

*Presentation on Recent Amendments in
The Companies Act, 2013*

By

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Amita Desai & Company

SCOPE OF PRESENTATION

| Sr. No. | Topic |
|----------------|---|
| 1 | INC – 20A <i>Commencement of Business;</i> |
| 2 | INC – 22A <i>Active Company Tagging Identities and Verification (ACTIVE);</i> |
| 3 | DPT – 3 <i>One Time Return of any kind of outstanding Receipt of Money or Loan by Company;</i> |
| 4 | AGILE INC – 35 <i>Application for Goods and services tax Identification number, employees state Insurance corporation registration pLus Employees provident fund organisation registration ;</i> |
| 5 | DIR -3 KYC- <i>KYC of Directors</i> |
| 6 | <i>E- Adjudication of penalties Rules 2019</i> |
| 7 | MSME– 1 <i>Disclosure of Outstanding dues to Micro or Small Enterprises</i> |
| 8 | <i>National Financial Reporting Authority- NFRA-1</i> |
| 9 | <i>Banning of Unregulated Deposit Schemes Ordinance, 2019 - BUD</i> |

INC – 20A For Commencement of Business

INC – 20A For Commencement of Business

The Companies (Amendment) Ordinance, 2018 dated **2nd November 2018** and later on the Companies (2nd Amendment) Ordinance , 2019 dated **21st February 2019** had inserted a **new Section 10A** in the CA 2013

for the Commencement of Business

New Clause (d) in Section 248 (1) is also inserted giving power to RoC to remove the name of the Company

INC – 20A For Commencement of Business



The Ministry of Corporate Affairs vide its Notification dated **18th December, 2018** has also inserted **new Rule 23A** in the Companies (Incorporation) Fourth Amendment Rules, 2014 which provides for

Form INC -20A

Rationale of this provision of section 10A

“Commencement of Business Certificate’ was required by all public limited companies in the erstwhile Companies Act, 1956

and

it was also introduced by the Companies Act, 2013 under the Section 11 of the Companies Act, 2013.

However, **Section 11 and Rule 24** both were omitted vide the Companies (Amendment) Act, 2015 w.e.f. 29th May 2015.

Applicability of INC 20A

Section 10A is applicable to every Company

1. Incorporated after the Commencement of the Companies (Amendment) Ordinance, 2018 (2nd Nov 2018) ;
and
2. having share capital

*Which means every Company **Incorporated after 2nd November 2018** shall not **commence any business** or **exercise any borrowing powers** unless such Company comply with provisions of this Section.*

Compliance of Provision of Section 10A

The Director of such Company is required to:

- a) File a **Declaration** within period of **180 days** from the date of incorporation in **Form INC- 20A** with the Registrar that **every subscriber to the memorandum has paid** the value of the shares agreed to be taken by him on the date of making of such declaration;

AND

- a) The Company has filed **Form INC-22** with Registrar, a verification of its registered office **with in 30 days** from its incorporation as provided in Section 12(2).

Rule 23A of the Companies (Incorporation) Rule, 2014

- ▶ Rule 23A requires declaration in **Form INC 20A** by Director and the Contents of the said Form shall **be verified by a CA/ CS/ CWA**
- ▶ Provided that in the case of a company pursuing objects requiring **registration or approval from any sectoral regulators** such as
 - (a) Reserve Bank of India (RBI),
 - (b) Securities and Exchange Board of India (SEBI), etc.,

the registration or approval, as the case may be from such regulator shall also be obtained and attached with the declaration.”

Penalty for Non Compliance

If any default is made in Compliance with the requirement of Section 10A then penalty shall be as follow :

- a) **Company -Rs.50,000** and
- b) **Every officer --Rs. 1000** for each day during which such default continues but not exceeding an amount of **Rs.100,000.**



Removal of name of Company from the Registrar of Companies

In case Company **fails to file INC 20A** with Registrar within a period of **180 days** from the date of incorporation of the Company

And

The Registrar has **reasonable cause to believe** that the Company is not carrying any business or operations,

he may without prejudice to the provisions of penalty, initiate **action for removal of the name of the Company** from the Registrar of Companies under Chapter XVIII.

INC 22A – (*ACTIVE*)
Active Company Tagging Identities
and Verification

The Companies (Incorporation) Amendment Rules, 2019

The Ministry of Corporate Affairs had Notified the Companies (Incorporation) Amendment Rules, 2019 on **21st February 2019** under which all the companies registered **on or before 31st December, 2017**, are required to file **e-Form ACTIVE** (Active Company Tagging Identities and Verification)-INC 22A **on or before 25th April, 2019**.

The Companies (Second Amendment) Ordinance, 2019

- ▶ The Ministry of Corporate Affairs has also Notified on 21st February 2019 the Companies (Second Amendment) Ordinance, 2019 and amended the Companies Act 2013.
- ▶ Under the amended law, **non-maintenance of registered office** would be one of the **grounds for striking off** the name of a company from the register by the Registrar of Companies ,
- ▶ The new **sections 12(9) and Section 248(1)(e)** is inserted in the Ordinance

Section 12(9) and 248(1) (e) of CA 2013

Section 12(9)

*“If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a **physical verification of the registered** office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the **removal of the name of the company** from the register of companies under Chapter XVIII.”*

Section 248

Power of Registrar to Remove Name of Company from Register of Companies

(1) Where the Registrar has reasonable cause to believe that—

*“(e) The company is **not carrying on any business or operations**, as revealed after the physical verification carried out under sub-section (9) of section 12.”*

Applicability



Every company incorporated
on or before 31st December 2017

to file the e-form ACTIVE (which is e-Form 22A)
which gives particulars of the Company and its Registered
Office .

The purpose of such e- Form is to update the **KYC of a
company with their Regd Off address**. This form is
required to be filed once only and not every year.

Non Applicability

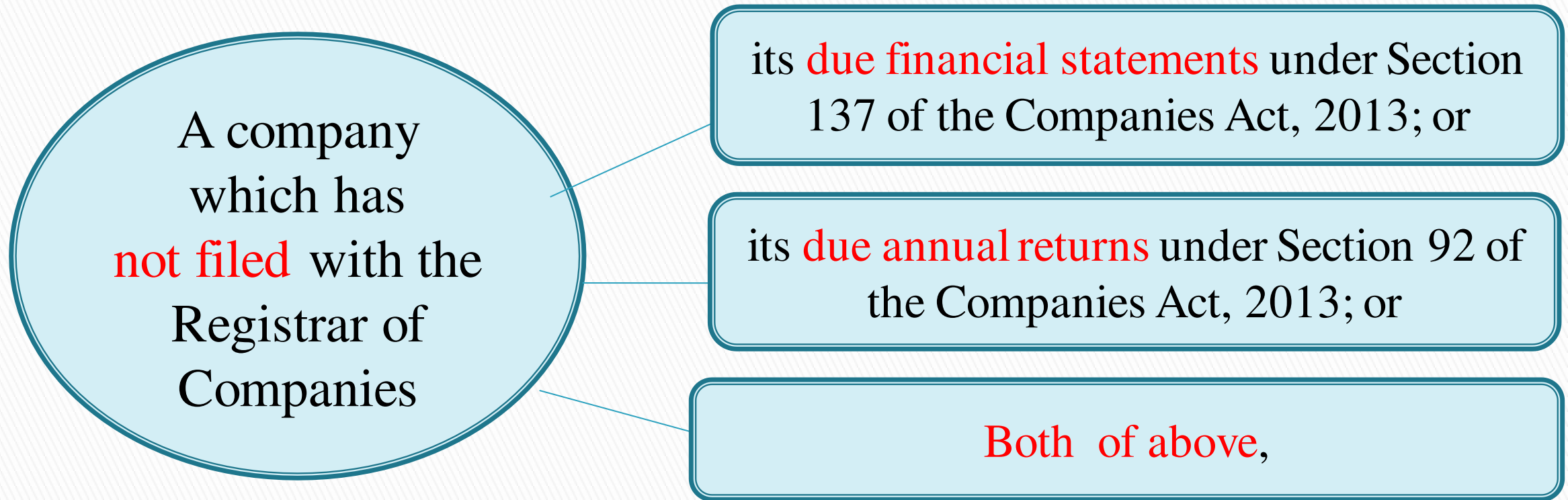


All companies including OPC are required to file e-Form ACTIVE EXCEPT

- a) which have been struck off ; or
- b) are under process of striking off; or
- c) are under liquidation ;or
- d) are amalgamated; or
- e) are dissolved

As recorded in the register as such

Certain companies will be unable to file Form INC 22A



- ▶ Unless such Company is **under management dispute** **and** the **Registrar has recorded** the same on the register.

Due Date of Filing
E- Form INC 22A



or before 25th April, 2019

Filing Fees of
e- Form INC 22A

If filed on or before 25th
April, 2019 **No Fees**

If filed on or after 26th April,
2019 **Fees of Rs. 10,000/-**

Implication of non-filing of e-Form 22A

- ▶ If a Company fails to file e-Form INC 22A:
 - a) the company shall be marked as **“ACTIVE- non-compliant”** on or after 26th April, 2019, and
 - b) **U/s 12 (9)** of the Companies Act, 2013, if the Registrar of Companies has **reasonable cause to believe** that the company is not carrying on any business or operation he may *cause a **physical verification of the Registered Office*** of the Company in such manner as may be prescribed and initiate action for the **removal of name** of the company from the Register of Companies under chapter XVIII

Implication of non-filing of e-Form 22A

- c) If any default is found to be made in complying with the requirement of section 12 of the Companies Act, 2013 , the company and every officer in default is liable to penalty of Rs.1000/- for every day during which the default continues but not exceeding Rs.1 Lac.

Implication of non-filing of e-Form 22A

- d) Event based Returns detailed below **shall not be recorded** by the Registrar till e-Form 22A is filed by such company:
- **SH-07** (Change in Authorized Capital)
 - **PAS-03** (Change in Paid-up Capital)
 - **DIR-12** (Changes in Director except cessation)
 - **INC-22** (Change in Registered Office)
 - **INC-28** (Amalgamation, de-merger)

Pre-requisite for filing of e-Form INC -22A

Email address of the company to be provided (on which One Time Password (OTP) will be generated and that OTP to be filled in the said Form INC 22A

Latitude and Longitude of Registered Office of the Company. The key objective of geo-tagging is to track the exact location of the building or office premises

If the number of Directors of the company is >15 then e-Form MGT 14 with Special Resolution of members to be filed [Refer section 149 (1) (b)]

Pre-requisite for filing of e-Form INC -22A

The status of **DIN** of all Directors of the company should be **“Approved”** i.e. DIN are *neither*
'De-activated due to non-filing of DIR-3 KYC'
nor
'Disqualified u/s 164(2) of the Companies Act, 2013'

The company should have filed **e-Form ADT 1** giving details of Auditor of the company like PAN and Membership No.;

Pre-requisite for filing of e-Form INC -22A

The company should have filed **e-Form CRA 2** giving details of **Cost Auditor** of the company (If applicable) like PAN No. and Membership Number ;

The company should have filed e-Form DIR 12 & MR 1, if applicable, for the appointment of **MD/WTD/ Manager CEO/CS/CFO** giving details of designation ;

The Company should have filed **e- Form AOC-4(Annual Accounts) or AOC-4 XBRL and MGT-7 (Annual Return)** filed for F.Y. 2017-18;

Pre-requisite for filing of e-Form INC -22A

Details of the **Stock exchange**, if the Company is a Listed Company

Number of Directors in the Company and list of Directors

If the Company has not appointed CS or CFO if required, the Company shall be restricted from filing Form INC 22A

Mandatory Attachments

Photograph of Registered Office showing **external building** with at least one director/KMP who has affixed his/her Digital Signature to this form

Photograph of Registered Office showing **inside office** with at least one director/KMP who has affixed his/her Digital Signature to this form

Signed and Certification

- ▶ E-Form INC 22A to be digitally signed by
- ▶ **one director** in case of **OPC** and
- ▶ **by one director and one KMP or two directors** in case Company is **other than OPC**, the same need to be.
- ▶ E- Form INC-22A - **certified by CA/ CS/ CWA** in whole time practice.

Rationale of this provision of Rule 25A

Last year, the Ministry of Corporate Affairs found that there were **114 Companies operating from same office of a small room** and half of it were not having any business operations. These companies were having huge losses but **Directors were drawing salaries** and companies were lending finance to each other. These companies were having assets and filing regularly their returns. Majority of these companies are registered in Eastern Region

Rationale of this provision of Rule 25A

MCA has come up with this new e-Form INC 22A to resolve various issues like

- Identifying shell / vanishing companies used for Black Money and Money Laundering activities
- Locating the office of the Company and with photo of Directors

DPT -3

Return of Deposits




Ministry of Corporate Affairs

brings

Form DPT-3

For all companies

 **startup**
India

FORM DPT-3

One Time Return of any kind of outstanding Receipt of Money or Loan by Company

Notification

**MCA amendment in
The Companies (Acceptance of Deposits) Rules, 2014
dated 22nd January 2019**

Index

| Sr. No. | Particular |
|---------|---|
| 1 | Rational |
| 2 | Applicability / Exemption |
| 3 | Effective Date |
| 4 | Requirement of filing Form DPT-3 |
| 5 | Clarification on certain receipt /loan |
| 6 | Deposit and exempted Deposit |
| 7 | The amount received from “ Real Estate Investment Trusts ” shall not be treated as deposits. |
| 8 | Punishment for contravention of the Companies (Acceptance of Deposits) Rules, 2014 |

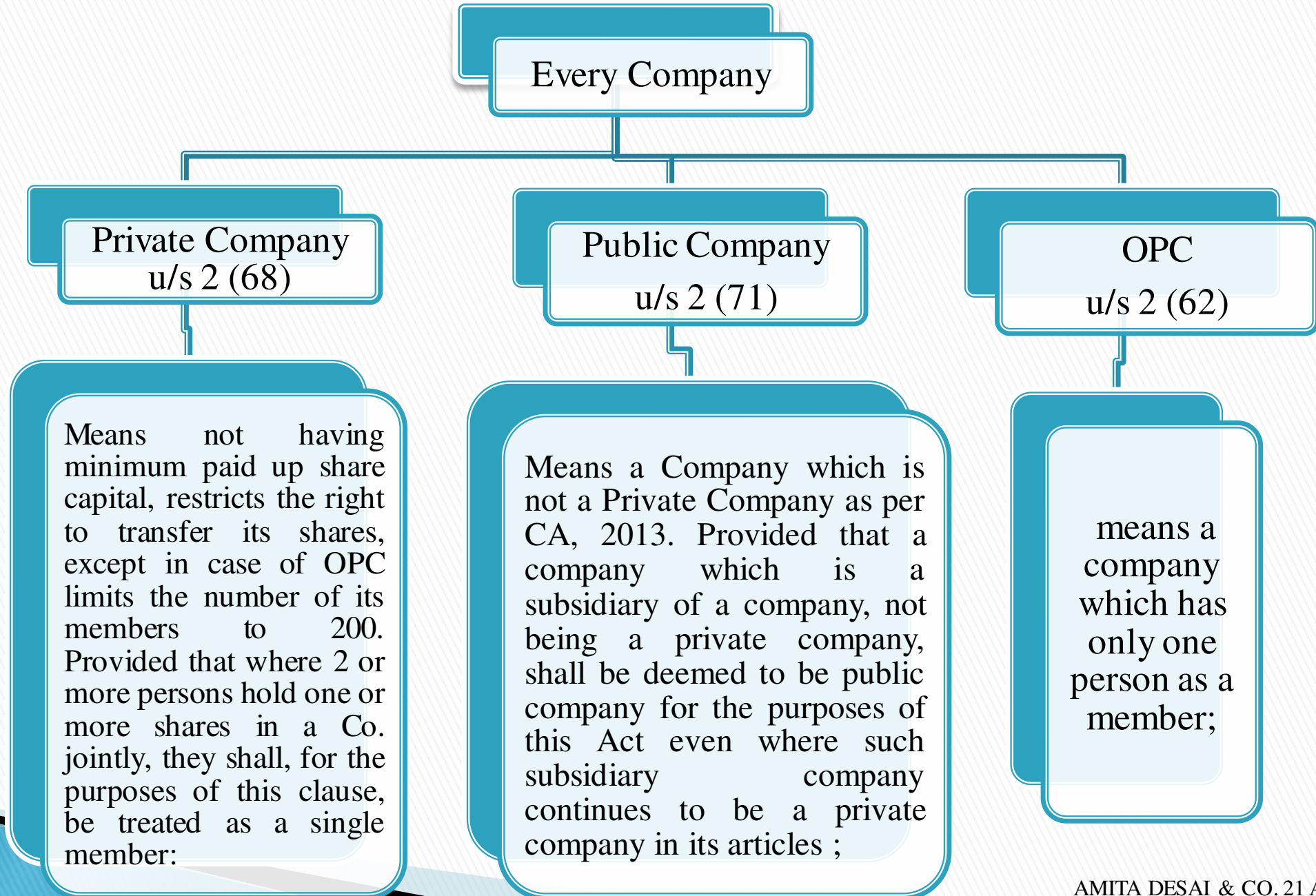
Rationale of this changes

The Reporting of Deposits was applicable only to following companies:

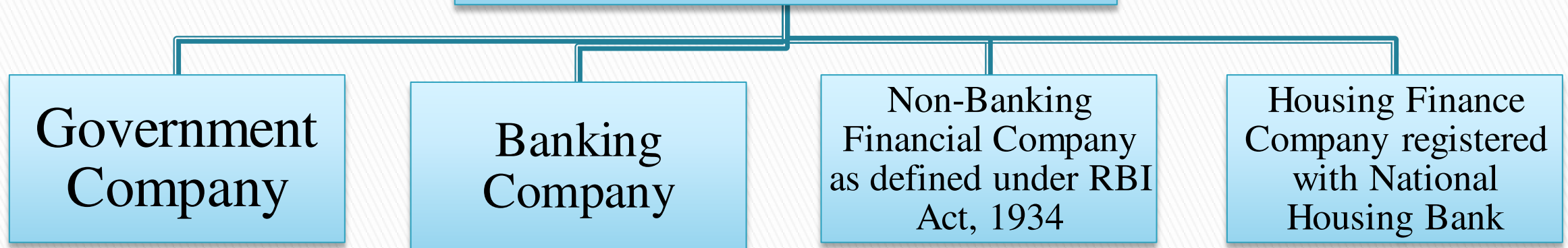
- (a) **Eligible Companies** means Public Company having **Net Worth of not less than Rs.100 crore OR Turnover of not less than Rs.500 Crore** which accepts deposits **from persons other than its members** after obtaining prior approval of its members;
- (b) **Companies** referred under section 73 (2), which have accepted Deposits **from its members**.

However, the amendment **requires one time report** of all outstanding receipt of money or loan by a company which is not considered as Deposit as per rule 2 (1) (c) from **1st April, 2014 till 31st March 2019** (earlier it was upto 22nd January 2019)– **General Circular No. 05/2019 dated 12.04.2019**

Applicability:



Exempt Company



***What is a Government Company :** Government Company means the Company where **holding of more than 51% of the paid up share capital** is with the Central Government, or by State Government, or partly by Central Government and partly by State Government and Includes a Company which is Subsidiary Company of such Government Company

Effective Date



FROM

22nd January, 2019

MCA Notification date

Requirement of filing Form DPT-3

Annually Return

Rule 16 of the Companies (Acceptance of Deposits) Rules, 2014 requires every company which is accepting deposits to file Form DPT-3 **on or before 30th June with information certified by its Auditors**

Due Date of filing is **30th June** of every financial year.

One-Time Return

Rule 16A 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 the Companies (Acceptance of Deposits) Rules, 2014

Due Date of filing is within **30 days from the date of deployment** of DPT-3 e-Form on MCA

Clarification

1

- If loan/money has been **received before 01.04.2014 and still outstanding** in the balance sheet, then also **information is required** to be furnished in Form DPT-3

2

- If loan/money has been received any time after 01.04.2014 and **repaid before 31.03.2019**, then **no information is required** to be furnished in Form DPT-3.

3

- This form will be filed even if a Company has received loan from its **Holding Company or Subsidiary Company or Associate Company**

What is Deposit :

Deposit includes

Any receipt of money by way of deposit or loan or in any other form, by a company,



Except the item prescribed

Under Rule 2 (1) (c) (i) to (xviii) of the Companies (Acceptance of Deposits) Rules, 2014

Exempted Deposits

Rule 2 (1) (c) of the Companies (Acceptance of Deposit) Rules, 2014 provides for exempted Deposits

| Sr.No. | Particular |
|--------|---|
| 1 | Any received Amount from <u>Central or State Government or Local Authority, Statutory Authority constitute under act of Parliament or State Legislature.</u> |
| 2 | Any received Amount from <u>Foreign Government or Foreign Bank, Foreign Export Credit Agencies, Foreign Collaborators, Foreign bodies Corporate and Foreign Citizens, Foreign Authorities or persons resident outside India</u> subject to the provisions of Foreign Exchange Management Act, 1999 (42 of 1999) and rules and regulations made there under; |

| | |
|---|---|
| | |
| 3 | Any amount received as a loan or facility from any <u>Bank/ Public Financial Institutions/ Co-operative Banks.</u> |
| 4 | Any amount received as a loan or facility from any <u>Public Financial Institutions notified by Central Government/ Insurance Companies or Schedule Commercial Bank</u> |
| 5 | Any amount received against issue of <u>Commercial Paper (CP)</u> |
| 6 | Money received from any <u>other Company (ICD)</u> |
| 7 | <p>Amount received towards <u>subscription of any securities</u></p> <ul style="list-style-type: none"> - Allotment to be made within 60 days from the date of receipt of money or advance. - amount <u>not refunded within 15 days</u> from completion of 60 days will be <u>treated as deposits</u>. Any adjustment of the amount for any other purpose shall not be treated as refund and considered as Deposit |

| | |
|----|--|
| 8 | Deposit from <u>Directors</u> or <u>Relative of director</u> in case of private company |
| 9 | Amount issued as <u>CCD</u> (Provided it is mandatorily converted in shares in 10years) Amount issued as <u>Secured Debentures</u> (Provided it is 100% secured). Any amount raised by issue of unsecured NCD and listed on Stock Exchange |
| 10 | Amount received from <u>Employee</u> (Not exceeding his annual salary) |
| 11 | Any non interest bearing amount received and held in <u>Trust</u> |
| 12 | Advance received for <u>supply of goods/services</u> (Maximum 365 days), amount received for <u>immovable property</u> under agreement, security deposit for performance of contract , advance received under <u>long term project for supply of capital goods</u> and advance for future services in the form of <u>warranty for period as per normal practice or 5 years</u> which ever is less. |

| | |
|----|--|
| 13 | <u>'Promoter'</u> unsecured funding on stipulation imposed by lending institution |
| 14 | Any amount accepted by a <u>Nidhi company</u> |
| 15 | Any amount received by way of <u>'Subscription in respect of a Chit'</u> under the Chit Fund Act, 1982 |
| 16 | <u>Collective Investment Scheme</u> in compliance with SEBI Regulation |
| 17 | <u>Convertible Note</u> issued by Start up Company (25 lakhs or more repayable within 5 years) |
| 18 | Amount received by co from <u>AIF, MF, Domestic Capital Venture, Infrastructure Investment Trusts, Real Estate Investment Trusts</u> (inserted vide amended Rules,2019) |

REAL ESTATE INVESTMENT TRUSTS

Before Amendment

Any amount / money
received by company
from **Real Estate
Investment Trusts**

were treated
as Deposits

Rule 2(1) (c) (xviii)

After Amendment

Such amount / money

now

**shall not be
considered as
Deposits**

Rule 2(1) (c) (xviii)

Punishment For Contravention of Deposit Rules (Rule 21)



Normal Fine

On company and every officer of the company who is in default shall be punishable with

fine which may extend to ₹ 5,000/-



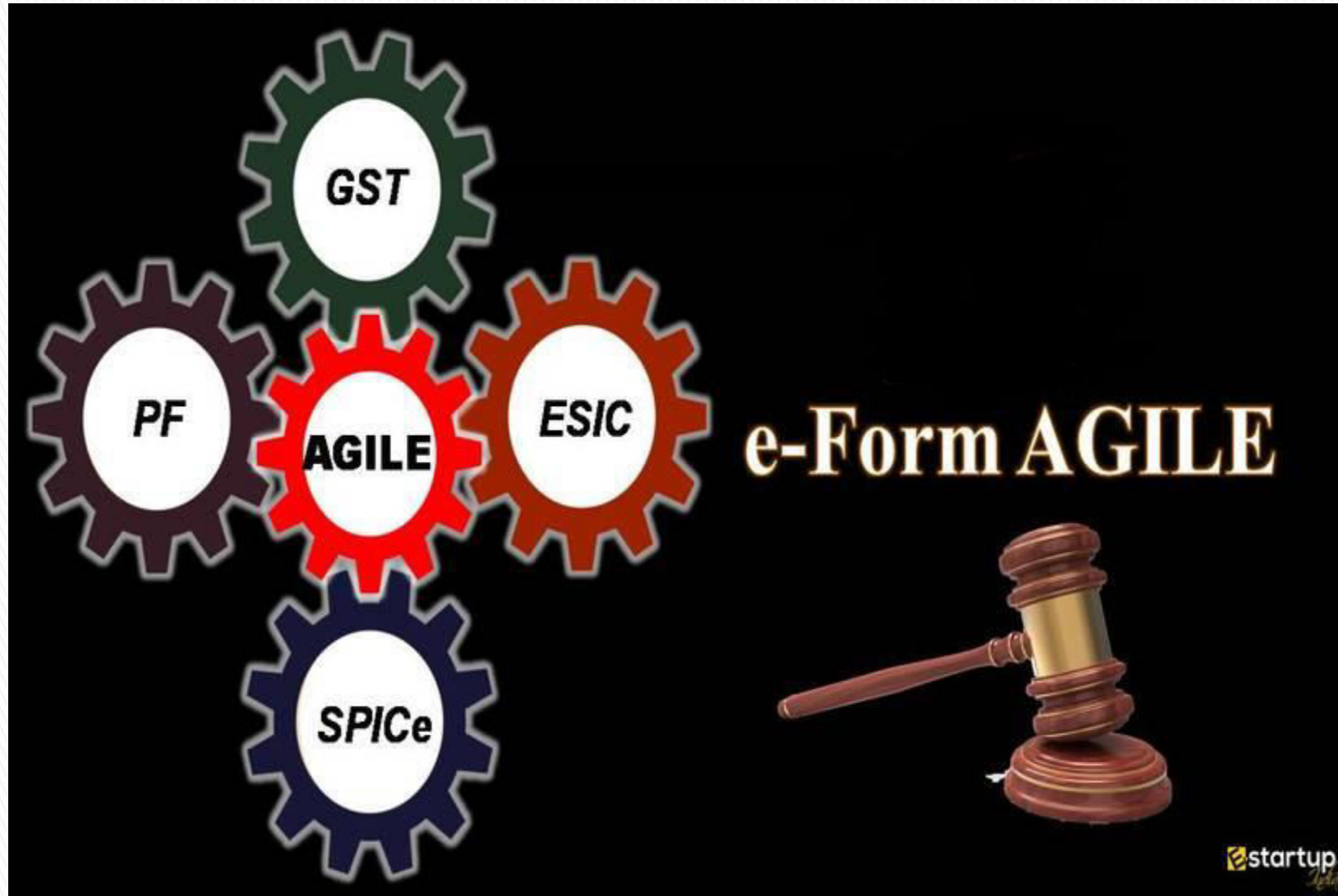
Continuing Offence

where the contravention is a continuing one,

₹ 500/- for every day during which the contravention continues

E-Form INC – 35 AGILE

*Application for **G**oods and services tax
Identification number, employees state
Insurance corporation registration p**L**us
Employees provident fund organisation
registration*



Introduction

Ministry of Corporate Affairs (MCA) had on
29th March, 2019 Notified
The Companies (Incorporation) Third
Amendment Rules, 2019
in which **Rule 38A is inserted**, which will be
effective from the date of its publication in
official gazette.

What is e-Form INC-35 ?

Rule 38A of the Companies (Incorporation) Rules, 2014 , provides an option to the Applicant Company while formation to apply for registration of the following numbers, namely:

- a) Goods and Service Tax Identification Number (**GSTIN**)(wef 31.03.2019)
- b) Employees' Provident Fund Organisation (**EPFO**) (wef 08.04.2019)
- c) Employees' State Insurance Corporation (**ESIC**) (wef 15.04.2019)

When to file e-Form INC-35 ?

As per Rule 38 of the Companies (Incorporation) Rules, 2014 ,

E-Form INC-35 to be filed while making application for Incorporation of a Company in Form INC-32(SPICe), along with

- ▶ e-MOA in Form INC-33 and
- ▶ e-AOA in Form INC-34

Mandatory Information and Details to Form INC-35

- 1) Details of Goods supplied by the Business with details of State ;
- 2) Details of Services supplied by the Business with details of State ;
- 3) Personal details of Director who is also an Authorised Signatory / Primary Owner / Office Bearer;
- 4) Personal details of Director other than Authorised Signatory / Primary Owner / Office Bearer;

Personal Details:

- a) Director Identification Number;
- b) PAN;
- c) Full name of Director;
- d) Personal Mobile Number in which OTP generated;
- e) Personal Email Id in which OTP generated;
- f) Latest Passport size photograph.

Mandatory Information and Details to Form INC-35

- 5) Minimum number of directors details –
 - a) In case of OPC – 1;
 - b) In case of Private Company – 2;
 - c) In case of Public Company – 3;
 - d) In case of Producer Company – 5.
- 6) Police station
- 7) Reason for Registration
- 8) Place of business with proof of ownership and possession
- 9) State and Center Jurisdiction

Mandatory Attachments to Form INC-35



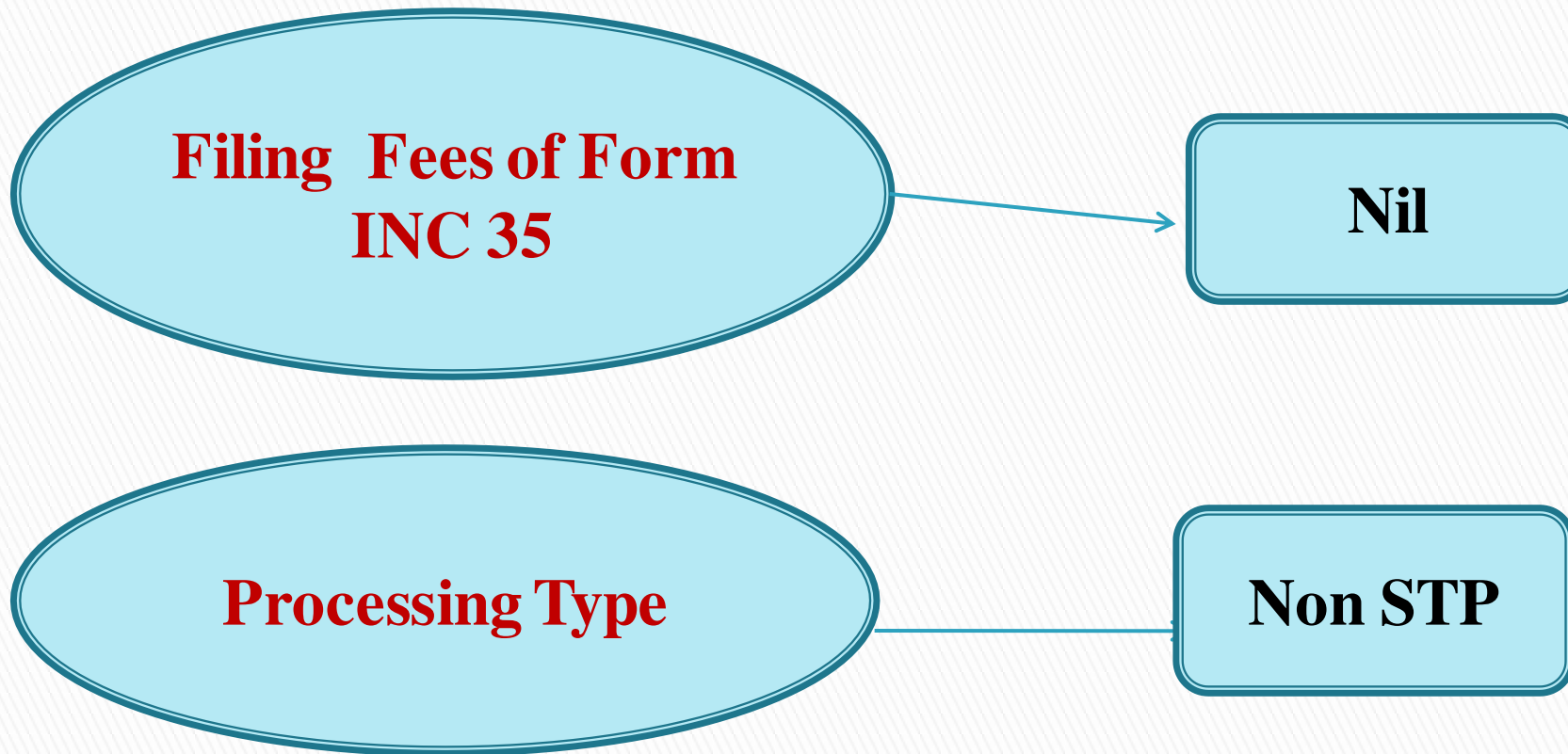
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graph LR; A([Mandatory Attachments to Form INC-35]) --> B([Proof of Principal place of business]); A --> C([Proof of appointment of Authorized Signatory]); A --> D([Specimen Signature]);
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The diagram consists of a central light blue oval on the left containing the text 'Mandatory Attachments to Form INC-35' in red. Three arrows point from the right side of this central oval to three separate light blue ovals on the right. The top oval contains 'Proof of Principal place of business', the middle one contains 'Proof of appointment of Authorized Signatory', and the bottom one contains 'Specimen Signature'.

Proof of Principal place
of business

Proof of appointment
of Authorized
Signatory

Specimen Signature



E-Form DIR-3 KYC

KYC OF DIRECTORS

All about DIR-3 KYC



Introduction



Ministry of Corporate Affairs (MCA) vide *Notification dated 5th July, 2018* has amended the Companies (Appointment and Qualification of Directors) Rules, 2014 by inserting Rule 11 (2) and (3) and Rule 12A and made Directors KYC mandatory which was *effective from 10th July 2018.*

What is DIR-3 KYC



DIR 3 KYC means KYC of Directors who has been allotted DIN (Director Identification Number) u/s154 of the Companies Act, 2013 and they are required to file e-Form DIR-3 KYC on MCA

Implication of non filing of Form DIR-3 KYC



Rule 11 (2) reads that if DIN holder **fails to file DIR-3 KYC** within the given time then DIN will be **De-activated** by the Central Government or Regional Director (Northern Region) or any officer authorized by the Central Government for this purpose.



Rule 11(3) reads that the de-activated DIN shall be **re-activated** only after **e-form DIR-3 KYC** is filed with additional fees of **Rs. 5000/-**

Due Date of filing DIR-3 KYC as per Rule 12A

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graph TD; A([Due Date of filing DIR-3  
KYC as per Rule 12A]) --> B[Initial]; A --> C[Annual Basis];
```

Initial

The Persons who have been allotted DIN till **31st March, 2018** were required to file this e-form with MCA by **31st August, 2018**.
(extended till **5th October 2018**)

Annual Basis

Rule 12A requires that every individual who has been allotted DIN as on **31st March of a Financial year** shall file DIR – 3 KYC with MCA **on or before 30th April** of immediate next Financial year.

MCA Clarification 13/04/2019 on filing of Form DIR-3 KYC

At present the form available on MCA portal is only for those individuals who were allotted DINs

- a) as on 31st March 2018 and
- b) whose DINs have been marked as 'Deactivated due to non-filing of DIR-3 KYC'.

However MCA has clarified that DIN holders are required to file e-Form DIR-3 KYC every year in the **revised form** which will shortly be deployed on MCA portal and the due date of filing the said Form is **within 30 days** from the date of its **deployment**.

MANDATORY INFORMATION/ DETAILS FOR FILING FORM DIR-3 KYC

- a) Director Identification Number (DIN)
- b) Full Name of the Director
- c) Fathers Name of Director
- d) Whether a citizen of India or not
- e) Nationality
- f) Whether resident in India or not
- g) PAN
- h) Date of Birth
- i) Gender
- j) Aadhar Card Number
- k) Passport Number (Mandatory in case of Foreign National)
- l) Personal Mobile and Personal Email ID of the Director
- m) Permanent Residential address & Present Residential address

**Mandatory Attachments
to e-Form DIR-3 KYC**

Proof of Identity



Proof of Address
of individual

CERTIFICATION BY PROFESSIONAL

- ▶ E-Form DIR 3 KYC is required to be signed digitally by the applicant director and the same is required to be **certified and verified by practicing CA / CS / CMA.**
- ▶ Professional is required to declare that he has been duly engaged for the purpose of certification/verification of the form and he is certifying the followings:
 - a) That he has satisfied himself about the **identity of the applicant and his address based on the perusal of the original of the attached document** and in case, where the applicant is residing **outside India** the particulars have to be verified from the documents duly **attested by the attesting authority as prescribed.**

CERTIFICATION BY PROFESSIONAL

- b) That he has **verified and attested** the documents of the applicant based **on the Originals documents** produced before him.
- c) That he has gone through the provisions of the Companies Act, 2013 and rules made thereunder for the subject matter of this form and matters incidental thereto and he has verified the particulars mentioned in the form (including attachment(s)) from the original records maintained by the Company/applicant which is subject matter of this form and **found them to be true, correct and complete** and no information material to this form has been suppressed.

CERTIFICATION BY PROFESSIONAL

- d) That **Mobile Number** and **Email ID** is of the applicant
- e) That all the required **attachments** have been completely and legibly attached to this form
- f) That he has kept a copy of this form and attachments thereto, in his records for further reference.
(**professional are custodian of these documents**)
- g) That he is understood that he shall be liable for action under section 448 of the Companies Act, 2013 **for wrong certifications**, if any found at any stage.

Rationale of Provision of DIR 3 KYC u/r 12A

DIR 3 KYC is required every year to confirm **the data , information** as available on MCA system

MCA wants its data base to be **relevant and updated** with any changes in Directors
KYC

Section 454
Adjudication of Penalties
as per Companies Act 2013
&
Companies (Adjudication of Penalties) Rules,
2014

Introduction

The Companies (Amendment) Ordinance, 2018 had substituted Section 454 (3) in the Companies Act, 2013 (effective from 2nd Nov 2018)

The Ministry of Corporate Affairs had substituted Rule 3 in the Companies (Adjudication of Penalties) Amendment Rules, 2019 vide its Notification (Dated 19th February, 2019)

Section 454(1)

The Central Government (CG) may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of this Act in the manner as per the Companies (Adjudication of Penalties) Rules, 2014.

Section 452 (2)

The CG shall specify the jurisdiction of appointed adjudicating officers in the order.

Imposing Penalty for Non Compliance

Section 454 (3) – Substituted 02.11.2018

If there is any **non-compliance or default under** the relevant provisions of the Companies Act, 2013 then adjudicating officer may, by an order –

- a) **Impose penalty** on the Company, the officer who is in default, or any other person, as the case may be; and
- b) direct such company, or officer who is in default, or any other person, as the case may be, **to rectify the default**, wherever he considers fit.

Section 454 (4) Opportunity of Being heard and Companies (Adjudication of Penalties) Rules, 2014

Section 454 (4)

The adjudicating officer before imposing any penalty shall give a **reasonable opportunity of being heard** and issue a written notice in the specified manner to such Company and the officer who is in default

Rule 3 (2) reads that

The adjudicating officer shall issue a written notice in the specified manner to the Company and the officer in default **or any other person**, as the case may be, **to show cause**, within such period as may be specified in the notice (which is not <15 days and > 30 days) why the penalty should not be imposed on it or him.

Rule 3 (3)

The notice issued shall clearly specify the nature of non-compliance or default have been committed or made by such Company and the officer who is in default or any other person, as the case may be and also draw attention to the relevant penal provisions of the act and the maximum penalty which can be imposed on it and him.

Rule 3 (4)

The Company and the officer who is in default or any other person has to reply to such notice shall be filed in electronic mode only within time specified in notice.

However adjudicating officer may grant extension of further period not exceeding 15 days if Company and the officer who is in default or any other person satisfies that

- a) it or he has sufficient cause for not responding to the notice within the stipulated period or
- b) the adjudicating officer has reason to believe that the company or the officer or the person has received a shorter notice and did not have reasonable time to give reply.

Rule 3(5)

If in the opinion of Adjudicating officer physical appearance is required, he may issue **notice within a period of 10 days from** the date of reply and fix a date for appearance.

Provided that if any person, to whom a notice is issued under sub-rule (2), **desires to make an oral representation**, whether personally or through his authorised representative **and has indicated the same** while submitting his reply in electronic mode, the adjudicating officer **shall allow** such person to make such representation after fixing a date of appearance

Rule 3 (6)

On the date fixed for hearing and after giving a reasonable opportunity of being heard, the adjudicating officer may **pass any order in writing** as he thinks fit including an order of adjournment.

Provided that after hearing Adjudicating Officer may require the concerned person **to submit his reply in writing** on certain other issues related to the notice relevant for determination of the default.

Rule 3 (7)

Adjudicating officer may pass an order:-

- In case **physical appearance not required** – within **30 days** after the expiry of the period given for reply (15 to 30 days or such extended period)
- In case **physical appearance required** – within **90 days** from the date of issue of appearance

If due to some reason there is delay in order passed then such order shall not considered to be invalid.

Rule 3 (8)

Every **order** given by Adjudicating officer shall be **duly dated and signed** by **him** and shall clearly state the reason for requiring the physical appearance

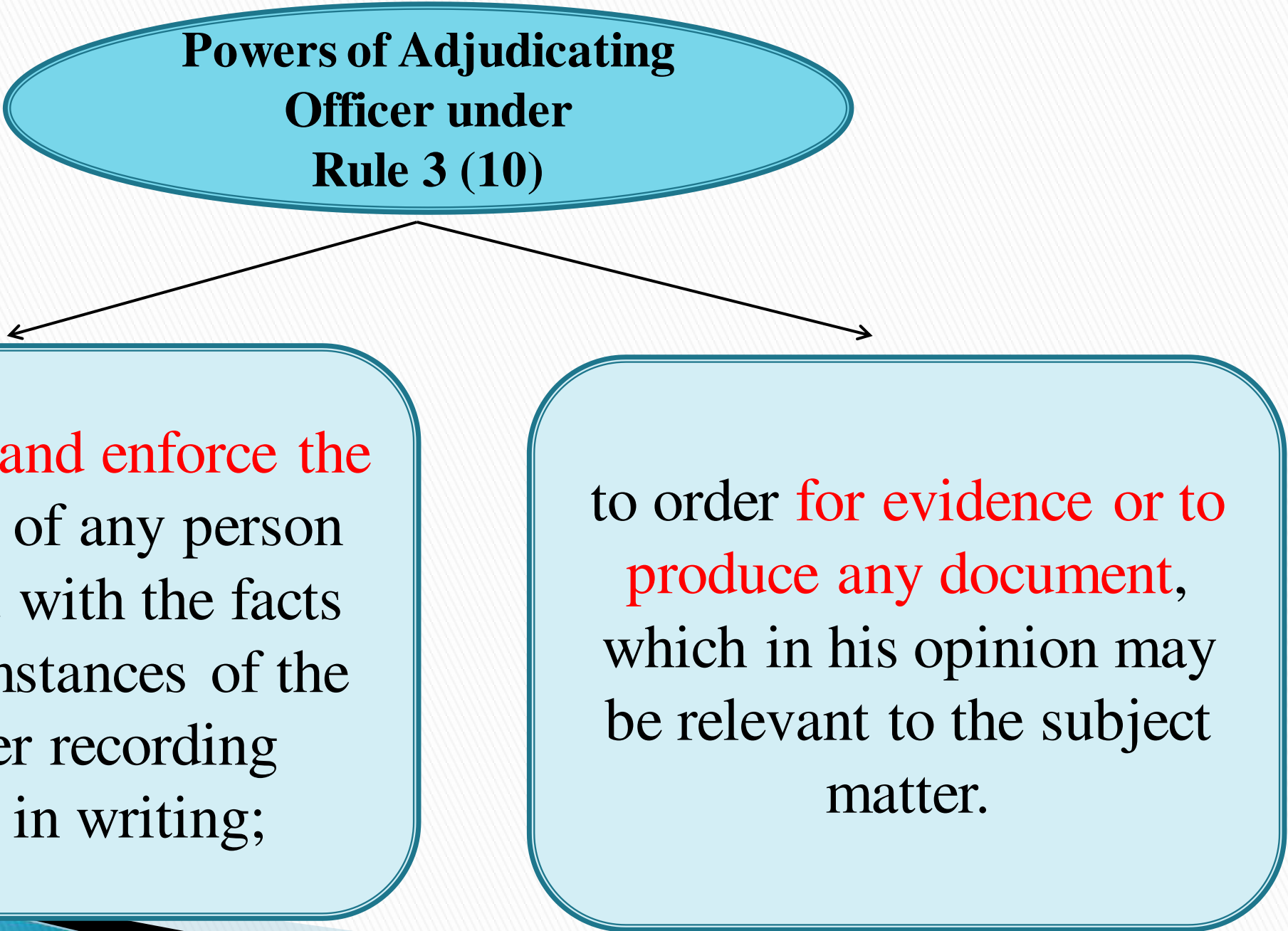
Rule 3 (9)

Copy of the order by Adjudicating officer shall be sent to

- a) the concerned Company, Officer who is in default or any other person or all of them;
- b) Central Government ; and
- c) Copy of the Order shall be uploaded on website.

.

Powers of Adjudicating Officer under Rule 3 (10)



to **summon and enforce the attendance** of any person acquainted with the facts and circumstances of the case after recording reasons in writing;

to order **for evidence or to produce any document**, which in his opinion may be relevant to the subject matter.

Rule 3 (11)

Adjudicating Officer may pass an **order of imposing penalty if any person fails to reply or neglects or refuses to appear before him**

Rule 3 (12) – Factors to be considered for adjudicating quantum of penalty

- a) Size of the Company;
- b) Nature of business carried on by the company;
- c) injury to public interest;
- d) nature of the default;
- e) repetition of the default;
- f) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and
- g) the amount of loss caused to an investor or group of investors or creditors as a result of the default.

Provided that, in no case, the penalty imposed shall be less than the minimum penalty prescribed, if any, under the relevant section of the Act.

Rule 3 (13)

In case a fixed sum of penalty is provided for default of a provision, the Adjudicating Officer **shall impose that fixed sum**, in case of any default therein.

Rule 3 (14)

Penalty shall be paid **through Ministry of Corporate Affairs portal** only.

Rule 3 (15)

All sums realised by way of penalties under the Act shall be **credited to the Consolidated Fund of India**.

Explanation 1

For the purposes of this rule, the term “specified manner” shall mean service of documents as specified under section 20 of the Act and rules made thereunder and details in respect of address (including electronic mail ID) provided in the KYC documents filed in the registry shall be used for communication under this rule.

Explanation 2

For the purposes of this rule, it is hereby clarified that the requirement of submission of replies in electronic mode shall become mandatory after the creation of the e-adjudication platform

Section 454(5) &(6)
Rule 4 of the Companies (Adjudicating Penalties) Rules, 2014


Any person aggrieved by an order made by Adjudication Officer may prefer an Appeal

To Regional Director
(RD) in From ADJ

Within 60 days from the date
of order received by the
aggrieved person

Rule 5 Registration of Appeal

On receipt of Appeal RD shall endorse the date on such Appeal and sign such endorsement **and** if appeal **found in order** shall be duly **registered** and serially numbered.



Provided that appeal found to be **defective**, RD may **allow** not less than **14 days** time to appellant **to rectify** the defects.

Provided further that RD may grant extension of **further** period of **14 days** if appellant satisfies **sufficient cause** for **not rectifying** the defect within 14 days



And

If appellant **fails** to **rectify** the defect within 14 days, then **RD** may **refuse** to **register** such appeal **within 7 days** by order in writing after completion of period of 14 days.

Rule 6 Disposal of appeal by RD

Sub rule (1) Serve copy of Appeal



RD shall serve copy of appeal to **Adjudicating Officer (AO)** against whose order the Appeal is sought along with notice requiring such AO to **file his reply** thereto **within** a period of **21 days**. Provided that **RD may extend** the further period of 21 days if AO satisfies sufficient cause to not file within period of 21 days.

Rule 6 Disposal of appeal by RD

Sub rule (2) Serve copy of reply



A copy of reply, application and written representation filed by AO before RD and shall serve same copy to the Appellant.

Rule 6 Disposal of appeal by RD

Sub rule (3) date of hearing



RD shall **notify** the **parties** date of hearing **before 30 days** from the date of hearing of the Appeal

Rule 6 Disposal of appeal by RD

Sub rule (4) Adjournment




On the date fixed for hearing RD may, subject to the reason to be recorded in writing, pass any order as he thinks fit including order of adjournment of hearing to a future date

Rule 6 Disposal of appeal by RD

Sub rule (5) Order of Ex-parte



In case the Appellant or AO does not appear on the date fix for hearing RD may dispose off the Appeal “Ex-parte”



However RD may set aside the ex-parte order and restore Appeal if Appellant appears afterwards and satisfies the RD that there was sufficient cause for his non-appearance.

As per Section 454(7) of CA 2013

Order of Regional Director

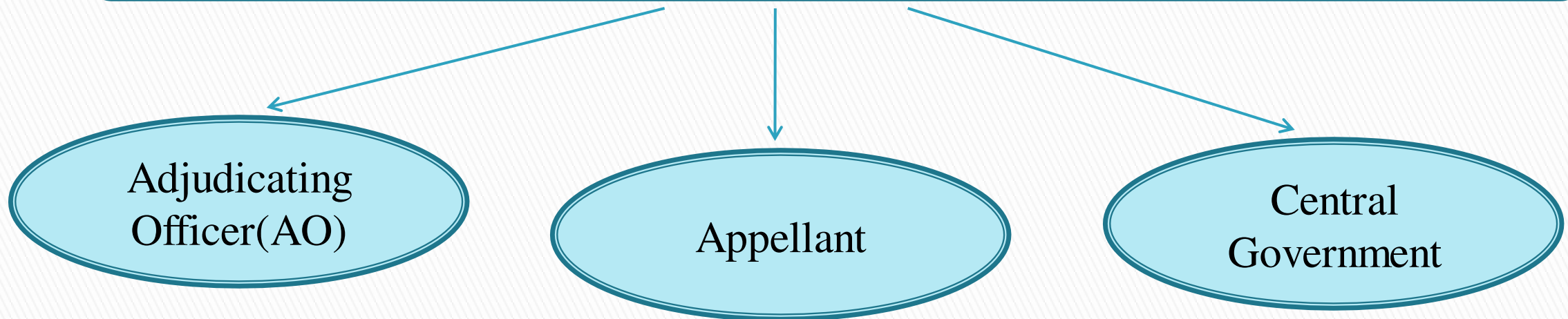


Regional Director may after giving the parties to the Appeal an opportunity of being heard, pass such order as he thinks fit, **confirming, modifying or setting aside the order** appealed against.

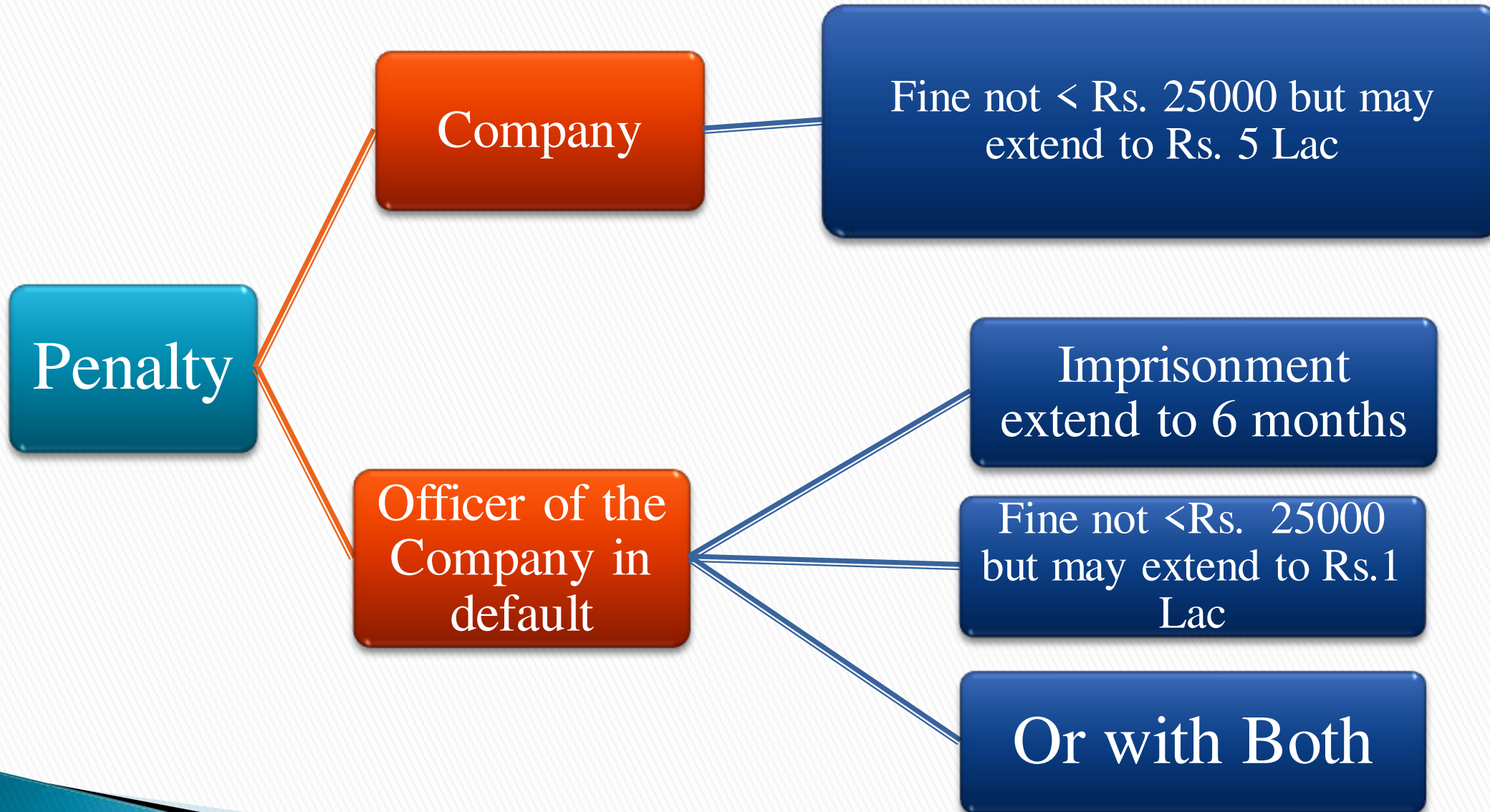
Rule 6 Disposal of appeal by RD

As per sub rule (6) the Order passed shall be dated and signed by RD

As per sub rule (7) Certified copy of every order shall be send to



Penalty u/s 454 (8)



Form MSME-I

INTRODUCTION

✓ The Micro, Small and Medium Enterprises Development Act, 2006 came into force on 2nd October, 2006.

✓ The purpose of the Act was to promote, develop and enhance competitiveness of MSME's and for other matters incidental thereto.

✓ MSME registration is optional but it has several benefits as well.



THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006

- ✓ MSMEs play a **crucial role** in any country by generating **employment, promoting entrepreneurship and earning foreign exchange**.
- ✓ Acknowledging the contribution of MSME , Government had enacted The Micro, Small and Medium Enterprises Development Act, 2006, **providing various initiatives towards boosting entrepreneurship, investment and growth** of this sector .

THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006

However MSMEs face the maximum **problem in raising finance** due to :

- (a) Lack of **collateral**,
- (b) Lack of **trust** due to their weak economic base,
- (c) **Cost of funding** is high as loan can be availed from unorganised sector,
- (d) Process is **time consuming**

BENEFITS OF MSME REGISTRATION

- ✓ Collateral free loans from banks
- ✓ preference in procuring government tenders.
- ✓ Reserved list
- ✓ Reduction in rate of interest from the Banks
- ✓ 50% subsidy on Patent Registration
- ✓ Eligible for Industrial Promotion Subsidy
- ✓ Concession in electricity bills
- ✓ Reimbursement of ISO Certification charges
- ✓ Protection against delayed payments
- ✓ Special consideration on International Trade Fairs



WHAT IS AN ENTERPRISE?

Section 2(e) of the MSMED Act, 2006 defines the term **enterprise** as under:

“enterprise means an **industrial undertaking or a business concern or any other establishment**, by whatever name called, engaged in the **manufacture or production** of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (55 of 1951) or engaged in providing or **rendering of any service or services**”

CLASSIFICATION OF ENTERPRISES

Section 7 of the MSMED Act, 2006 classifies the Enterprises as under:

| Classification of Enterprise | Engaged in Manufacture of Goods (Investment in P/M) | Engaged in the rendering of Services (investment in equipment's) |
|-------------------------------------|--|---|
| Micro Enterprise | < Rs. 25 lakhs | < Rs. 10 lakhs |
| Small Enterprise | >Rs. 25 lakhs but < Rs. 5 Crore | >Rs. 10 lakhs but < Rs. 2 crores |
| Medium Enterprise | >Rs. 5 crores but <Rs.10 crores | >Rs.2 crores but <Rs. 5 crores |

PROPOSED CHANGE IN NORMS OF CLASSIFICATION

From “Investment in Plant and Machinery/ Equipment” to “Annual Turnover” --- However *not been notified yet*.

Enterprises Producing Goods or Providing Services

Micro

- A unit where annual turnover < Rs. 5 crores

Small

- A unit where annual turnover is more than > Rs. 5 crores but < Rs. 75 crores

Medium

- A unit where annual turnover is >Rs. 75 crores but < Rs. 250 crores

REASON FOR CHANGE IN NORMS OF CLASSIFICATION

- ✓ Turnover based criterion resolves many of the ills of the earlier regime.
- ✓ It is transparent, as authorities could always cross check the turnover through platforms such as GSTN. No CA certificate would be required.
- ✓ It also levels the field for new and old enterprises as the comparison is not between historical investments and current investments but between current turnovers.
- ✓ Considering the inflation factor, using “investment” as a criterion would be impractical, alternatively, using “turnover” as a norm would be more realistic.

NOTIFICATION BY MINISTRY OF MSME

(Dated November 2, 2018)

All companies who **get supplies** of goods or services from Micro or Small Enterprises **and** whose **payment** to Micro and Small Enterprise suppliers **exceed 45 days** from the **Date of Acceptance** or the **Date of Deemed Acceptance** of the goods or services (hereafter referred to as “**Specified Companies**”)

Such Specified Companies shall submit a **half yearly return** to the Ministry of Corporate Affairs (MCA) stating the following:

- (a) the amount of **payment due**; and
- (b) the **reasons** of the delay

NOTIFICATION BY MINISTRY OF CORPORATE AFFAIRS U/s
405 of the CA 2013 -- Dated January 22, 2019)

Order

- **Specified Companies** (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019

Scope

- As per this Order, Specified Companies **are required to report** the outstanding dues to the Micro and Small Enterprises on the date of notification of this Order in *Form MSME I*.

Medium

- Aforesaid Notifications applies only to Micro and Small Enterprises and **Medium Enterprise is kept outside** the purview of these Notifications.

REPORTING REQUIREMENT

(Under MCA Notification)

Initial Reporting

- For all outstanding dues to be done *within 30 days* from the date the said publication of the Notification that is 22.01.2019. However, on 21.02.2019, MCA notified that the same to be filed within 30 days from the date of release of Form by MCA

Half-Yearly Reporting

- By *31st October*, for the period from April to September
- By *30th April*, for the period from October to March

NIL Reporting

- Any Company which does not fall within the definition of “Specified companies” *is not required to file NIL return.*

INTENTION OF THIS FORM

- The intention of this Form is to gather the data of delayed payment to MSME **beyond 45 days** from the Day of Acceptance or the Day of Deemed Acceptance.
- Even the Company made **default good** it has to report such delay in this Form .

FEW DEFINITIONS UNDER MSMEDA 2006

DAY OF ACCEPTANCE

- (a) the day of the actual delivery of goods or the rendering of services; or
- (b) where any objection is made in writing by the buyer regarding acceptance of goods or services within 15 days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier

DAY OF DEEMED ACCEPTANCE

Where no objection is made in writing by the buyer regarding acceptance of goods or services within 15 days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services.

MEANING OF OUTSTANDING DUES

- ▶ The Order issued by MCA does not define the term “Outstanding Dues”. However, it can be concluded that it may include:
 - (a) All dues outstanding to the Micro and Small Enterprises for a period exceeding 45 days and
 - (b) Outstanding GST payable on such supplies made.



CONTENTS OF FORM MSME-1

Disclosures

Company Details:

- Name, address and CIN
- PAN
- Email ID

Details of outstanding dues to Micro/Small Enterprise:

- Total amount dues,
- Relevant Financial year,
- Name of Supplier & its PAN,
- Date from which such amount is due.

Reasons for delay:

State the reasons for delay in making the payment of amounts due

The said Form needs to be digitally signed by Director, Manager or CEO of the Company. However, professional certification is not required for this Form.

PENAL PROVISIONS

- No penal provisions mentioned in the **Notifications** for non-filing of the Form MSME-I with MCA.
- However, any incorrect or incomplete information filed by any Specified Companies, in the Form , in any material aspect, would attract **Section 405 (4) of the CA, 2013.**



FINE U/S 405 (4) OF THE CA, 2013

If any company knowingly furnishes any information or statistics which is **incorrect or incomplete** in any material respect,

- ✓ the **company** shall be punishable with fine which may extend to **Rs.25,000/-** and
- ✓ every **officer** of the company who is in default, shall be punishable with **imprisonment** for a term which may extend to **6 months** or with **fine** which shall not be **<Rs.25,000/-** but which may extend to **Rs.3 Lac** , or with both

NATIONAL FINANCIAL REPORTING AUTHORITY

National Financial Reporting Authority



NATIONAL FINANCIAL REPORTING AUTHORITY (NFRA)

- ✓ NFRA is a body **constituted** under the provisions of **Section 132** of the CA, 2013.
- ✓ The **constitution** of this authority is **effective from 1st October, 2018**
- ✓ The **aim** of the Central Government in this regard appears to be:
 - a) Setting up of a separate and independent regulatory body to **assist in** the framing and enforcement of legislation relating to **accounting & auditing** and
 - b) **Improving investor and public confidence** in the financial reporting of an entity.
- ✓ Supposedly, the need for this authority arose as a response to **various corporate scams** in recent times.

ROLE OF NFRA

As per Section 132 (2) of the CA, 2013, role of NFRA includes the following:

- ✓ **make recommendations to the CG** on the formulation and laying down of accounting and auditing policies and standards;
- ✓ **monitor and enforce the compliance** of the accounting standards and auditing standards;
- ✓ **oversee the quality of service of the professionals** and **suggest measures** required for improvement in the quality of service; and
- ✓ perform **such other functions** related to the above



POWERS OF NFRA

- ✓ The NFRA shall have the following powers:
- ✓ To investigate the matters of professional or other misconduct committed by a prescribed class of CA firms or CAs. No other authority can initiate or continue proceedings where the NFRA has initiated an investigation. Such an investigation can be initiated either suo moto (by itself) or on a reference made by the Central Government.

POWERS OF NFRA

The same powers as a Civil Court under the Code of Civil Procedure, 1908, in respect of a suit involving the following matters.

- (a) **Discovery and production of books of account** and other documents, at such place and time as may be specified by the NFRA
- (b) **Summoning** and enforcing the attendance of persons and examining them under oath
- (c) **Inspection** of any books, registers, and other documents of any person at any place
- (d) **Issuing commissions** for the examination of witnesses or documents

POWERS OF NFRA

- ✓ Where **professional or other misconduct is proved**, it shall have the power to impose the following punishment:
 - (a) **Penalty**:
 - For individuals a fine between Rs. 1,00,000 to 5 times the fees received;
 - For firms a fine Between Rs. 5,00,000 to 10 times the fees received;
 - (b) **Debarring the member/firm from practice** as a member of ICAI between **6 months to 10 years** as may be decided

COMPOSITION OF NFRA

- ✓ As per Section 132 (3), NFRA shall consist of a Chairperson, who shall be appointed by CG and maximum 15 members consisting of part-time and full time members as prescribed.
- ✓ As per Rule 3 of NFRA (Manner of appointment and other Terms and Conditions of Service of Chairperson and Members) Rules, 2018 dated 21st March 2018, following persons of the NFRA shall be appointed by the CG:
 - (a) a chairperson;
 - (b) 3 full-time members; and
 - (c) 9 part-time members

TERMS AND CONDITIONS FOR APPOINTMENT

- ✓ Chairperson and full-time members shall have expertise in the field of accountancy, auditing, finance or law.
- ✓ Chairperson and all members shall submit a declaration to the CG confirming that they have no conflict of interest or lack of independence in respect of their appointment.
- ✓ Chairperson and full-time members, shall not be associated with any audit firm including related consultancy firms during the term of office and 2 years after their term.

NATIONAL FINANCIAL
REPORTING AUTHORITY
RULES, 2018

(w.e.f. 13th November, 2018)

APPLICABILITY OF THE RULES

- ✓ As per rule 3(1) of the NFRA Rules, 2018, following class of companies and body corporate will be governed by the Authority:
 - (a) Companies whose securities are **listed** on any stock exchange in India or outside India;
 - (b) **Unlisted public companies** fulfilling *any* of the below mentioned criteria as on 31st March of the immediately preceding financial year:
 - having **paid-up capital of not less than Rs. 500 Cr.**; or
 - having **annual turnover of not less than Rs. 1000 Cr.**; or
 - having in **aggregate, outstanding loans, debentures and deposits of not less than Rs. 500 Cr.**

APPLICABILITY OF THE RULES

- (c) Insurance companies, banking companies, companies engaged in the generation of supply of electricity, companies governed by any special Act or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of Section 1(4) of the Act.
- (d) Any body corporate or company or person or any class of them, referred by the Central Government to the Authority in public interest.

APPLICABILITY OF THE RULES

- (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 under points (a) to (d) above; and
 - the **income or net worth of such subsidiary or associate exceeds 20% of the consolidated income or consolidated net worth** of such company or body corporate referred under points (a) to (d) above

APPLICABILITY OF THE RULES

A company or a body corporate 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.

FILING OF FORM NFRA-1

- ✓ Every existing body corporate other than a company governed by these rules, shall inform the Authority within 30 days of the commencement of these rules, in Form NFRA-1, about the particulars of the auditor as on date of commencement of these rules.
- ✓ Every body corporate, other than a Company defined under Section 2(20), formed in India and governed by this rule, shall within 15 days of appointment of an auditor u/s 139 (1), inform the Authority about the particulars of the auditors appointed by such body corporate, in Form NFRA-1:

Provided that a body corporate governed under Rule 3 (1) (e) of the NFRA Rules, 2018 shall provide details of appointment of its auditors in Form NFRA-1.

CONTENTS OF FORM NFRA-1

- ✓ CIN of the Company
- ✓ Name of the body corporate
- ✓ Details regarding the Auditor:
 - a) Category of the Auditor
 - b) PAN of the Auditor
 - c) Name of the Auditor/Auditor's Firm
 - d) Membership No.
 - e) Address of the Auditor/Auditor's Firm
 - f) Period for which Auditor is appointed
 - g) No. of F.Y.'s for which appointment relates
 - h) Tenure of previous appointment in the same Company in which audit was conducted
- ✓ Whether auditor is appointed in AGM
- ✓ Date of Appointment
- ✓ Whether Auditor is appointed due to casual vacancy



PUNISHMENT INCASE OF NON-COMPLIANCE OF RULES

Rule 13 reads that if a company or any officer of a company or an auditor or any other person contravenes any of the provisions of these rules, the company and every officer of the company who is in default or the auditor or such other person shall be punishable as per the provisions of section 450 of the Act.



SECTION 450 OF CA, 2013

If a Company or any officer of a Company or any other person contravenes any of the provisions of this Act or the rules made thereunder, and for which **no penalty or punishment is provided** elsewhere in this Act, **the Company and every officer of the Company** who is in default or such other person shall be punishable with **fine which may extend to Rs 10,000/-** and where the **contravention is continuing** one with a further **fine which may extend to Rs. 1,000 for every** day after the first during which the contravention continues.

EXTENSION FOR FILING FORM NFRA-1

(Vide Circular dated 13th December, 2018)

After considering several representations regarding extension of the last date of filing Form NFRA-1, the time limit for filing Form NFRA-1 will be 30 days from the date of deployment of this Form.



**Due Date
Extension**

***BANNING OF UNREGULATED DEPOSIT
(BUD),
SCHEMES ORDINANCE, 2019***

Introduction

- ▶ President of India vide Notification dated February 21, 2019 has promulgated **The Banning of Unregulated Deposit Schemes Ordinance, 2019** to protect the interest of depositors and for matters connected therewith or incidental thereto.
- ▶ This Ordinance is **applicable w.e.f February 21, 2019** and it applies to whole of India except the State of Jammu and Kashmir.
- ▶ It also seeks to **amends Three laws**,
 - (1) The Reserve Bank of India Act, 1934,
 - (2) The Securities and Exchange Board of India Act, 1992 and
 - (3) The Multi-State Co-operative Societies Act, 2002 (Refer II Schedule of the Ordinance).

The Banning of Unregulated Deposit Schemes Ordinance, 2019

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graph TD; A["The Banning of Unregulated Deposit Schemes Ordinance, 2019"] --> B["8 Chapters"]; A --> C["42 Sections"]; A --> D["2 Schedules"];
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**8
Chapters**

**42
Sections**

**2
Schedules**

CHAPTERS

I – Preliminary (Section 1-2)

II- Banning of Unregulated Deposit Schemes (Section 3-6)

III- Authorities (Section 7-8)

IV- Information on Deposit Takers (Section 9-11)

V-Restitution to Depositors (Section 12-20)

VI- Offences & Punishments (Section 21-27)

VII- Investigation, Search & Seizure (section 28-32)

VIII- Miscellaneous (Section 33-42)

SCHEDULES

Schedule I - Regulated Deposit Schemes

Schedule II - Amendment to certain enactments like,

- ▶ The RBI Act, 1934
- ▶ The SEBI Act, 1992
- ▶ The Multi-State Co-operative Societies Act, 2002

What is Deposit under BUD ?

As per Section 2(4) of the Ordinance **Deposit means**

- ✓ An amount of **money received** by way of an advance or loan or in any other form, by **any Deposit Taker**
- ✓ with a **promise to return** whether after a specified **period** or otherwise,
- ✓ either in **cash or in kind** or in the form of a specified service,
- ✓ **with or without any benefit** in the form of interest, bonus, profit or in any other form.

Following are excluded from the definition of Deposits Under BUD

- a) Amount received as loans received from Banks (including co-operative banks)
- b) Amount received as loan or financial assistance from PFI/NBFCs/Insurance Companies;
- c) Amounts received from the Government of Statutory Authority or from any other source whose repayment is guaranteed by Government.

- d) Amount **received from foreign sources** like,
- i. Foreign Governments
 - ii. Foreign or international banks, multilateral financial institutions
 - iii. Foreign Government owned development financial institutions
 - iv. Foreign export credit collaborators
 - v. Foreign bodies corporate
 - vi. Foreign citizens
 - vii. Foreign authorities or person resident outside India
- e) Amount received by way of **capital contribution** by partner in partnership firms / LLP

- f) Amounts received by an individual way of loan from his relatives or in case of any firm, amounts received by way of loan from the relatives of any of its partners
- g) Amounts received as credit by a buyer from a seller on the sale of any property (whether movable or immovable)
- h) Amounts received by an asset re-construction company
- i) Any deposit made u/s 34 or an amount accepted by a political party u/s 29B of Representation of People Act, 1951
- j) Any periodic payment made by the members of the self-help groups

- k) Any amount collected for such purpose as **may be prescribed by the State Government**
- l) **Business Receipts** : Any amount received in the course of, or **for the purpose of business** and bearing a genuine connection to such business including:
- i. Payment, advance or part payment for the **supply or hire of goods or provision of services** ;
 - ii. Advance received as a consideration of an **immovable property** under an agreement or arrangement ;
 - iii. **Security or dealership deposited** for the performance of the contract for supply of goods or provision of services ; or
 - iv. **Advance under the long-term projects** for supply of capital goods except those specified in item (ii) above

- ▶ Provided that if the amounts received under items (i) to (iv) become refundable, such amounts shall be **deemed to be Deposits on the expiry of 15 days** from the date on which they become due for refund.
- ▶ Provided further that , where the said amount become refundable, due to the **Deposit Taker not obtaining necessary permission or approval under the law**, to deal in the goods or properties or services for which money is taken, such amounts shall be deemed to be **Deposits**.

Who is Depositor ?



As per Section 2(5) of the Ordinance, the Depositor means any person who makes a Deposit under this Ordinance.

Who is Deposit Taker

Section 2(6) of the Ordinance defines “Deposit Taker” comprehensively and covers following entities which receives or solicit deposits

1. Any Individual or group of individuals **does not cover Hindu Undivided Family (HUF)**
2. A Proprietorship concern
3. A Partnership Firm
4. A Limited Liability Partnership
5. A Company
6. An Association of Persons
7. A Trust (Private / public/ registered or unregistered)
8. A Co-operative or Multi-state co-operative society
9. Any other arrangements of whatsoever nature

However, following entities are not considered as Deposit Taker

- a) A **Corporation** incorporated under Act of Parliament or State Legislature
- b) A Banking Company, a corresponding new bank, State Bank of India, a subsidiary bank, Regional Rural Bank, a co-operative bank or Multi State Co-operative Bank as defined in the **Banking Regulation Act, 1949.**

Definition of Person

PERSON: As per Section 2 (10) of the Ordinance, a Person includes the following:

- an individual;
- a Hindu Undivided Family;
- a Company;
- a Trust;
- a Partnership firm;
- a Limited Liability Partnership;
- an Association of Persons;
- a co-operative society registered under any law for the time being in force relating to co-operative societies; or
- every artificial juridical person, not falling within any of the preceding sub-clauses

REGULATED DEPOSIT SCHEME:



Regulated Deposit Scheme means the Schemes specified **First Schedule**, which are regulated by the following Nine Rregulators:

| | |
|-------------------------------------|---|
| 1. SEBI | 6.Pension Fund Regulatory & Development Authority |
| 2. RBI | 7.Employees Provident Fund Organisation |
| 3. IRDA | 8.Central Registrar, Multi-State Co-operative Societies |
| 4. State/Union Territory Government | 9. Ministry of Corporate Affairs |
| 5. National Housing Bank | |

What is Unregulated Deposit Scheme



As per Section 2(17) of the Ordinance ‘Unregulated Deposit Scheme Means



A scheme or an arrangement under which deposits are accepted or solicited by any Deposit Taker **by way of business**



And

which is not a Regulated Deposit Scheme.

Section 3 – Banning of Unregulated Deposit Schemes

- ▶ On and from the date of commencement of this Ordinance
- ▶ The **Unregulated Deposit Scheme shall be banned** : and
- ▶ **No Deposit Taker** shall directly or indirectly
 - promote,
 - operate,
 - issue any advertisement
 - soliciting
 - participation or enrolment in or accepting deposits in pursuance of an Unregulated Deposit Scheme.

Section 4 – Fraudulent default in Regulated Deposit Schemes

No Deposit Taker while accepting deposits pursuant to Regulated Deposit Scheme, shall commit any fraudulent default,

- ✓ in the repayment or return of deposit on maturity or
- ✓ in rendering any specified service promised against such deposit.

Note: Section 4 is not applicable to companies (as per proviso to Section 27 of the Ordinance)

Section 5 – Wrongful inducement in relation to Unregulated Deposit Schemes

No person by whatever name called shall knowingly,

- a) make any statement, promise or forecast, which is false, deceptive or misleading in material facts or
- b) deliberately conceal any material facts to induce another person to invest in, or
- c) become a member or participant of any Unregulated Deposit Scheme.

Section 6 – Certain scheme to be Unregulated Deposit Scheme

- Prize chit or
- Money circulation scheme

is banned under the provisions of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978
and

shall be deemed to be an Unregulated Deposit Scheme under this Ordinance.

AUTHORITIES

- ▶ Chapter III contains provisions empowering the Govt. to appoint “Competent Authority” to carry out the provisions (such as conducting inquiries and attaching properties) and constitute “Designated Courts” for trying offences.
- ▶ It provides for the appointment of one or more officers, not below the rank of Secretary to the SG or CG, as the Competent Authority.
- ▶ The Competent Authority shall have the same powers as vested in a Civil Court under the Code of Civil Procedure, 1908.
- ▶ It also provides for the constitution of one or more Designated Courts in specified areas. This Court will be headed by a Judge not below the rank of a District and Sessions Judge, or Additional District and Sessions Judge.

POWER OF AUTHORITY TO CALL FOR INFORMATION

- ▶ The CG to designate an authority to create an online central database for information on Deposit Takers operating in India.
- ▶ Every Deposit Taker shall intimate the authority about its business (It applies to Company incorporated under the Companies Act, 2013)
- ▶ The Competent authority, if it has reason to believe that the Deposits are being solicited or accepted to an Unregulated Deposit Scheme, he may direct the Deposit Taker to furnish necessary information, documents and particulars related to deposits receipt.

RESTITUTION TO DEPOSITORS

| SECTION | PROVISIONS |
|---|--|
| Sec. 12- Priority of depositors' claim | Save as otherwise provided in SARFAESI, 2002 or IBC, 2016, any amount due to depositors from a Deposit Taker shall be paid in priority over all other debts and all revenues, taxes, cesses , and other rates payable to the appropriate government or the local authority. |
| Sec.13- Precedence of attachment | Save as otherwise provided in SARFAESI, 2002 or IBC, 2016, an order of provisional attachment passed by the Competent Authority, shall have precedence and priority , to the extent of the claims of the depositors, over any other attachment for any authority competent to attach property for repayment of any debts, revenues, taxes, cesses and other rates payable to the appropriate Government or the local authority. |

| SECTION | PROVISIONS |
|--|--|
| <p>Sec. 14- Application for confirmation of attachment & sale of property</p> | <p>The Competent Authority shall within a period of 30 days which may extend up to 60 days , for reasons to be recorded in writing , from the date of Order of provisional attachment file an application before the Designated Court for making the provisional attachment absolute, and for permission to sell the property so attached by public auction or private sale .</p> |
| <p>Sec. 15– Confirmation of attachment by Designated Court</p> | <p>The Designated Court shall then issue notice to the Deposit Taker or any person whose property is attached under section 14, to show cause, within a period of 30 days, as to why the order of attachment should not be made absolute and the properties so attached be sold.</p> <p>The Designated Court shall pass such Order or issue such direction for equitable distribution among the Depositors of the money realized out of the sale and it shall endeavor to complete the proceedings with in a period of 180 days from date of receipt of application.</p> |

Continue...

| SECTION | PROVISIONS |
|---|--|
| Section 19- Appeal to High Court | Any person including the Competent Authority, if aggrieved by any final order of the Designated Court under this Chapter, may appeal to the High Court, within a period of 60 days from the date of such order, unless High Court is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. |

OFFENCES & PUNISHMENTS

| SEC | OFFENCES | IMPRISONMENT | FINE |
|-----|---|--------------------|--|
| 21 | <u>Solicits</u> deposits in contravention of section 3 (Banning of unregulated Deposit Schemes) | 1 year to 5 years | Rs. 2 lakhs to Rs.10 lakhs |
| | <u>Accepts</u> deposits in contravention of section 3 | 2 year to 7 years | Rs. 3 lakhs to Rs. 10 lakhs |
| | <u>Accepts</u> deposits in contravention of section 3 AND fraudulently defaults in repayment or in rendering any specified service | 3 year to 10 years | Rs. 5 lakhs to Twice the aggregate funds collected |

OFFENCES & PUNISHMENTS

| SEC | OFFENCES | IMPRISONMENT | FINE |
|-----|---|-------------------|---|
| 22 | Contravention of section 4 (Fraudulent default in Regulated Deposit Schemes) | Up to 7 years | Rs. 5 lakhs to Rs. 25 crores or 3 times of profits made out of the fraudulent default or with both. |
| 23 | Contravention of section 5 (Wrongful inducement in relation to Unregulated Deposit Schemes.) | 1 year to 5 years | Up to Rs. 10 Lakhs |

OFFENCES & PUNISHMENTS

| SEC | OFFENCES | IMPRISONMENT | FINE |
|-----|--|--------------------|-------------------------------|
| 24 | Repeat Offenders | 5 year to 10 years | Rs. 10 lakhs to Rs. 50 Crores |
| 26 | Contravention of Section 10 (Not intimating business by Deposit Taker to the Authority) | N.A | Up to Rs. 5 lakhs |

INVESTIGATION, SEARCH AND SEIZURE

- ▶ Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Ordinance , except the offense u/s 22 and 26 , shall be **cognizable and non bailable.**
- ▶ The Competent Authority shall refer the matter to CG for **investigation by CBI.**
- ▶ Section 31 gives **power to any police officer**, not below the rank of an officer-in-charge of Police Station, with the written authorization of an officer not below the rank of Superintendent of Police, and subject to the rule **may enter any building, or place take search and seize records and properties.**

MISCELLANEOUS

Section 33- Publication of advertisement of Unregulated Deposit Scheme

Where any newspaper or other publication of any nature, contains any statement, information or advertisement promoting, soliciting deposits for, or inducing any person to become a member of any Unregulated Deposit Scheme, the appropriate Government **may direct** such newspaper or publication **to publish a full & fair retraction, free of cost**, in the same manner & in the same position in such newspaper or publication as may be prescribed

▶ Section 34-Ordinance to have overriding effect

Save as otherwise expressly provided in the Ordinance, the provisions of the Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force, including any law made by any State or Union territory.

▶ Section 35 to 42:

Powers are provided to Central Government, State Government to make and lay the Rules, remove difficulties and amend First Schedule

FIRST SCHEDULE - REGULATED DEPOSIT SCHEMES

This Schedule contains regulator-wise list of Regulated Deposit Schemes:

| | |
|----------------------------------|---|
| SEBI | Pension Fund Regulatory & Development Authority |
| RBI | Employees Provident Fund Organisation |
| IRDA | Central Registrar, Multi-State Co-operative Societies |
| State/Union Territory Government | Ministry of Corporate Affairs |
| National Housing Bank | |

SECOND SCHEDULE - AMENDMENT TO CERTAIN ENACTMENTS

Following 3 enactments shall be amended in the manner specified in Schedule II



The RBI Act, 1934;
The SEBI Act, 1992; and
The Multi-State Co-operative Societies Act, 2002.



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