

Latest Critical issues in Companies Act including Deposits



CA. PRAMOD JAIN

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

Shared at

Webcast, EIRC of ICAI

27th April 2020

FINE REPLACED WITH PENALTY

- × 16 cases
- × Fine by NCLT, Penalty by RoC
 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 O/D 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

CLFSS 2020

- ✘ Company Law Fresh Start Scheme**
- ✘ No additional fees - for late filing of Forms during moratorium period from 1st April to 30th September 2020, irrespective of its due date**
- ✘ Only Normal Fee to be paid**
- ✘ If appeal filed against penalty – has to withdraw**

CLFSS 2020

✖ Scheme applicable to all Forms,
except:

+ Increase in Authorised Capital (SH-7)

+ Charge related:

✖ CHG-1

✖ CHG-4

✖ CHG-8

✖ CHG-9

CLFSS 2020 - IMMUNITY

- ✗ Immunity from penal proceedings, including for late submissions & prosecutions
- ✗ Immunity only against delayed filings and not against any substantive violation of law. For e.g. - S. 42 – utilization of money.
- ✗ For immunity Form CLFSS-2020 to be filed after 30th September 2020 and DA take it on record but not after 6 months from end of scheme – Nil Fee

CLFSS 2020

- ✗ **Immunity not applicable:**
 - + **Any matter pending before any court of law**
 - + **Court has ordered any conviction**
 - + **Penalty order has been passed by adjudicating authority and no appeal is preferred**
- ✗ **Where order u/s 454(6) falls between 1.3.2020 to 31.5.2020 additional 120 days allowed to file appeal – no prosecution**

CLFSS 2020

- ✗ **Following cannot avail of this scheme:**
 - + **Cos. against which action for final notice of strike down has been initiated by ROC**
 - + **Companies have themselves filed application for strike-off**
 - + **Companies which have amalgamated**
 - + **Where applications have been filed for Dormant status**
 - + **Vanishing Companies**

CLFSS 2020

- ✗ **DINs marked as 'Deactivated' due to non-filing of DIR-3KYC !**
- ✗ **Companies whose compliance status has been marked as "ACTIVE non-compliant" due to non-filing of ACTIVE e-form !**
- ✗ **Can file between 1st April 2020 to 30th September 2020 without any filing fee of Rs. 5000/10000 respectively.**

CLFSS 2020 – INACTIVE

- ✗ Apply to get themselves declared as dormant company u/s 455 by filing e-form MSC-1 at a normal fee on said form;
- ✗ OR
- ✗ Apply for striking off the name of the company by filing e-Form STK-2 by paying fee payable on form STK-2

LLPSS 2020

- ✗ **Similar Scheme (though brought earlier).. But only for Forms due till 31.08.2020:**
 - + **Form 11**
 - + **Form 8**
 - + **Form 3**
 - + **Form 4**
- ✗ **Not applicable for LLP who have applied for strike-off u/s 24**
- ✗ **Immunity from prosecution if go for LLPSS 2020**



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

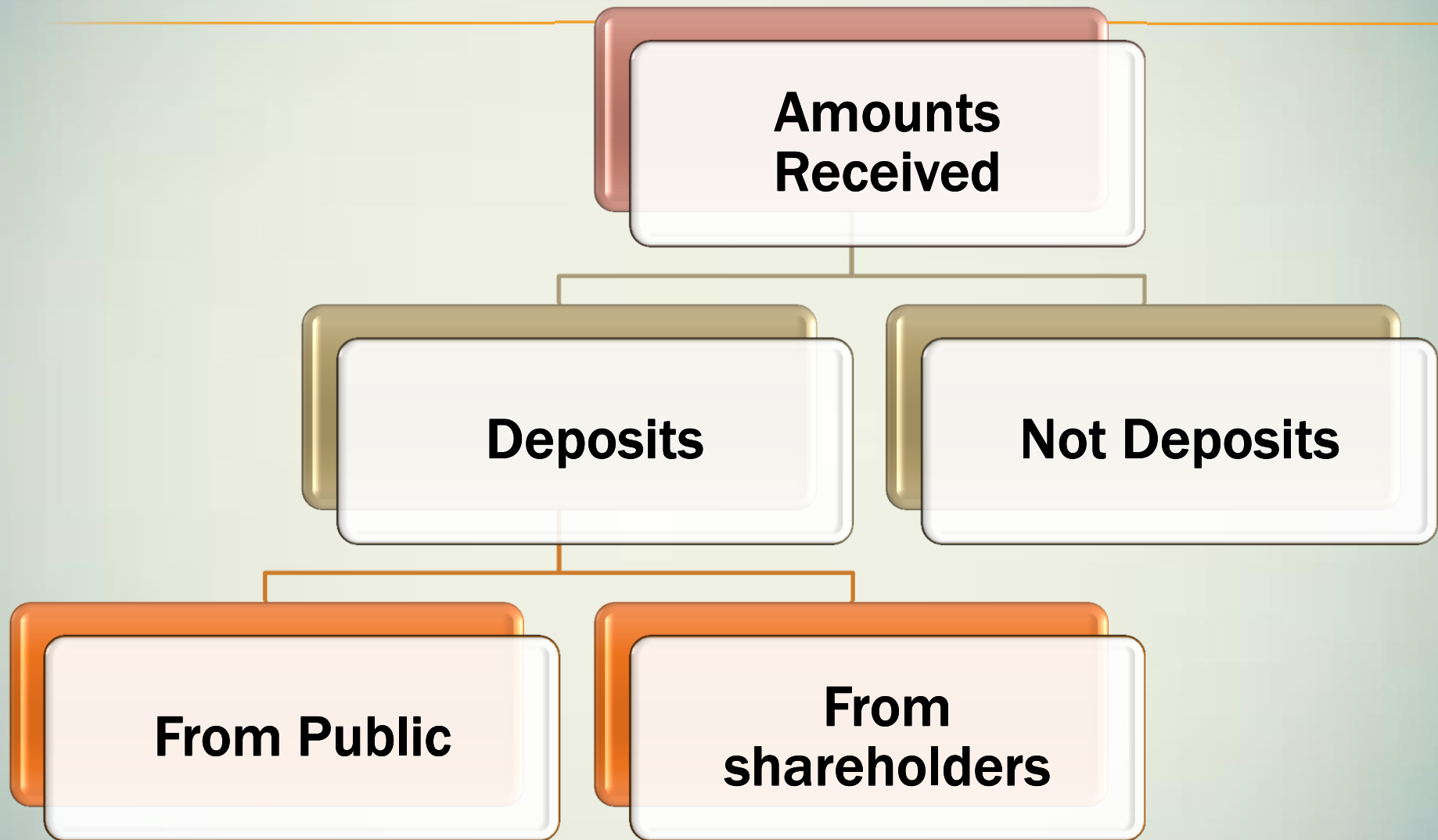
- ✗ To be filed annually by 30th June and furnish information as on 31st March of that year **duly audited by auditor of the company.**
- ✗ Was to be filed only by cos. accepting deposits
- ✗ Later companies accepting deposits from shareholders also covered w.e.f. **19th September 2017**
- ✗ Insertions 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

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 1st 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**
- ✗ 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

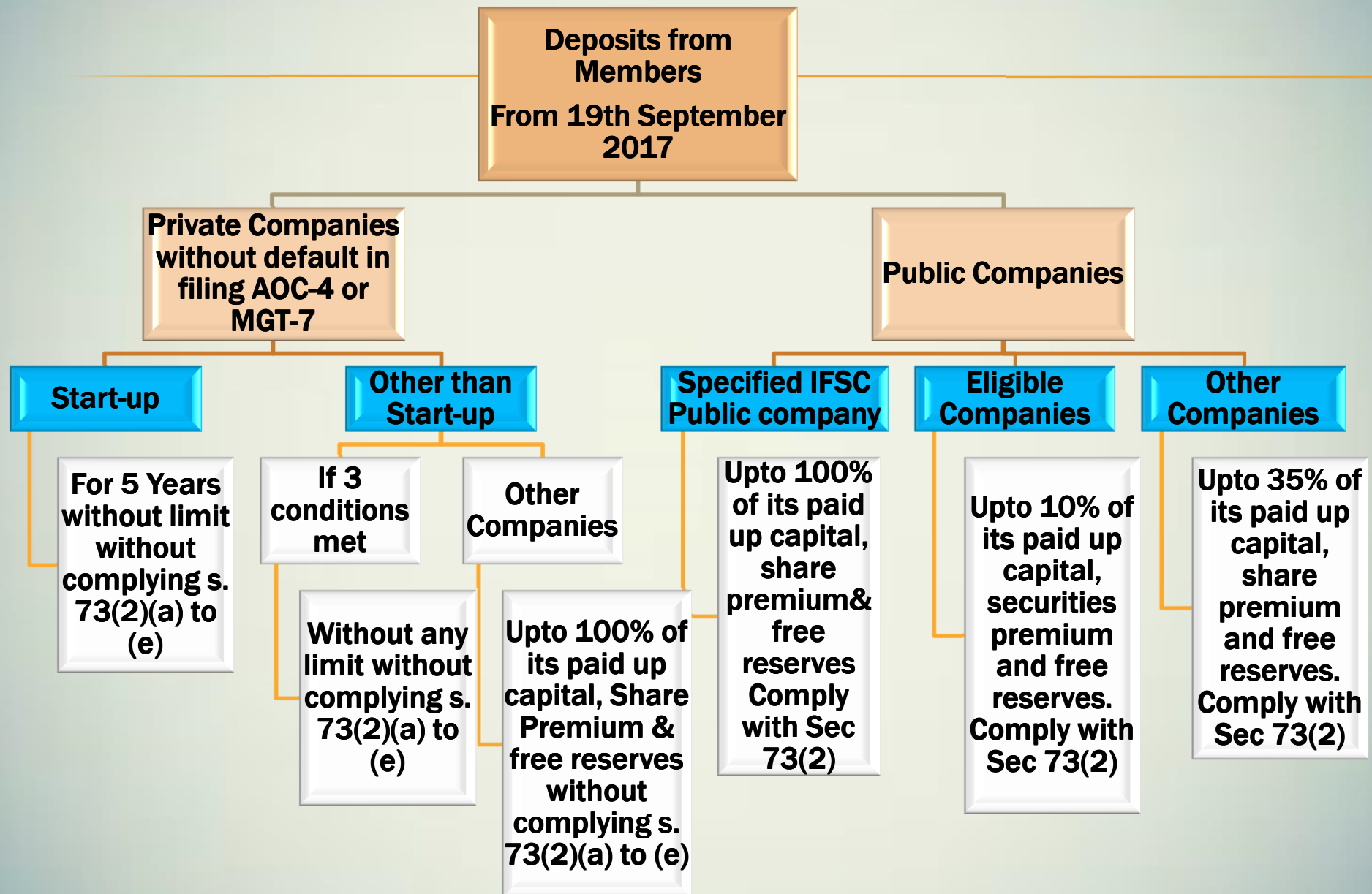
- ✗ **Rs. 25 Lakh or more by start up company in single tranche by convertible note (in equity or repayable within 5 years) – 29.6.16**
- ✗ **Promoters - stipulation of any FI or a banks:-**
 - + **Loan is brought in pursuance of stipulation imposed by lending institutions on promoters to contribute 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

- ✘ 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**

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??

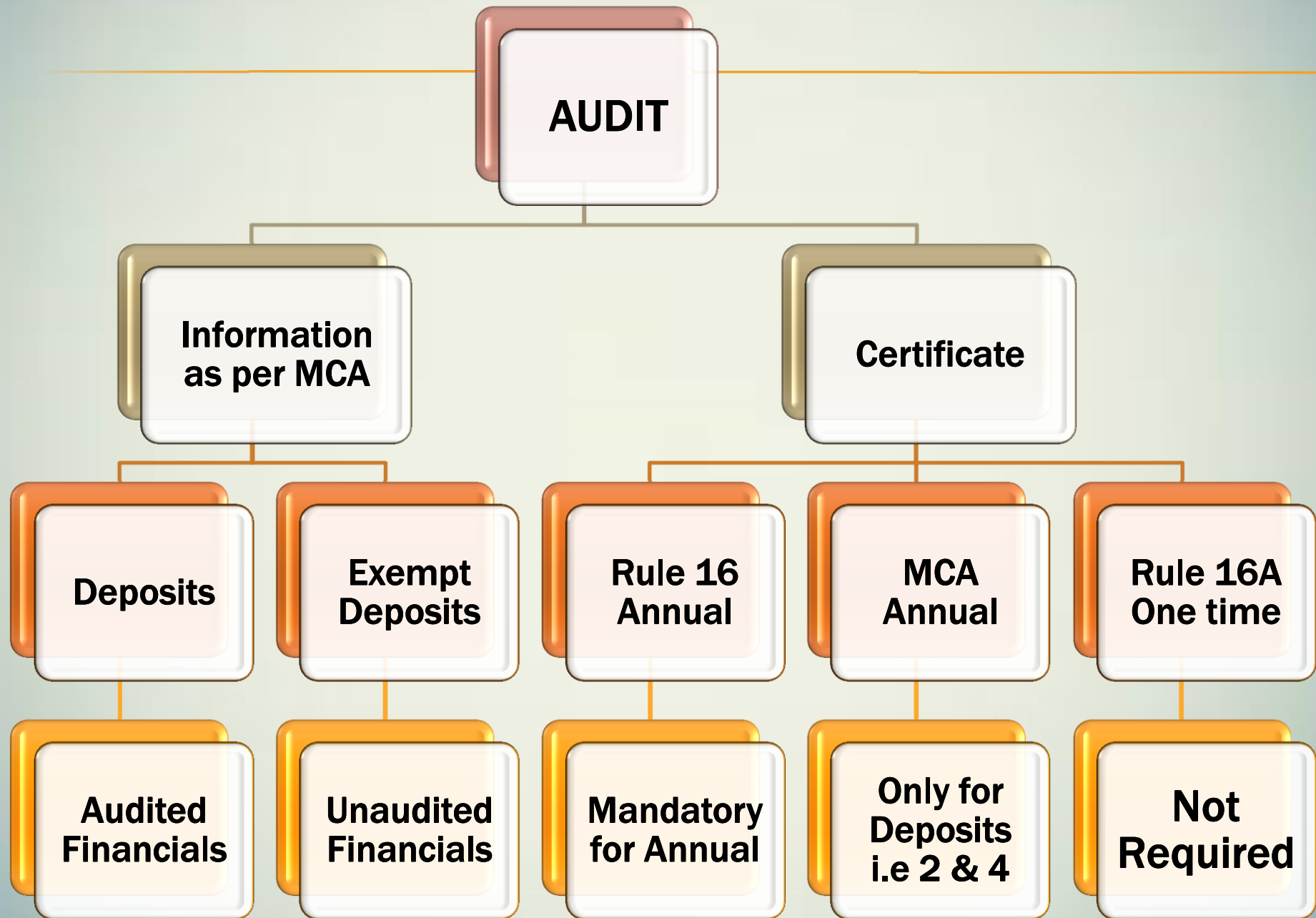
- ✗ **Unsecured Loan from Director's HUF**
- ✗ **How to disclose in DPT-3?**
 - ✗ **One Time – Not allowed**
 - ✗ **Annual - mention in outstanding from director's relatives**
 - ✗ **Auditor Certificate (when required) – Outstanding amount from director's relative includes outstanding loan from director's 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 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 31.3.2020 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 31st March 2019**
- ✗ **Latest audited financials – 31st March 2018**
- ✗ **Net Worth as per latest audited balance sheet preceding the date of the return – March 2018**

A one stop place where all your Queries can be answered by various Experts throughout the Country

www.expertspanel.in




Questions 



QuestionsCategoriesExpertsAsk a QuestionSign UpLogin

A Place to Share Knowledge

for and by Professionals in Law, Tax, Accounts, Finance



Recent QuestionsArticlesPresentationsVideosNotifications

All Categories

Goods and Services Tax (GST)
(3,106)

Income Tax
(2,368)

Corporate Matters/LLP
(565)

Audit & Assurance and Accounting Standards
(208)

Bank / Insurance / Stock / Debtors Audit
(60)

Recent Questions

Question added **1 hour** ago **Goods and Services Tax (GST)** By **Kaustubh Ram Karandikar**, Other Professional, Thane

1
answer

Q. Eligibility of input tax credit of CESS on Coal
Answered By **CA Raman Khatuwala**
8 views

Question added **1 hour** ago **Income Tax** By **Vijay Kumar**, CA, New delhi

0
answers


Q. How I file income tax return
11 views

Ask a question:

Next

Concept by

CA Pramod Jain



**This Presentation would be available
on**

www.lunawat.com

Also may download free mobile app

“LUNAWAT”

**For all updates & Ready to use
Charts since year 2007**

Thank You!

CA. Pramod Jain

pramodjain@lunawat.com

+91 9811073867



© 2020 CA. Pramod Jain