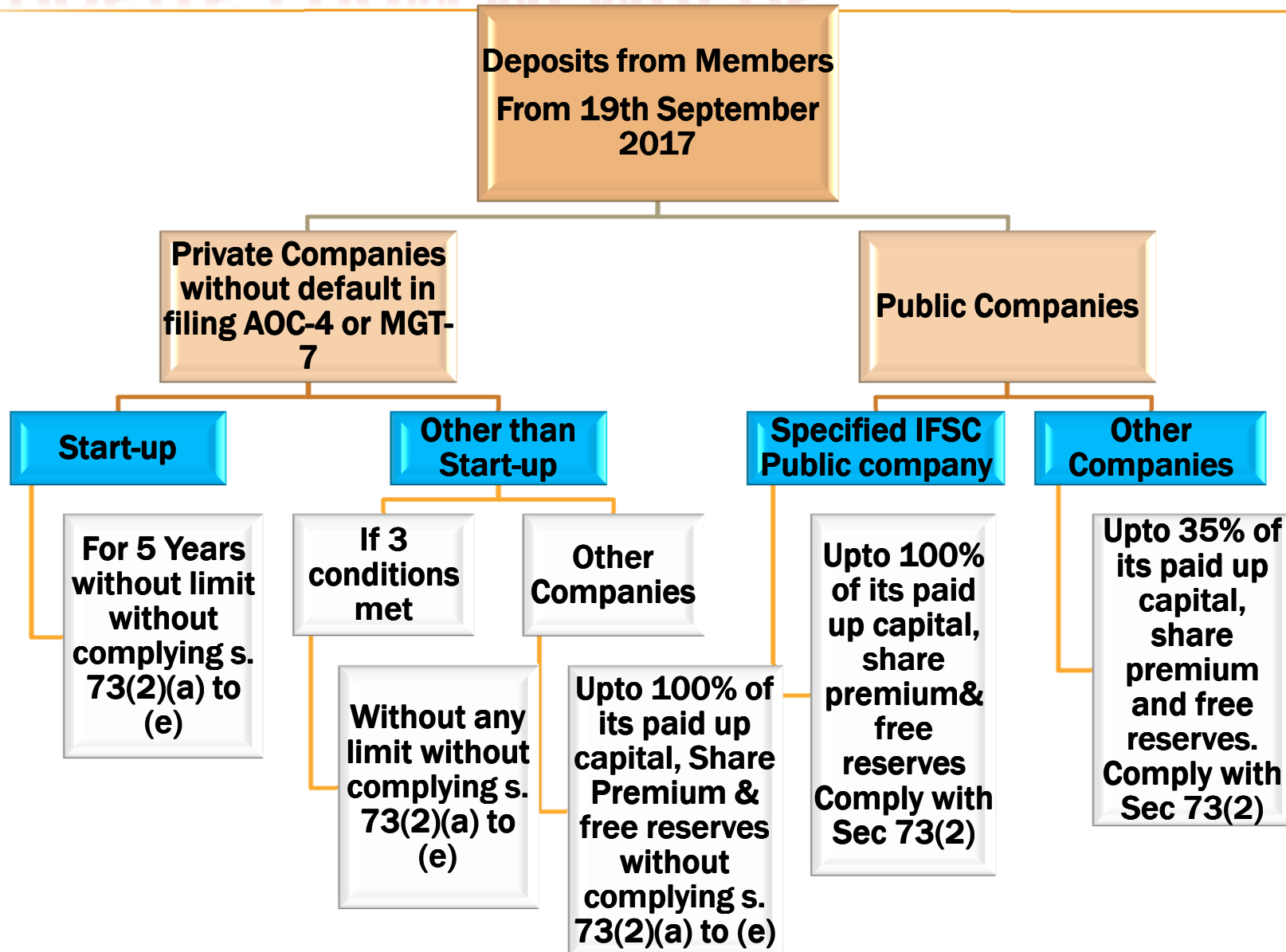
AMOUNTS NOT DEPOSITS

- ✘ 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

CA. Pramod Jain

E-FORM - ACTIVE

Get
Active



E-FORM - ACTIVE

- ✘ **Incorporation Rules amended w.e.f. 25th 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 15th June 2019.**

WHEN CANNOT FILE

- ✘ 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

- × 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

- ✘ **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 singed by**
 - +1 director and 1 KMP, if KMP required
 - +2 directors
 - +1 director in case of OPC
- ✘ **Verification by professional**

CONSEQUENCES

- ✘ Shall be marked as "ACTIVE-non-compliant" on or after 16th June,2019; AND
- ✘ Liable for action u/s 12(9) – removal of name
- ✘ Fee for INC 22A on or after 16.6.2019 – Rs. 10000/-

CONSEQUENCES

✘ **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)**

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DIR 3 KYC

Every year by 30th June

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THANK YOU



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