

# Deposits

## Private Company Exemptions

### Other Critical Issues



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

**Shared at**

**National Conference, Gurugram**

**30<sup>th</sup> December 2019**

# 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 2<sup>nd</sup> November 2018, shall not commence business or exercise any borrowing powers, unless:**
  - + **It files a declaration in Form INC 20A within 180 days of incorporation, 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.



# DEPOSITS

- ✘ **Following may invite, accept or renew deposits :**
  - + **Banking companies - (RBI);**
  - + **NBFC – (RBI);**
  - + **Notified companies;**
  - + **Public company having net worth > 100 Cr or turnover > 500 Cr (Rules)**

# DPT-3

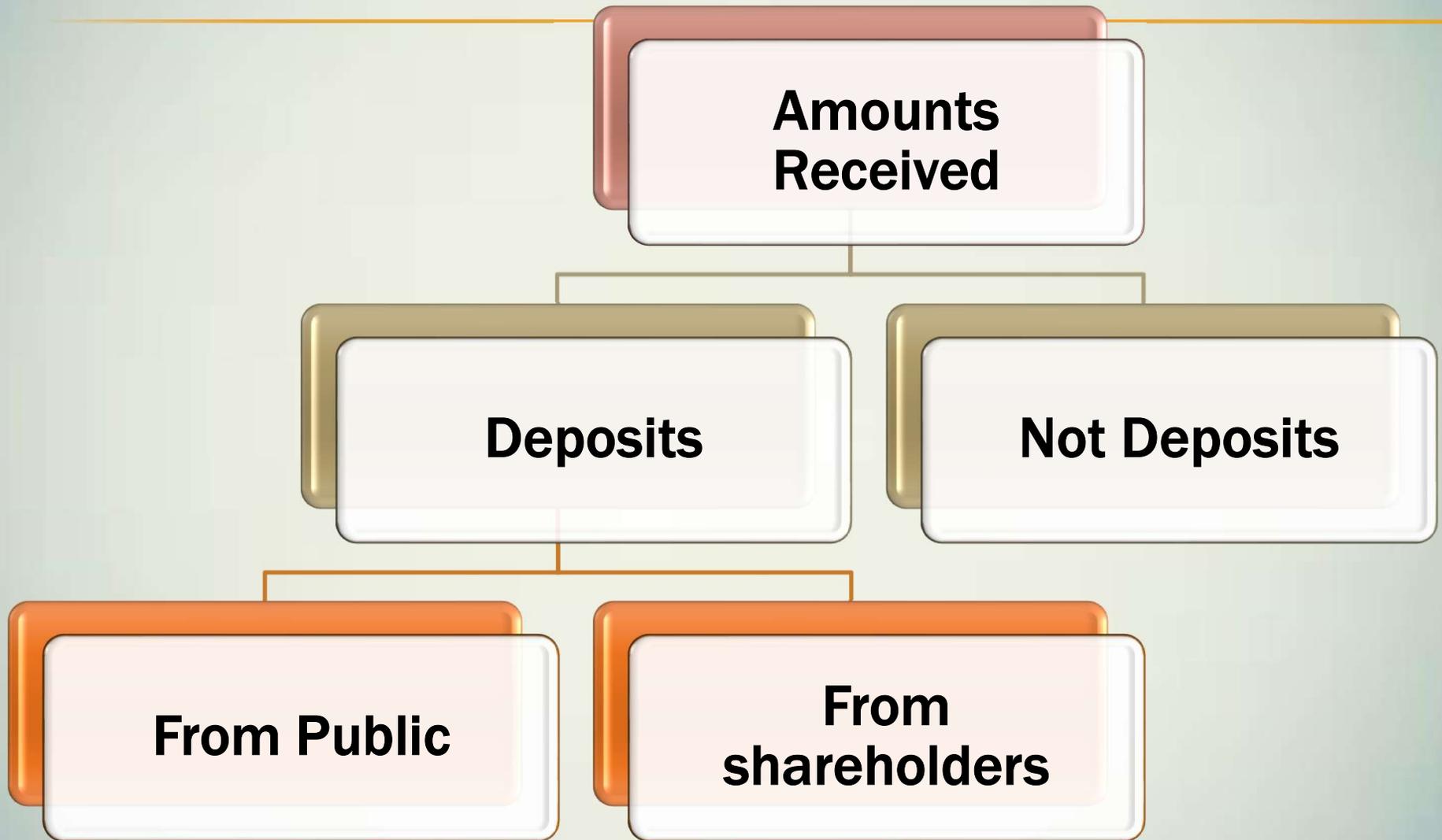
- ✘ To be filed annually by 30<sup>th</sup> June and furnish information as on 31<sup>st</sup> March of that year **duly audited by auditor of the company.**
- ✘ Was to be filed only by cos. accepting deposits
- ✘ Later companies accepting deposits from shareholders also covered w.e.f. **19<sup>th</sup> 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 - ANNUALLY

- ✘ 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
- ✘ Auditor's Report /Certificate

# DPT-3 – ONE TIME

- ✘ Sub-rule (3) added to Rule 16A :
  - + Every company other than Government company shall file a **1 time 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 31.3.2019,
  - + within 90 days from 1<sup>st</sup> April 2019 (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**
- ✘ Secured Convertible bond/debenture – Compulsory shares within 5 yrs **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**

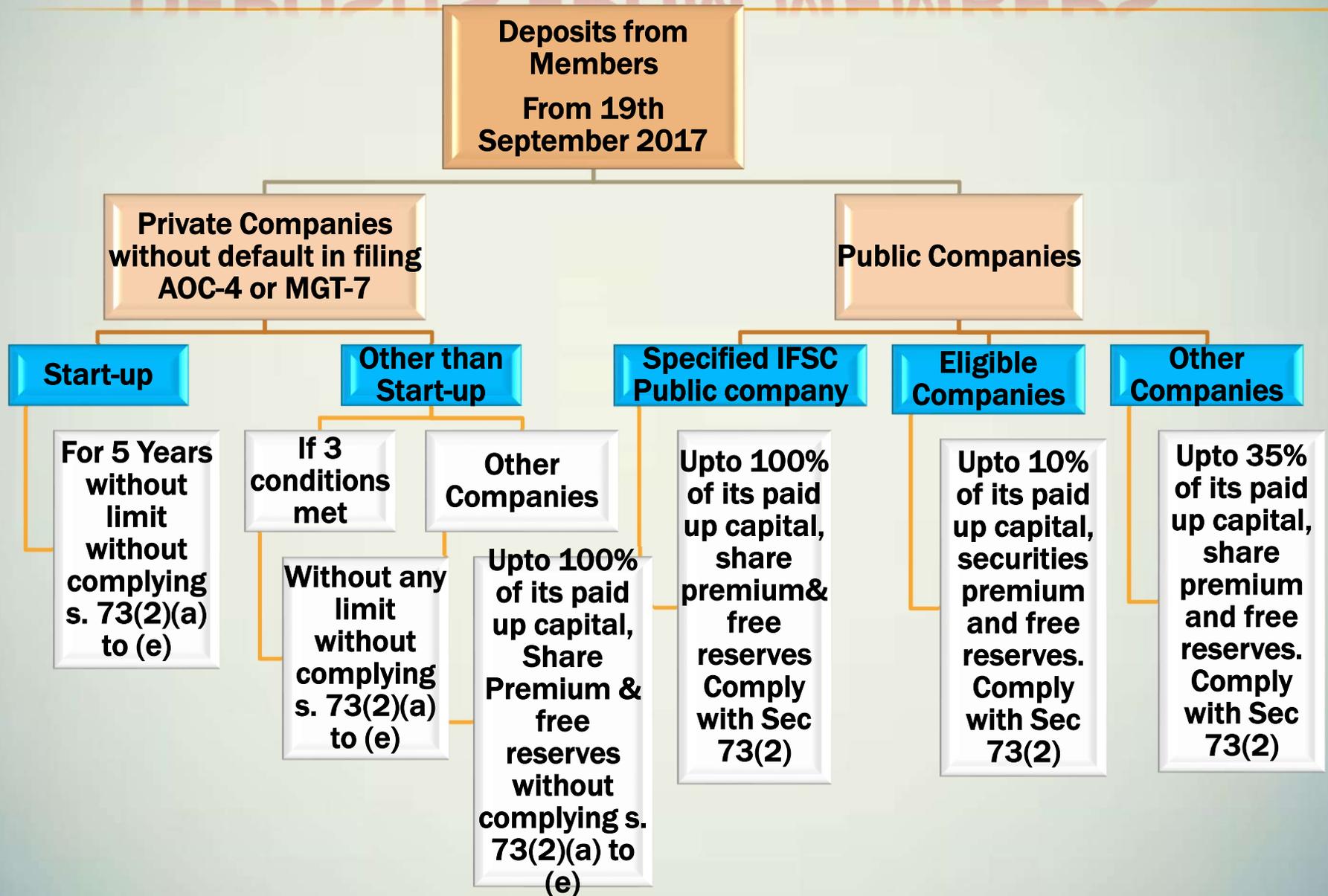
# AMOUNTS NOT DEPOSITS

- ✘ 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 19<sup>th</sup> September 2017

# PURPOSE OF FORM – PARA 4

1. **Onetime Return** for disclosure of details of outstanding money or loan received by a company but not considered as deposits in terms of rule 2(1)(c) of Companies (Acceptance of Deposits) Rules
2. **Return of Deposit**
3. Particulars of transactions by a company **not considered as deposit** as per rule 2 (1) (c) of Companies (Acceptance of Deposit) Rules
4. Return of **Deposit &** Particulars of transactions by a company **not considered as deposit**

# ISSUES??

## ✘ Bank CC / OD balances??

+ Balance as per books – Rs. 1800000/-

+ Balance as per bank statement – Rs.  
1500000/-

+ Which amount to be disclosed in DPT-3?

✘ DPT-3 – 18 L

✘ Auditor Certificate (when required) - mention  
both

# ISSUES??

- × **Unsecured Loan from Director??**
  - + **Loan Taken on 1.4.2012 – Rs. 1000000/-**
  - + **Loan Repaid on 1.4.2016 – Rs. 500000/-**
  - + **Interest (Net of TDS) as on 31.3.2020 – Rs. 100000/-**
  - + **Outstanding balance as on 31.3.2020 – Rs. 600000/-**
    - × **DPT - 3 - Rs. 600000/-**
- × **Auditor Certificate (if required) – Outstanding amount includes interest provided less TDS**

# ISSUES??

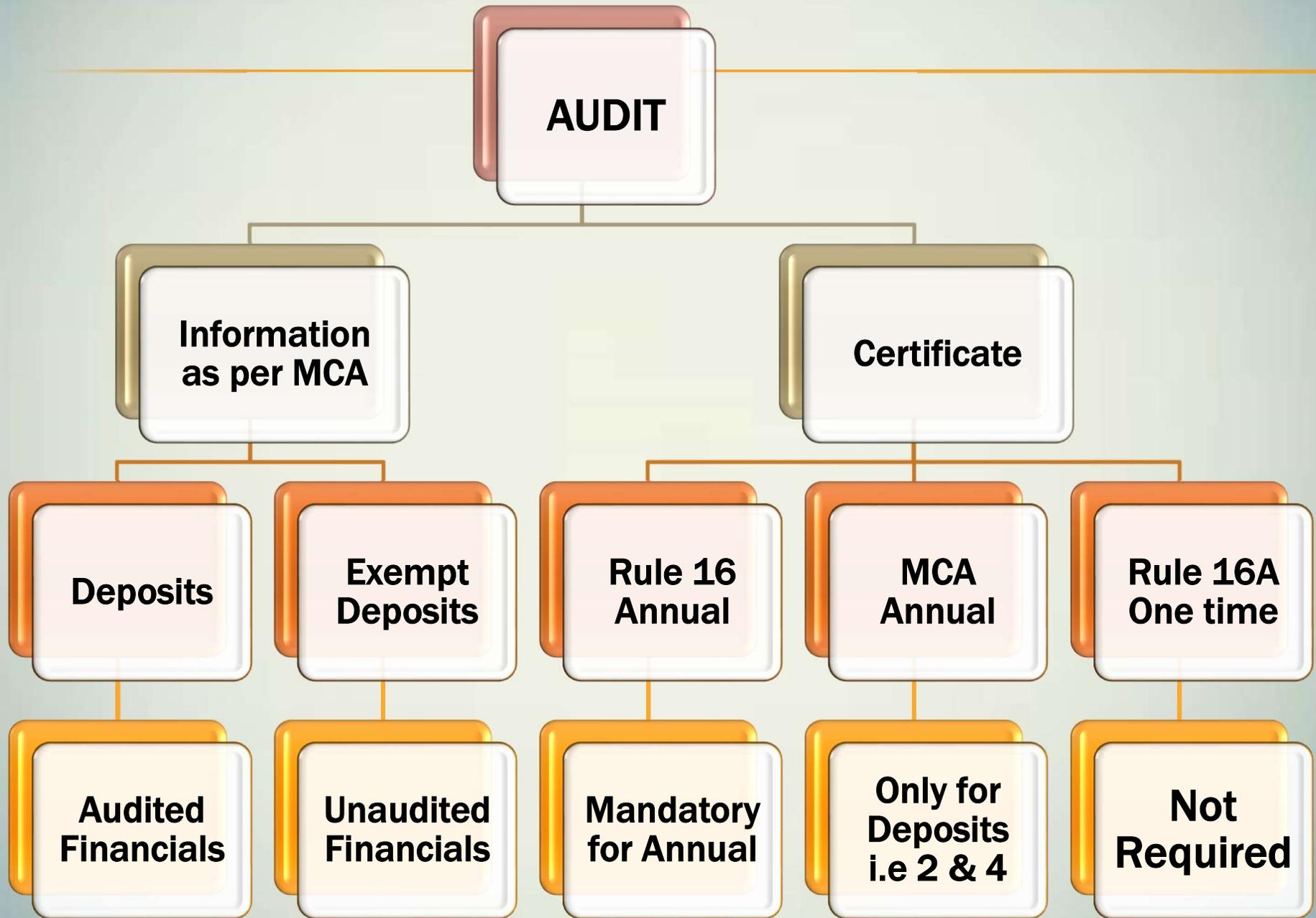
- × **Unsecured Loan from Director's HUF**
- × **How to disclose in DPT-3?**
  - × **One Time – Not allowed**
  - × **Annual - mention in outstanding from director's relatives**
  - × **Auditor Certificate (when required) – Outstanding amount from director's relative includes outstanding loan from director's HUF including interest provided less TDS**

# ISSUES??

- × **Loan received from shareholder on 1.4.2012 Rs. 200000/-**
- × **No further amount received**
- × **What to disclose in one time and annual return**
  - × **DPT-3 - Nil**
  - × **Auditor Certificate (when required) – mention received from shareholders prior to 1.4.2014**

# DPT-3 - SUMMARY

- × **NIL DPT-3 Not required**
- × **Every company receiving monies and having outstanding as on year end to file DPT-3:**
  - + **One time Return – by 29<sup>th</sup> June 2019**
    - × **Outstanding amounts as on 31.3.2019 for NOT DEPOSITS AND which are received after 1.4.2014**
  - + **Annually – by 30<sup>th</sup> June every year**
    - × **Outstanding amounts as on 31.3.2020 which are deposits or not deposits.. Irrespective of date of receipt**
- × **Non- Comp. Fine – 5K-continuing Rs. 500 pd R. 21**



# INFORMATION

- ✘ **Date of last closing of accounts – as on last year end i.e 31<sup>st</sup> March 2020**
- ✘ **Latest audited financials – 31<sup>st</sup> March 2019**
- ✘ **Net Worth as per latest audited balance sheet preceding the date of the return – March 2019**

# EXEMPTIONS TO PRIVATE COS.

- ✘ Notification dated 5<sup>th</sup> June 2015 as amended from time to time – major – 13<sup>th</sup> June 2017
- ✘ Exceptions, modifications and adaptations shall be applicable to a private company which has not committed a default in filing its FS u/s 137 (AOC-4) of the said Act or annual return u/s 92 (MGT-7) of the said Act with the Registrar

# MCA NOTIFICATION FOR PVT. COS

S. No.	Provision	Exemption / Modification / Exception
1	2(76)(viii)	Related party – holding, subs.... Shall not apply w.r.t. s. 188
2	43 & 47	Shall not Apply where MOA of Pvt. Co. so provides (Kind of Shares)
3	62(1)(a) & 62(2)	Proviso added - in case 90%, of members of pvt. Co. give their consents in writing or in electronic mode, periods < those specified shall apply
4	62(1)(b)	Shall apply except that instead of special resolution, ordinary resolution would be required
5	67	Restrictions on purchase by co. or giving of loans by it for purchase of its shares - Shall not apply to pvt. companies - <ul style="list-style-type: none"><li>• in whose share capital another body corporate has invested any money;</li><li>• if borrowings of such a co. from banks or FIs or any body corporate is &lt; twice its capital or Rs. 50 Crs, whichever is lower; &amp; it is not in default in repayment of such borrowings at time of making transactions.</li></ul>

# MCA NOTIFICATION FOR PVT. COS

S. No.	Provision	Exemption / Modification / Exception
6	2(40)	Private Company being start-up company – Cash Flow not required
7	73(2) (a) to (e)	<p>Shall not apply to Pvt. Cos. if they accept monies from their members:</p> <ul style="list-style-type: none"><li>• not exceeding 100% of aggregate of paid up capital, securities premium &amp; free reserves</li><li>• which is a start-up, for 5 yrs from date of its incorporation</li><li>• which fulfils all of the following conditions, namely:<ul style="list-style-type: none"><li>• is not an associate or a subsidiary company of any other company;</li><li>• borrowings of such a company from banks or FIs or any body corporate is less than twice of its paid up share capital or Rs. 50 Crs, whichever is lower; and</li><li>• has not defaulted in repayment of such borrowings subsisting at time of accepting deposits</li></ul></li><li>• which inform the details of such monies to ROC in DPT-3</li></ul>

# MCA NOTIFICATION FOR PVT. COS

S. No.	Provision	Exemption / Modification / Exception
8	92 (1)(g)	Shall apply to private cos. which are SC, namely: (g) aggregate amount of remuneration drawn by directors
9	Proviso to S. 92(1)	OPC, SC & private co. (a start-up), the annual return shall be signed by the CS, or where there is no CS, by the director of the company.
10	101 to 107 & 109	Shall apply unless - otherwise specified in respective sections or - unless articles of the private company otherwise provide.
11	117 (3) (g)	Shall not apply – 179 (3)
12	141(3)(g)	Audit limit - 20 Companies other than OPC, DC, small companies & Pvt. Cos. Paid up capital < 100 Crs.
13	160	Shall not apply (right of a person other than retiring directors to stand for directorship)
14	162	Shall not apply (appointment of directors to be voted individually)

# MCA NOTIFICATION FOR PVT. COS

S. No.	Provision	Exemption / Modification / Exception
15	180	Shall not apply
16	184(2)	Disclosure of Interest - Shall apply with exception that interested director may participate in such meeting after disclosure of his interest
17	185	Shall not apply to Private companies - <ul style="list-style-type: none"><li>• in whose share capital other body corporate has not invested any money.</li><li>• if borrowings of such a company from banks or FIs or any body corporate is less than twice of its paid up share capital or Rs. 50 Crs, whichever is lower; and</li><li>• such a company has no default in repayment of such borrowings subsisting at time of making transactions under this section.</li></ul>
18	2 <sup>nd</sup> Proviso S. 188 (1)	Shall not apply. (Related Party Transaction) – interested member can vote
19	Section 196, sub-section (4) & sub-s. (5)	Shall not apply (MD Remuneration)

# MCA NOTIFICATION FOR PVT. COS

S. No.	Provision	Exemption / Modification / Exception
20	143(3)(i)	<b>IFC - Shall not apply to a private company:</b> <ul style="list-style-type: none"><li>• which is a OPC or a SC; or</li><li>• which has turnover less than Rs. 50 Crs as per latest audited FS or</li><li>• which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the FY less than Rs. 25 Crs.</li></ul>
21	173(5)	<b>Substituted, - (5) A OPC, SC, DC and a private co. (if such private co. is a start-up) shall be deemed to have complied with the provisions of this section if at least 1 meeting of the BoD has been conducted in each half of a calendar year and the gap between the 2 meetings is not less than 90 days</b> <b>OPC – if 1 director – then not applicable</b>
22	174(3)	<b>Shall apply with exception that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to s. 184</b>

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