

Latest Critical issues in Companies Act



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Shared at

Regional Conference, Kolkata

20th 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 2nd 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.

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
 - ✖ Rs. 100/- per day on continuous default.
 - ✖ maximum – 500K
 - + Imprisonment on OLD upto 6 mnths omitted

S. 137 FILING OF FS

- ✗ 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 – Min 1 L
 - ✗ Rs. 100/- per day if continuous default
 - ✗ Maximum 5 L

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 default Rs. 500/- p.d.
 - + Max. Rs. 5 L

DEMAT SHARES

- ✗ **S. 29 - Public Offer of Securities to be in Dematerialised Form**
- + **Issue of securities only in dematerialised form by:**
 - ✗ **Public issue**
 - ✗ **Such other class(es) of companies as may be prescribed**
- + **Securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder**

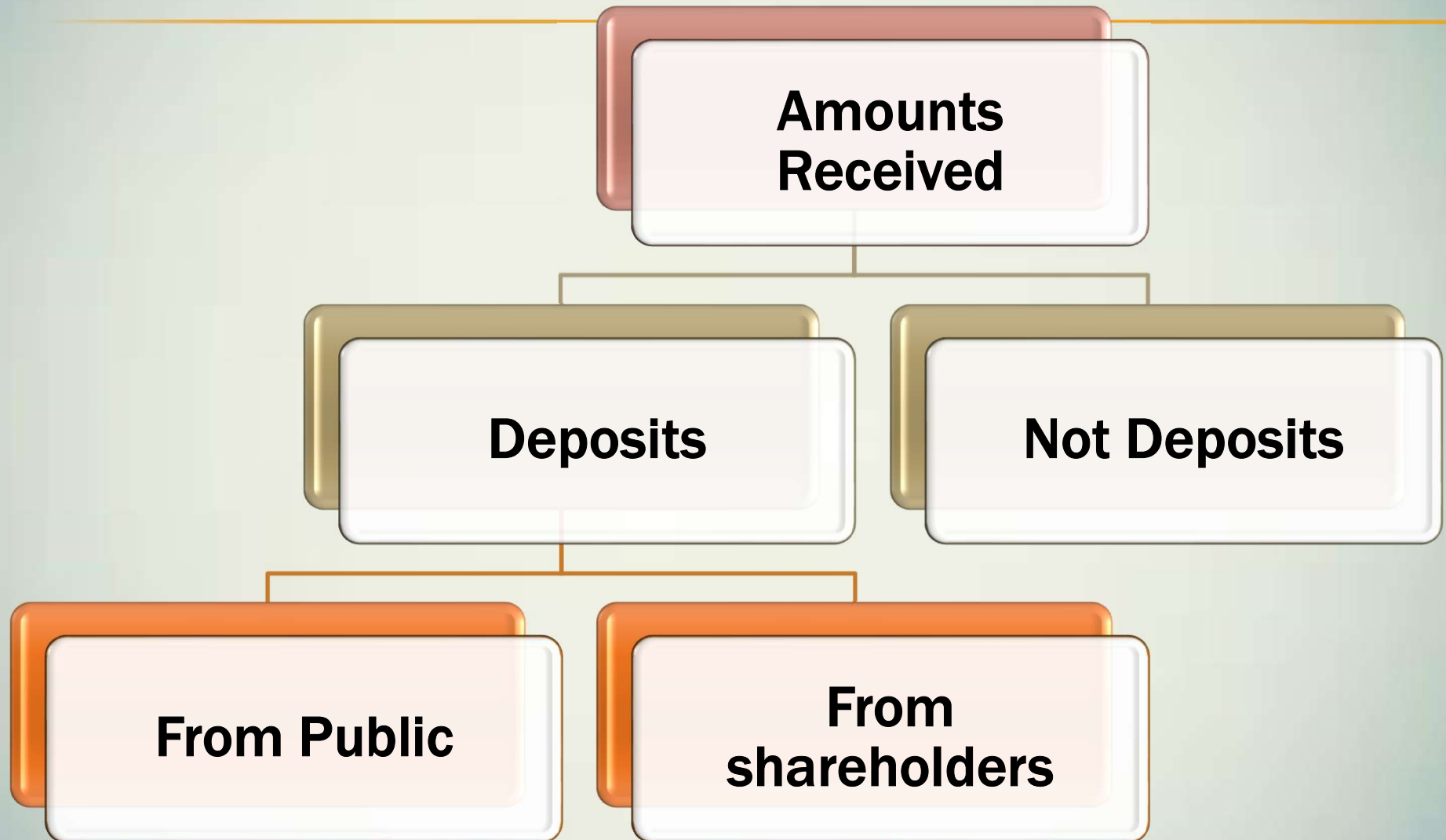


DPT-3

- ✗ 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 - 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



NOT DEPOSITS - CRITICAL

- ✗ 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**
- ✗ Compulsorily secured Convertible bond / debenture – shares within 5 years **10 from 29.6.16. & Listed unsecured NCD**

NOT DEPOSITS - CRITICAL

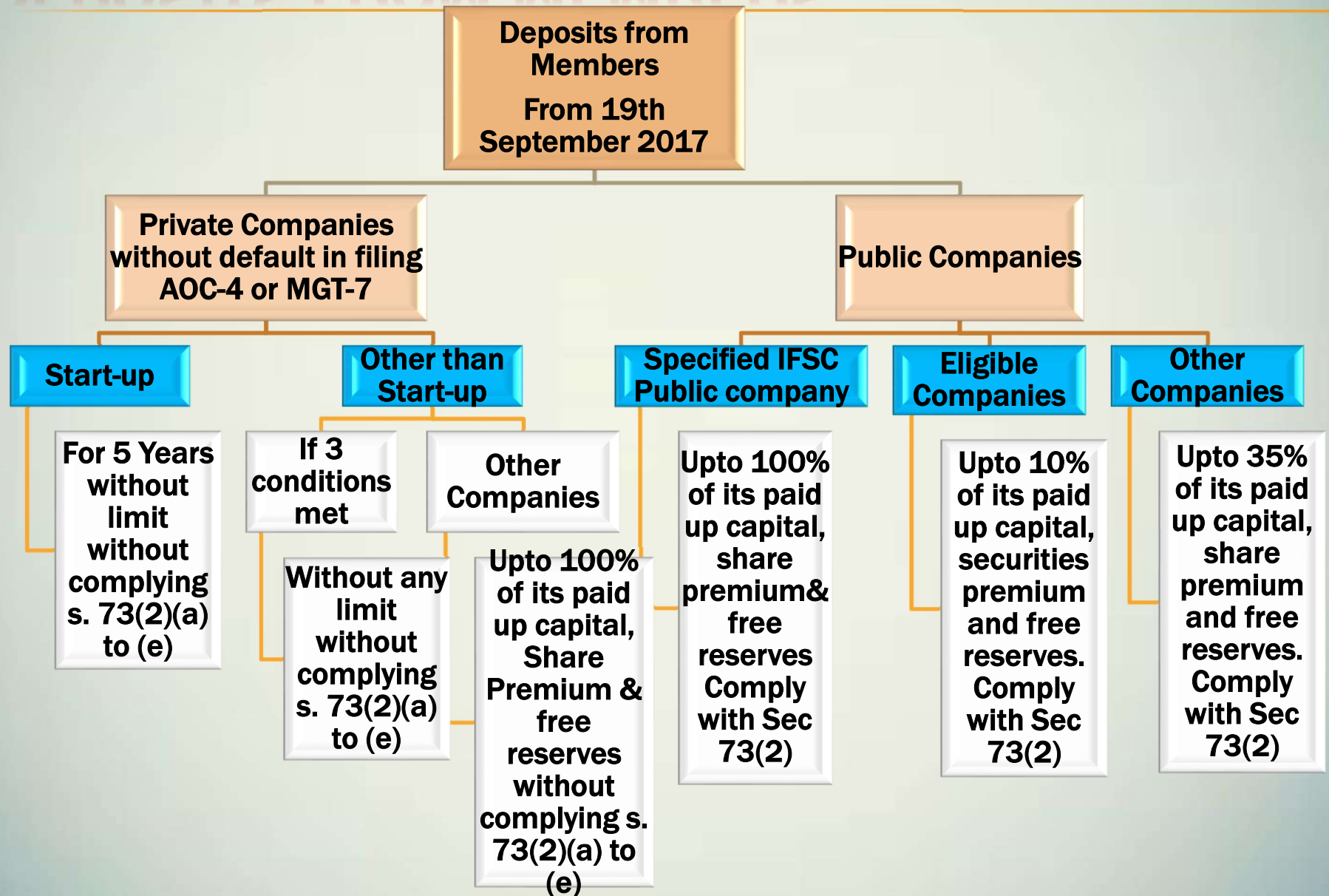
✖ Business advances:

- + 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
- + Warranty or maintenance contract (written) upto 5 years – 29.6.2016
- + Subscription towards publication – 29.6.2016

NOT DEPOSITS - CRITICAL

- ✖ **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**

DEPOSITS FROM MEMBERS



DEPOSITS FROM MEMBERS

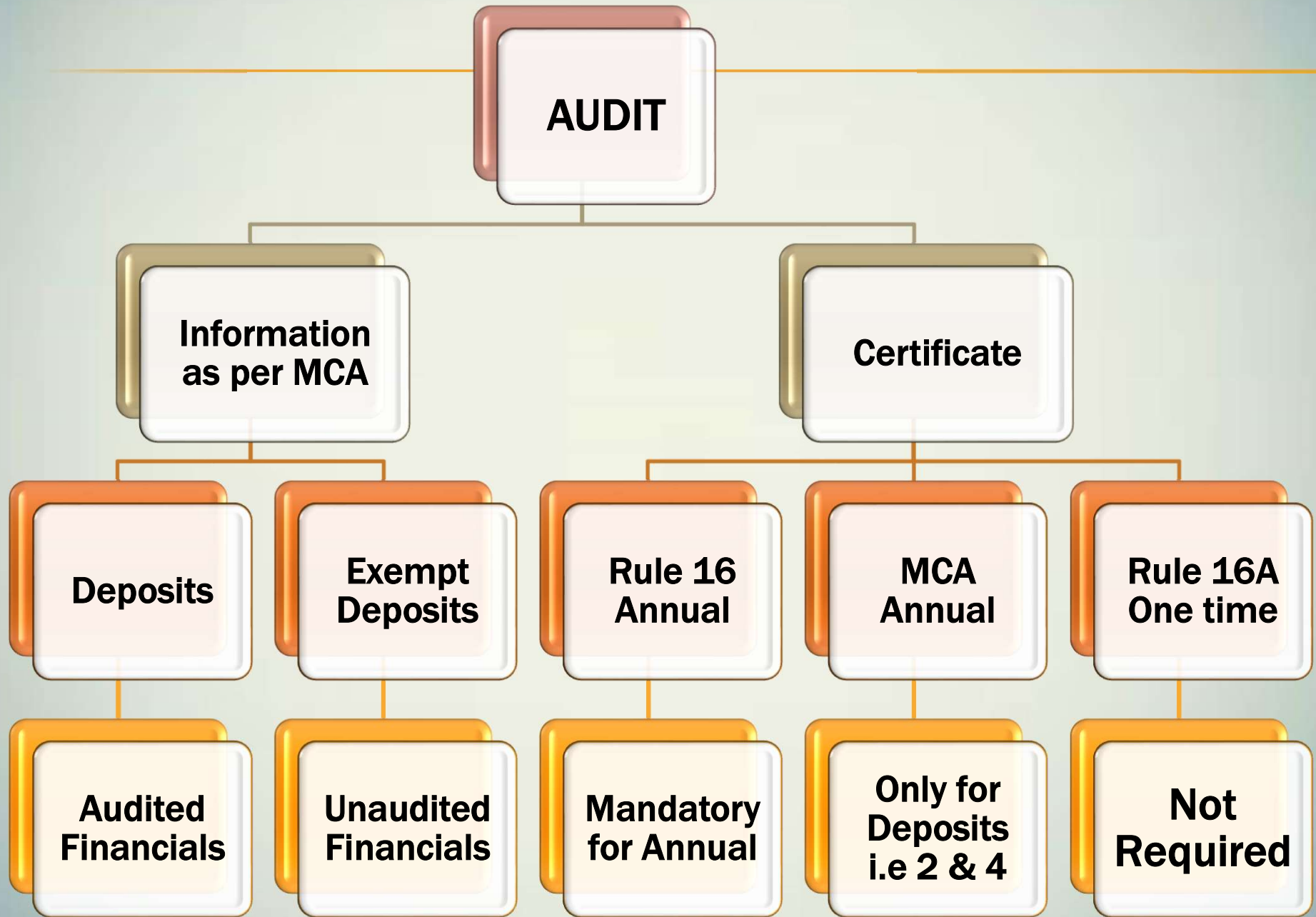
- ✖ In the previous chart in case Private Company is in default in filing AOC-4 or MGT-7, then the limits for start-up and other than start-up companies remains same
- ✖ However, they would have to comply with conditions of S. 73(2) on or after 19th September 2017

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**

DPT-3 - SUMMARY

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





NFRA RULES

× Classes of companies & bodies corporate:

- d) Companies whose securities are listed on any stock exchange in India or outside India;
- e) Unlisted public cos. having paid-up capital of not less than Rs. 500 Crores or having annual turnover of not less than Rs. 1000 Crores or having, in aggregate, outstanding loans, debentures and deposits of not less than Rs. 500 Crores as on 31st March of immediately preceding FY;
- f) Insurance cos., banking cos., companies engaged in the generation or supply of electricity, companies governed by any special Act for time being in force or bodies corporate incorporated by an Act in accordance with clauses (b). (c). (d). (e) & (f) of s. 1 (4) of the Act:

NFRA RULES

- d) Any body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the Authority by CG in public interest; and**
- e) A body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d), if the income or net worth of such subsidiary or associate company exceeds 20% of the consolidated income or consolidated net worth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d).**

NFRA RULES

- ✖ (2) Every existing body corporate other than a company governed by these rules, shall inform in Form NFRA -1 within 30 days of commencement of these rules, particulars of auditor as on date of commencement of these rules – was extended to 31.7.2019
- ✖ (3) Every body corporate, other than a company as defined in section 2(20), formed in India and governed under this rule shall, within 15 days of appointment of an auditor u/s 139(1), inform NFRA in Form NFRA-1, particulars of auditor appointed by such body corporate
- ✖ Provided that a body corporate governed under clause (e) of sub-rule (1) shall provide details of appointment of its auditor in Form NFRA-1.

NFRA RULES

- ✖ (4) A company or a body corporate other than a company governed under this rule shall continue to be governed by the Authority for a period of 3 years after it ceases to be listed or its paid-up capital or turnover or aggregate of loans, debentures and deposits falls below the limit stated therein.
- ✖ **Annual Return Form NFRA-2 which was to be filed by 30th November by Auditors covered under NFRA to 90 days from the date of deployment of the form on website of NFRA**

NFRA PROCEEDINGS

- ❖ No other body to continue proceedings
- ❖ If misconduct proved:
 - ❖ Rs. 1 L, to 5 times of fees received -individuals;
 - ❖ Rs. 5L (w.e.f. 9.2.2018) to 10 times of the fees received -firms;
 - ❖ Debarring from:
 - ❖ being appointed as auditor or **internal auditor or undertaking any audit** in respect of financial statements or internal audit of functions & activities of any company or body corporate; or
 - ❖ performing any **valuation** as provided under section 247,
 - ❖ for a minimum period of 6 months or such higher period not exceeding 10 years as may be determined by NFRA

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