Loans & Deposits
Under
Companies Act 2013



**CA. PRAMOD JAIN** 

FCA, FCS, FCMA, LL.B, MIMA, DISA Shared at

CICASA, Ranchi of CIRC of ICAI 26<sup>th</sup> November 2017





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

# CA. Pramod Jain Deposit

## **AUDITOR'S DUTY - DEPOSITS - CARO 2016**

- \* 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?

## **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)

## **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

- 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 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 vr salary

## SHARE APPLICATION

- Share appl. money, except not allotted / refunded
- If subscription received before 31<sup>st</sup> March 2014
- And the allotment is still pending till 31<sup>st</sup> March 2015
- ➤ Then return by 1<sup>st</sup> June 2015 or comply with Companies Act 2013
- Notification dated 31.3.2015

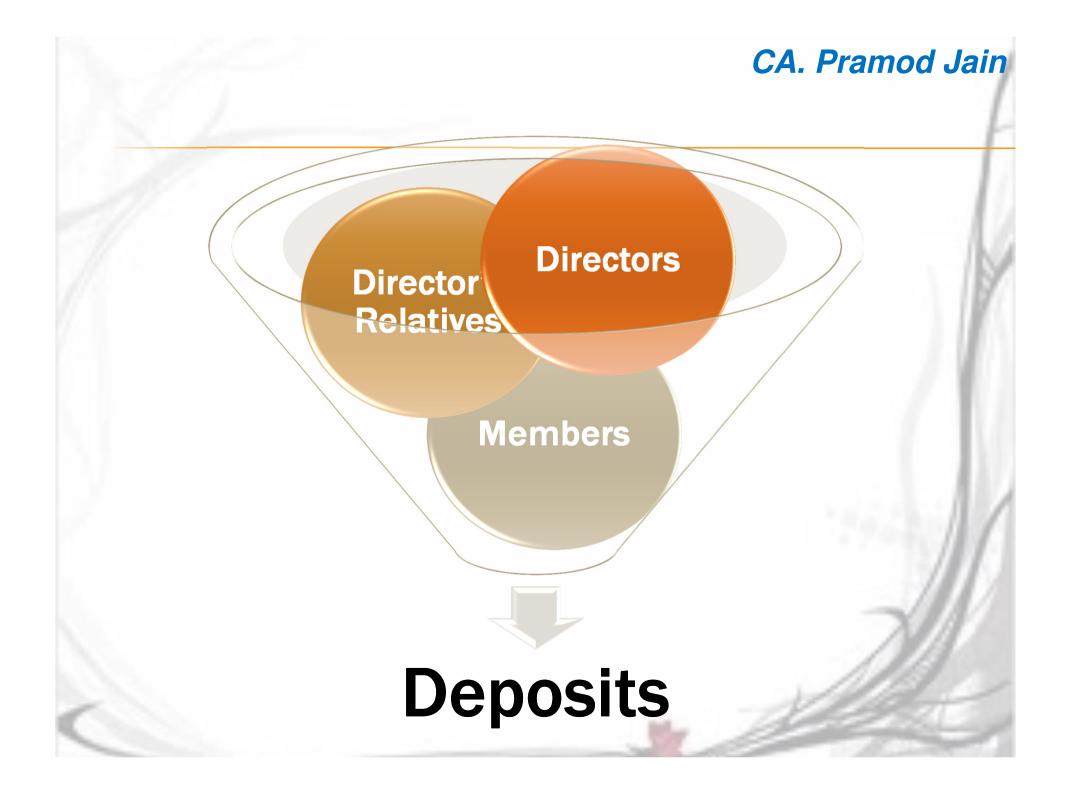
- Non-Interest bearing amount received and held in Trust
- **×** Business advances:
  - + Supply of goods / services within 365 days
  - + Against Imm property if adjusted as per agreement
  - Security deposit for performance of contract for supply of goods or provision of services
  - Advance under 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

- 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
- ★ Received by company in collective investment scheme in compliance with SEBI 29.6.16

- 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

- 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</p>
- 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



## 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)

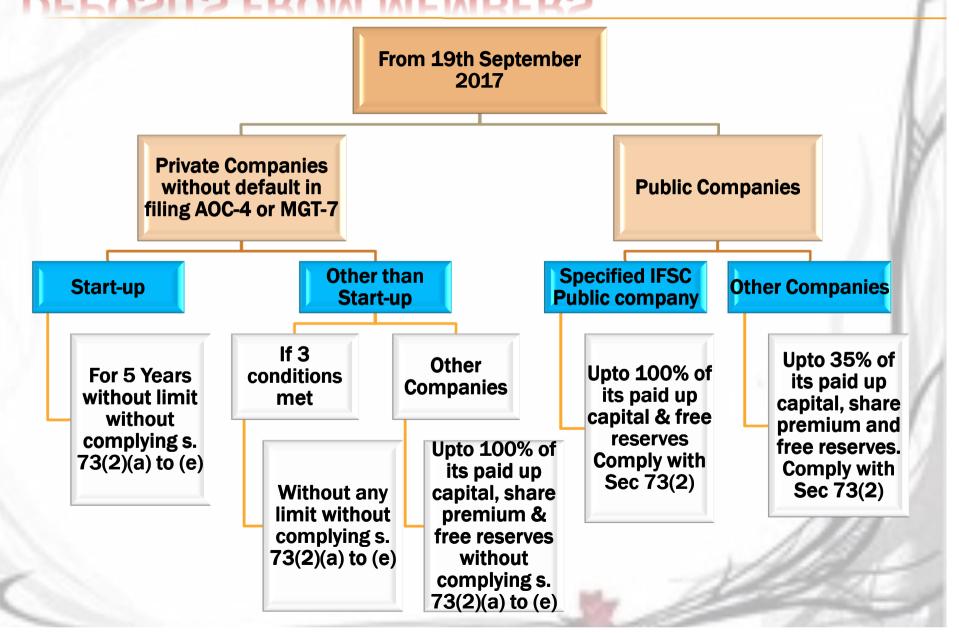
# **DEPOSITS FROM MEMBERS [73(2)]**

- 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<sup>th</sup> 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**



#### **DEPOSITS FROM MEMBERS**

★ 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 19<sup>th</sup> September 2017

## ANNUAL RETURN OF DEPOSITS

- Annual Return to be filed in DPT -3 by 30<sup>th</sup> 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., 31<sup>st</sup> March ???



#### **AUDITOR'S DUTY - LOANS - CARO 2016**

× 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.

#### **AUDITOR'S DUTY - LOANS - CARO 2016**

- × 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

#### **AUDITOR'S DUTY - LOANS - CARO 2016**

- \*(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 byCo. for recovery of principal & intt.
  - + Opening + CY no. of cases, principal amt overdue, intt overdue, steps taken

# INTER CORPORATE DEPOSIT (ICD)

- 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

## GIVING LOAN & INVESTMENT (186)

- 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 LOAN & INVESTMENT (186)

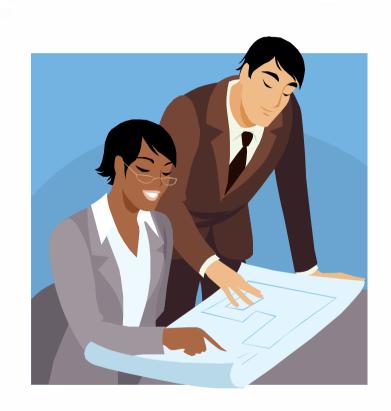
- Giving of loan / investment exceeding limits SR required.
- If Term loan from PFI prior approval required for loan investment etc beyond limits
- No SR required if a loan or guarantee given or security provided to its WOSC or a JV or for purchase / subscription of securities of WOSC. However disclosure required in FS
- No interest free loans rate of intt Govt securities

# GIVING LOAN & INVESTMENT (186)

- 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.

## PENALTIES 186

- 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

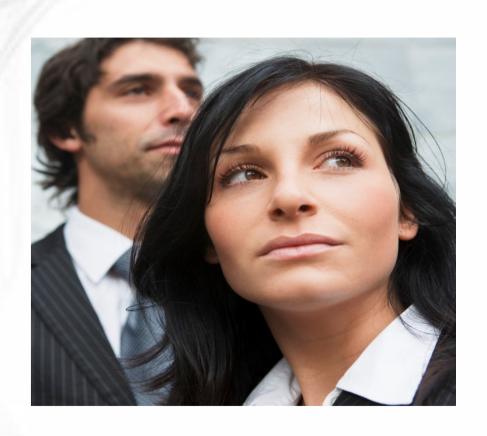


# Practice Your Studies





# **BELIEVE IN YOURSELF**



Feel you are already a CA



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