What is first thing to be SUCCESSFULL ??
RECEIVING

S. 73 to 76A + Deposit Rules
S. 179
S. 180
S. 185

GIVING

S. 185
S. 186
5 - In case, co. has accepted deposits, whether directives issued by RBI & provisions of ss. 73 to 76 or any other relevant provisions of Companies Act, 2013 & rules framed thereunder, where applicable, have been complied with?

If not, nature of such contraventions be stated; If an order has been passed by CLB or NCLT or RBI or any court or any other tribunal, whether same has been complied with or not?
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)
NOTIFICATIONS - AMENDMENTS

- Amendment – 6th June 2014
- Clarification – 30th March 2015
- Amendment – 31st March 2015
- Notification – 5th June 2015
- Clarification – 18th June 2015
- Amendment – 15th September 2015
- Amendment – 29th June 2016
- Amendment – 11th May 2017
- Notification – 13th June 2017
- Amendment – 19th September 2017
ACCEPTANCE OF DEPOSIT RULES 2014

- Apply to all companies except Bank, NBFC & HFC
- Deposit includes receipt of money by way of loan, deposit or other form, but does not include:
  - 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
Share appl. money, except not allotted / refunded

If subscription received before 31\textsuperscript{st} March 2014

And the allotment is still pending till 31\textsuperscript{st} March 2015

Then return by 1\textsuperscript{st} June 2015 or comply with Companies Act 2013

Notification dated 31.3.2015
Non-Interest bearing amount received and held in Trust

Business advances:

+ Supply of goods / services – within 365 days
+ Against Imm property – if adjusted as per agreement
+ Security deposit for performance of contract for supply of goods or provision of services
+ Advance under long term projects for supply of capital goods
+ Advance for providing future services in form of warranty or maintenance contract (written) upto 5 years – 29.6.2016
ACCEPTANCE OF DEPOSIT RULES 2014

+ Advance received and as allowed by sectoral regulator as per CG or SG – 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
- Received by company in collective investment scheme in compliance with SEBI – 29.6.16
ACCEPTANCE OF DEPOSIT RULES 2014

- 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

- Amount received from alternative investment funds, Domestic VC Funds, MF registered with SEBI– 29.6.16. Infrastructure Invt. Trusts- 11.7.17

- 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
ACCEPTANCE OF DEPOSIT RULES 2014

- Amt. received by Nidhi companies
- Public / Eligible – deposit – 6 m to 36 m
- Eligible company to obtain rating and to be attached with DPT 3 – 29.6.16
- If <6, 3 months - 10% of capital + free reserves
- Total deposit from members <25% of C + F. Reserve – 35% from 29.6.16
- Rate of Intt & commission not to exceed NBFC norms
- Auditors should take suitable note of violation of these provisions
A Specified IFSC Public company w.e.f. 19.09.2017 can accept from its members monies not exceeding 100% of aggregate of the paid up share capital, free reserves and securities premium account + file 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
CA. Pramod Jain

Deposits

Directors

Members

Director's Relatives
FROM DIRECTORS

1956 Act
- Out of own Funds

2013 Act
- Out of own Funds
- Disclosure in DR (15.9.2015)
- Disclosure in FS (29.6.2016)
FROM DIRECTOR’S RELATIVE

1956 Act
(Only for Private Cos)
- Allowed

2013 Act
(Only for Private Cos)
- Initially Not allowed
- Allowed out of own Funds & Disclosure in DR (15.9.2015)
- Disclosure in FS (29.6.2016)
DEPOSITS FROM MEMBERS [73(2)]

- Normally subject to certain conditions
- Pvt. Cos. allowed:
  - upto 100% of capital + free reserves – 5.6.15
  - upto 100% of capital + FR + SP – 26.6.16
- W.e.f. 13\textsuperscript{th} June 2017 for private companies:
  - Upto 100% of capital + FR + SP; or
  - A start-up company for 5 years from date of its incorporation
  - Which fulfills all of the following conditions:
    - It is not an associate or subsidiary of any other company;
    - Its borrowings from banks/ FIs or body corporate is less than twice its paid up capital or Rs. 50 Crs. Whichever is lower; and
    - Has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section
FOR PRIVATE COMPANIES

- The exceptions are applicable if the private company which has not committed a default in filing its financial statements AOC -4 u/s 137 or Annual Return MGT –7 u/s 92
- File details of monies accepted from members to ROC in Form DPT 3 (w.e.f. 19.07.2017)
Deposits from Members

From 19th September 2017

Private Companies without default in filing AOC-4 or MGT-7

Start-up
- For 5 Years without limit without complying s. 73(2)(a) to (e)

Other than Start-up
- If 3 conditions met
- Without any limit without complying s. 73(2)(a) to (e)

Public Companies

Specified IFSC Public company
- Upto 100% of its paid up capital & free reserves Comply with Sec 73(2)

Other Companies
- Upto 35% of its paid up capital, share premium and free reserves. Comply with Sec 73(2)
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, but they would have to comply with conditions of S. 73(2) on or after 19th September 2017.
Annual Return to be filed in DPT -3 by 30th June.
To be pre-certified by auditor
Computation of Net Worth in Form DPT-3 requires data of latest audited balance sheet preceding the date of the return i.e., 31st March ???
4 - In respect of loans, investments, guarantees, and security whether provisions of section 185 and 186 of the Companies Act, 2013 have been complied with? If not, provide the details thereof.
3 - Whether company has granted any loans, secured or unsecured to cos, firms, LLP or other parties covered is registered maintained u/s 189. If so,

(a) Whether terms & conditions of grant of such loans are not prejudicial to company’s interest;

CY only, terms s. 186(7), ability to lend, borrower standing
(b) Whether schedule of repayment of principal & interest is stipulated & whether repayments & interest are regular.

+ Opening + CY, squared up loans covered – no. of cases

(c) If overdue amount for more than 90 days, whether reasonable steps taken by Co. for recovery of principal & intt.

+ Opening + CY – no. of cases, principal amt overdue, intt overdue, steps taken
Can a company take ICD?

What if the company from whom you take ICD has same director as your company?

What if the company from whom you take ICD has a member who is also a director in your company?
LOAN TO DIRECTOR (185)

- Co. not allowed directly or indirectly to advance any loan or any loan represented by book debt or give guarantee or provide security in connection with loan taken to:
  - Director of lending co or its partner or relative
  - Director of its holding co or its partner or relative
  - Firm in which such director or relative is partner
  - Pvt. Co. in which such director is Dir. or member
  - Co in which all directors hold >25% voting power
  - Co. or BOD or MD or Manager acts in direction or instruction of such director or BOD of lending co.
LOAN TO DIRECTOR – EXCEPTIONS

- MD or WTD if condition of service - all employees
- Any scheme approved by members by spl resolution
- Co in business of providing loans - Intt rate > bank rate by RBI
- Loan, Guarantee, etc by holding co. to its WOSC
- Guarantee given or security provided by a holding in respect of loan made by bank or FI to its subsidiary
- However, it should utilised by Subs. Co. for principle business activities
EXCEPTIONS – PVT. CO.

- Shall not apply to a private company:
  + In whose share capital another body corporate has invested any money;
  + If the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or Rs. 50 Crs, whichever is lower; and
  + Such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.

- Exceptions are applicable if it has not committed a default in filing its financial statements AOC -4 u/s 137 or Annual Return MGT –7 u/s 92 - 19.9.2017
LOAN TO DIRECTOR – PENALTY

✘ On Giver i.e., Company:
   + Minimum Rs. 5 Lacs
   + Maximum Rs. 25 Lacs

✘ On Taker i.e., director:
   + Imprisonment upto 6 months
   + Penalty - Minimum Rs. 5 Lacs
   + Penalty - Maximum Rs. 25 Lacs

✘ Auditor should ensure adequate disclosure in case of non-compliance
Company can make investment through not more than 2 layers of invest. Co. Exceptions:-

+ Acquisition of any other company incorporated outside India if such other company has investment beyond two layers as per the laws of that country.
+ Investment by subsidiary company in investment subsidiary for the purpose of meeting any requirement under any law in force.

Disclosure of details and purposes of loan, guarantee, investment in financial statement.

Cannot give any loan/investment if company is in default of paying deposit or interest and said default subsists.
Giving of loan / investment exceeding limits – SR required.

If Term loan from PFI prior approval required for loan investment etc beyond limits

No SR required if a loan or guarantee given or security provided to its WOSC or a JV or for purchase / subscription of securities of WOSC. However disclosure required in FS

No interest free loans – rate of interest – Govt securities
Exemption of provisions to

- Loan/Guarantee/Security provided by a Banking Co., Insurance Co., Housing Finance Co., Co. engaged in business of Financing of Cos., a Co. providing Infrastructural facilities

Acquisitions by :-

- NBFC whose principal business is acquiring Securities
- A Company whose principal business is acquisition of securities
- Right Issue.
On company
+ Minimum Rs.25000/-
+ Maximum Rs.5,00,000/-

On every Officer in Default
+ Imprisonment up to 2 yrs; or
+ Fine
  × Minimum Rs.25000/-
  × Maximum Rs.1,00,000/-; or
+ both
BELIEVE IN YOURSELF

Feel you are already a CA.

CA. Pramod Jain