

# **Latest Critical issues in Companies Act including Deposits, CLFSS & LLPSS**



**CA. PRAMOD JAIN**

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

**Shared at**

**Webinar, Shalimar Bagh CPE Study Circle of NIRC of ICAI  
1<sup>st</sup> August 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 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.

## **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. 2<sup>nd</sup> 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

# 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

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✖ 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 30<sup>th</sup> 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

# **SCHEME - CHARGES**

- ✖ **Scheme for relaxation of time for filing Forms related to Creation and Modification of Charges**
- ✖ **Only CHG-1 & CHG-9 covered. Time:**
  - + **is before 01.03.2020, but the timeline for filing such form had not expired u/s 77 as on 01.03.2020, or**
  - + **falls on any date between 01.03.2020 to 30.09.2020 (both dates inclusive).**

# **SCHEME - CHARGES**

- ✗ If not filed by 30.9.2020... 1<sup>st</sup> day to start from 1.10.2020
- ✗ Normal Fee applicable till 30.9.2020
- ✗ Not applicable to
  - + CHG-1 & CHG-9 filed before 17.6.20
  - + Timeline for filing Form expired prior to 1.3.20
  - + Timeline for filing Form expires at future date, despite exclusion of 30.9.2020 time given.
  - + Form CHG-4 - satisfaction of charges.

# LLPSS 2020

- ✖ **LLP Settlement Scheme 2020**
- ✖ **Originally from 16.3.2020 to 13.6.2020**
  - + **Additional Fee of Rs. 10/- was to be paid**
  - + **Maximum Additional Fee Rs. 5000/-**
  - + **Scheme amended vide circular dated 30.3.2020**
  - + **Now no Additional Fee**

# LLPSS 2020

- ✗ 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

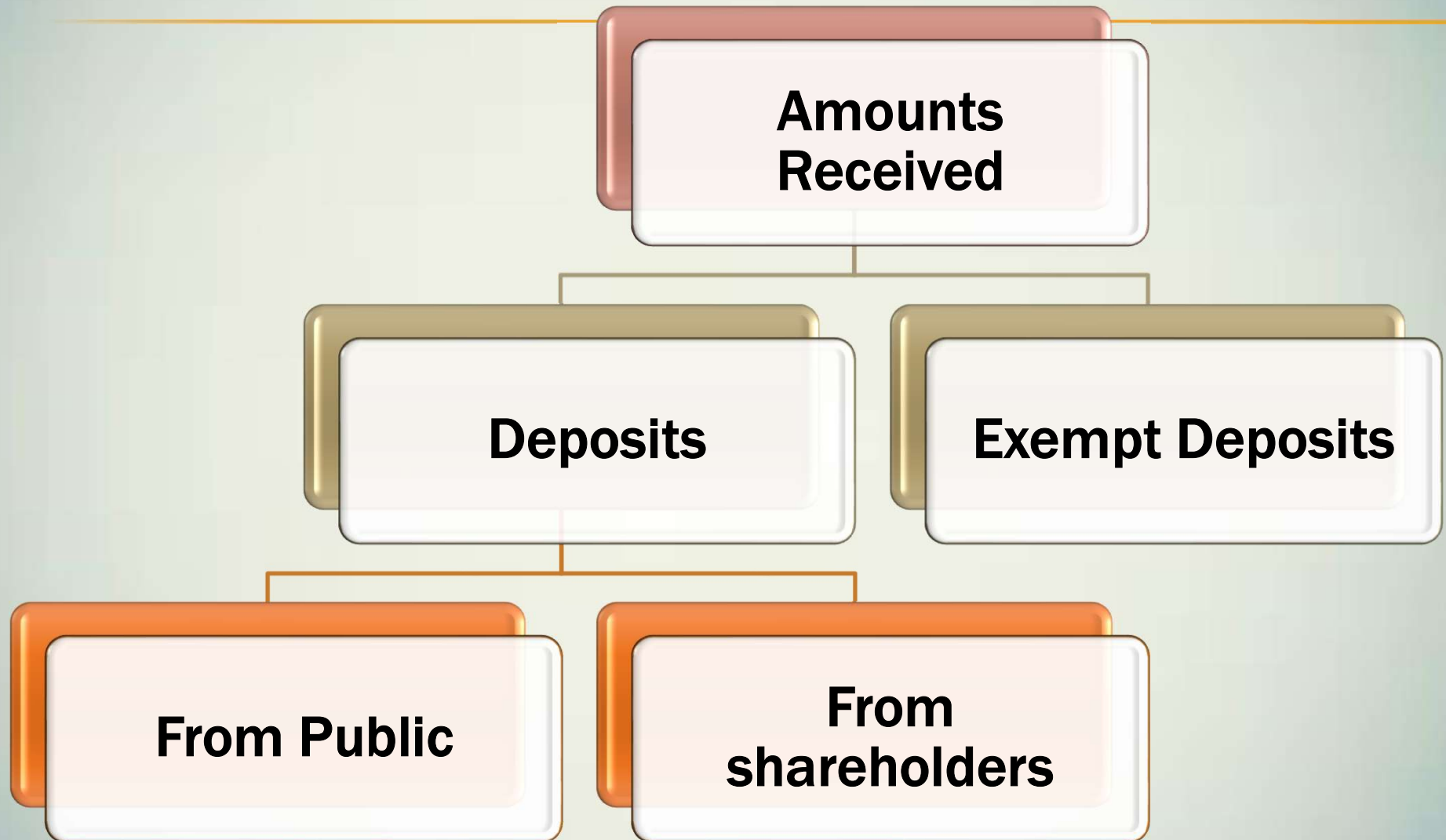
- ✖ To be filed annually by 30<sup>th</sup> June and furnish information as on 31<sup>st</sup> March of that year **duly audited by auditor of the company.**
- ✖ Was to be filed only by cos. accepting deposits
- ✖ Later companies accepting deposits from shareholders also covered w.e.f. **19<sup>th</sup>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



# EXEMPT 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

# EXEMPT 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

# EXEMPT 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

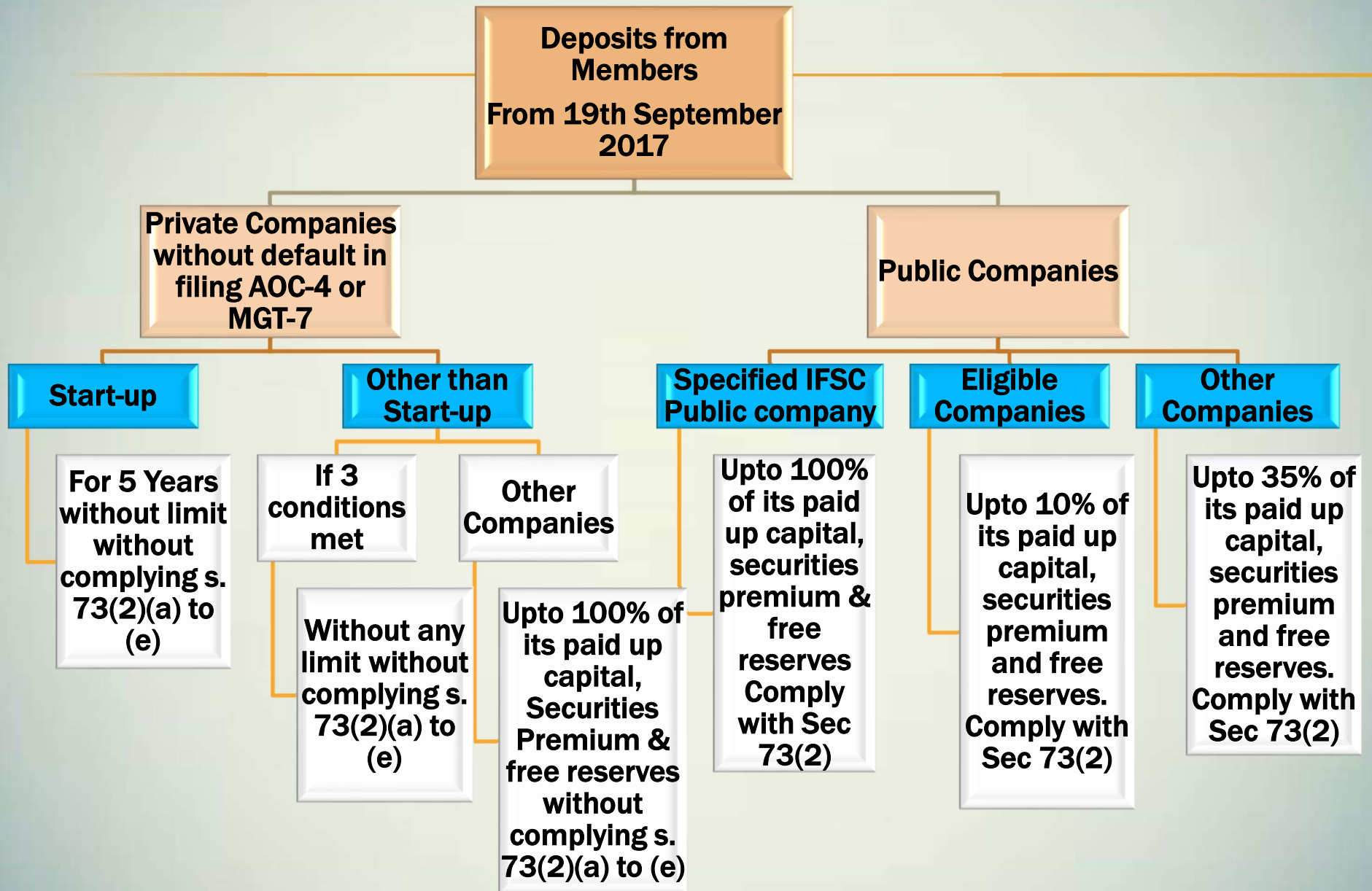


# EXEMPT DEPOSITS

- ✖ **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**

# EXEMPT DEPOSITS

- ✖ From Nidhi Companies
- ✖ 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 & Mutual Funds reg. with SEBI (29.6.16)
- ✖ From Infrastructure Investment Trusts (11.5.2017)
- ✖ From Real Estate Investment Trusts (22.01.2019)



# 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 1.4.2018 – 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**

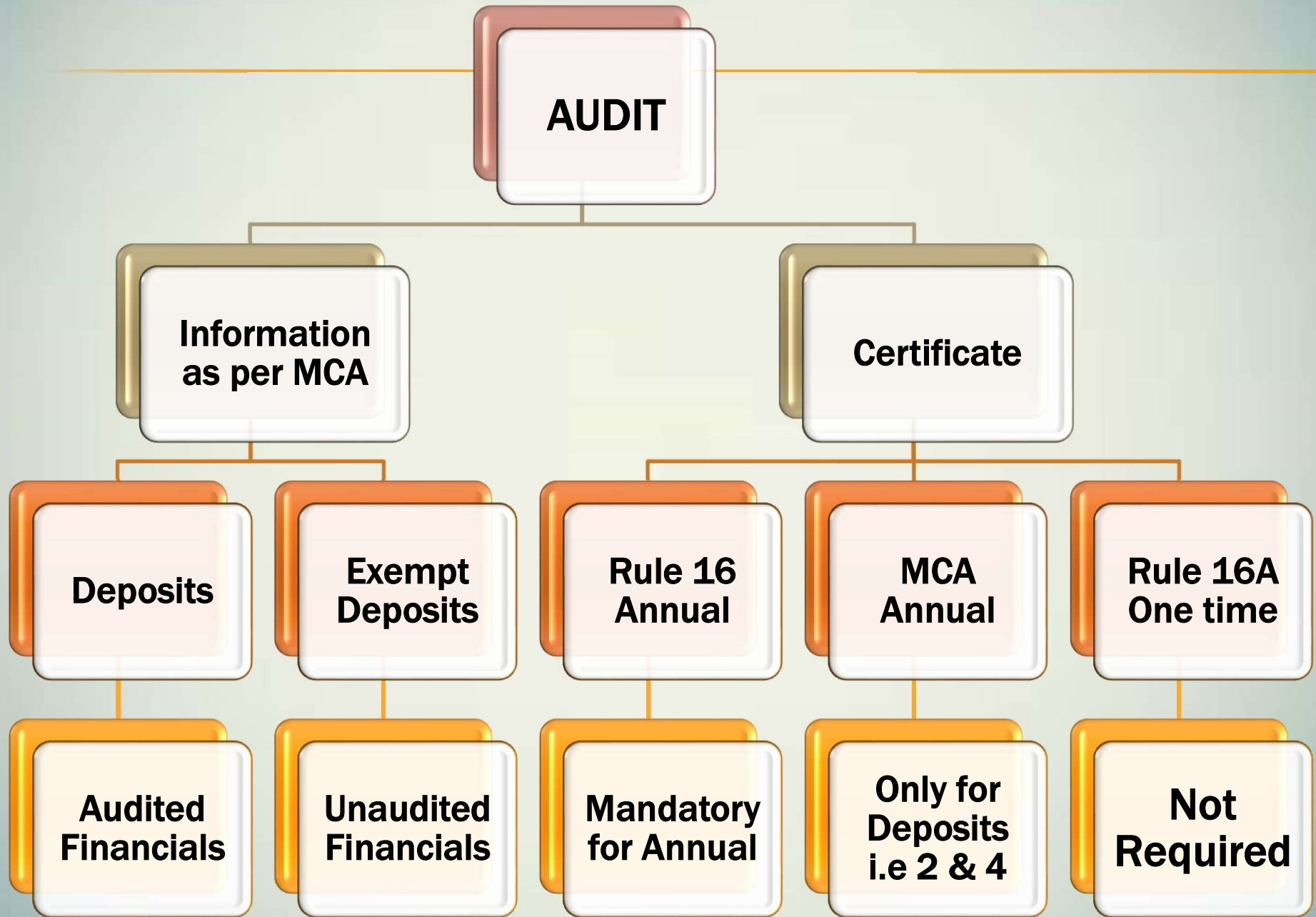


# ISSUES??

- ✗ **Loan received from shareholder on 1.4.2013 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**

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answer

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# Thank You!

**CA. Pramod Jain**

**[pramodjain@lunawat.com](mailto:pramodjain@lunawat.com)**

**+91 9811073867**

