

DEPOSITS-COMPANIES ACT 2013

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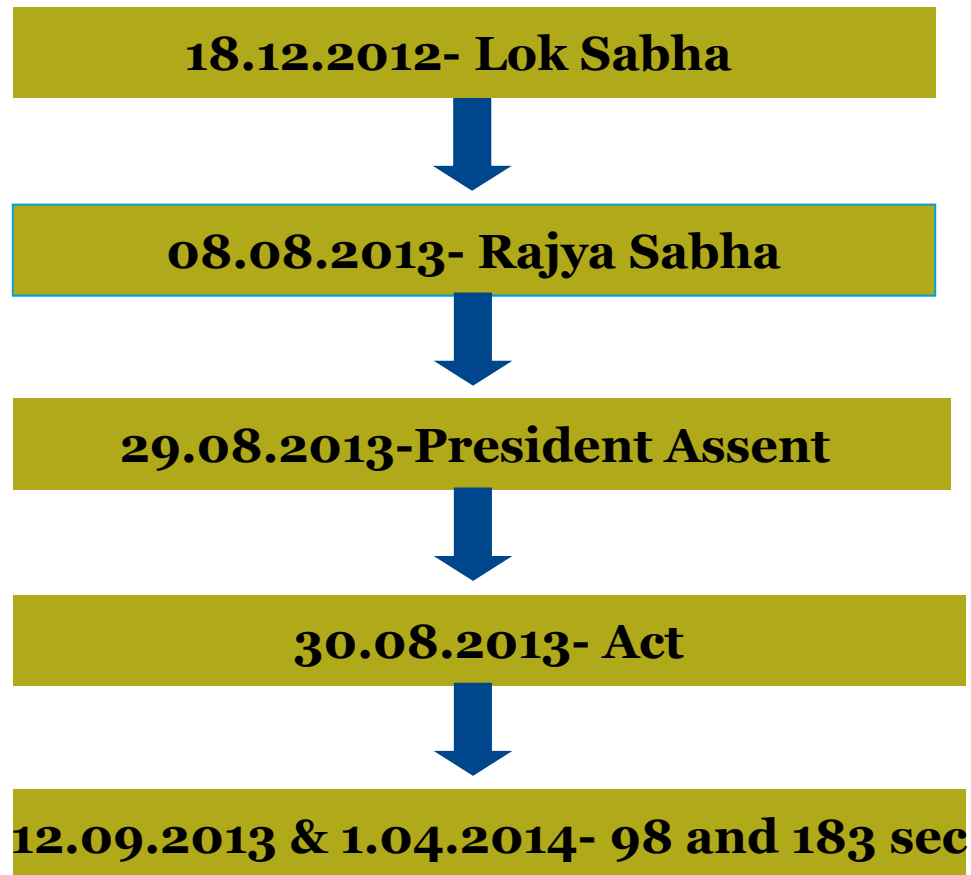
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Coverage of the presentation

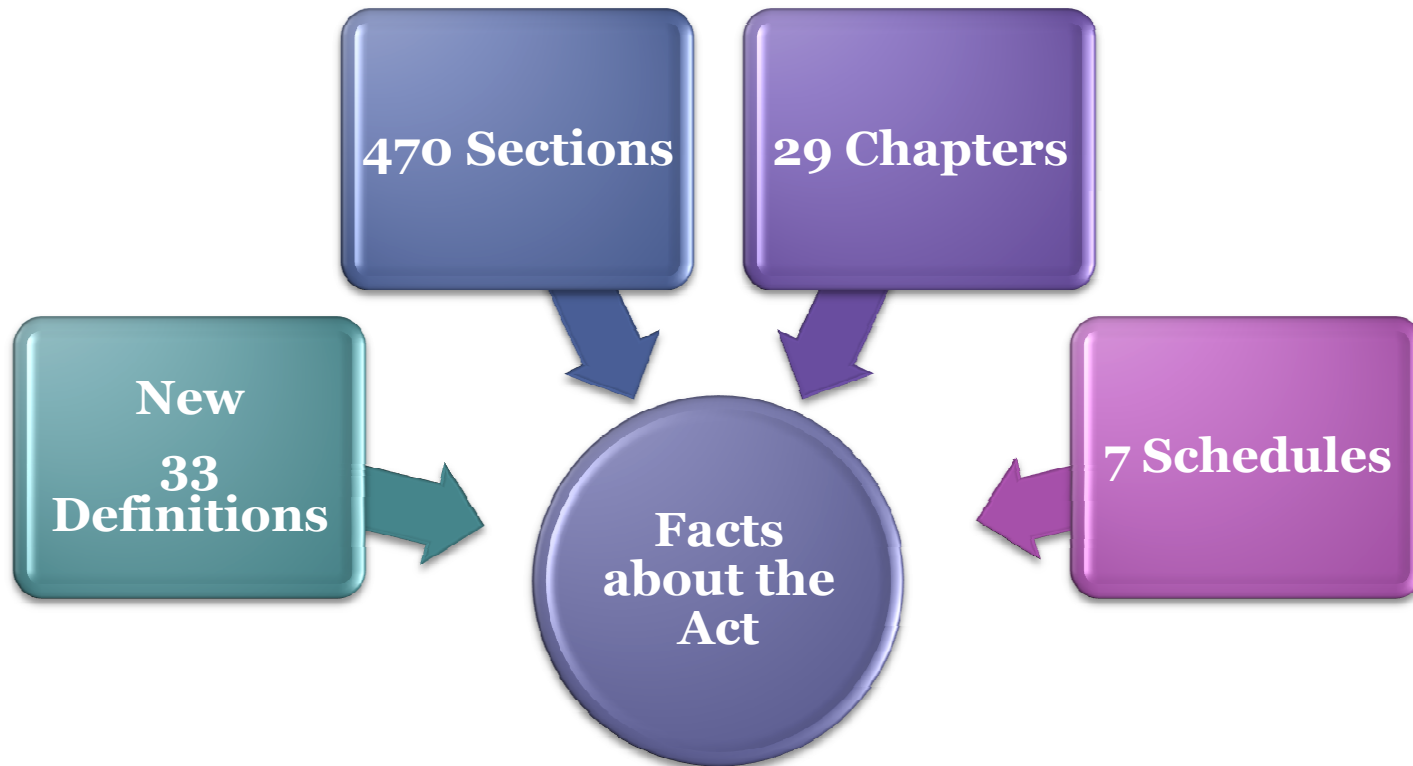
- Facts cum Companies Act 2013 Overview
- Deposits- History
- What is Deposits
- Applicability
- Deemed Deposits
- Procedural Requirements
- Penal Provisions
- Case Study

Brief Facts





Company Law Overview



Deposits



Deposits- Preface



Sahara Case-

- Two Sahara companies, Sahara India Real Estate Corporation (SIREC) and Sahara Housing Investment Corporation Limited (SHICL) -OFCDs - 30 million investors for Rs. 25,000 crore
- ROC allowed the Sahara Group companies to go ahead with the proposal
- SEBI claimed it to be a public issue



- Open Ended for 10 years.
- Sahara Prime City submitted RHP to SEBI to tap the stock market, this is when it was found that the money raised through OFCDs was camouflaged as private placements
- These OFCDs are now covered under Deposits.

Saradha Case



- Saradha group raised money from investors
- SEBI has acted against the Saradha group-CIS
- Saradha group claimed it to be chit funds which should be under the jurisdiction of Central Government and not SEBI and required to comply only with the Companies Act.

Deposits- Definition

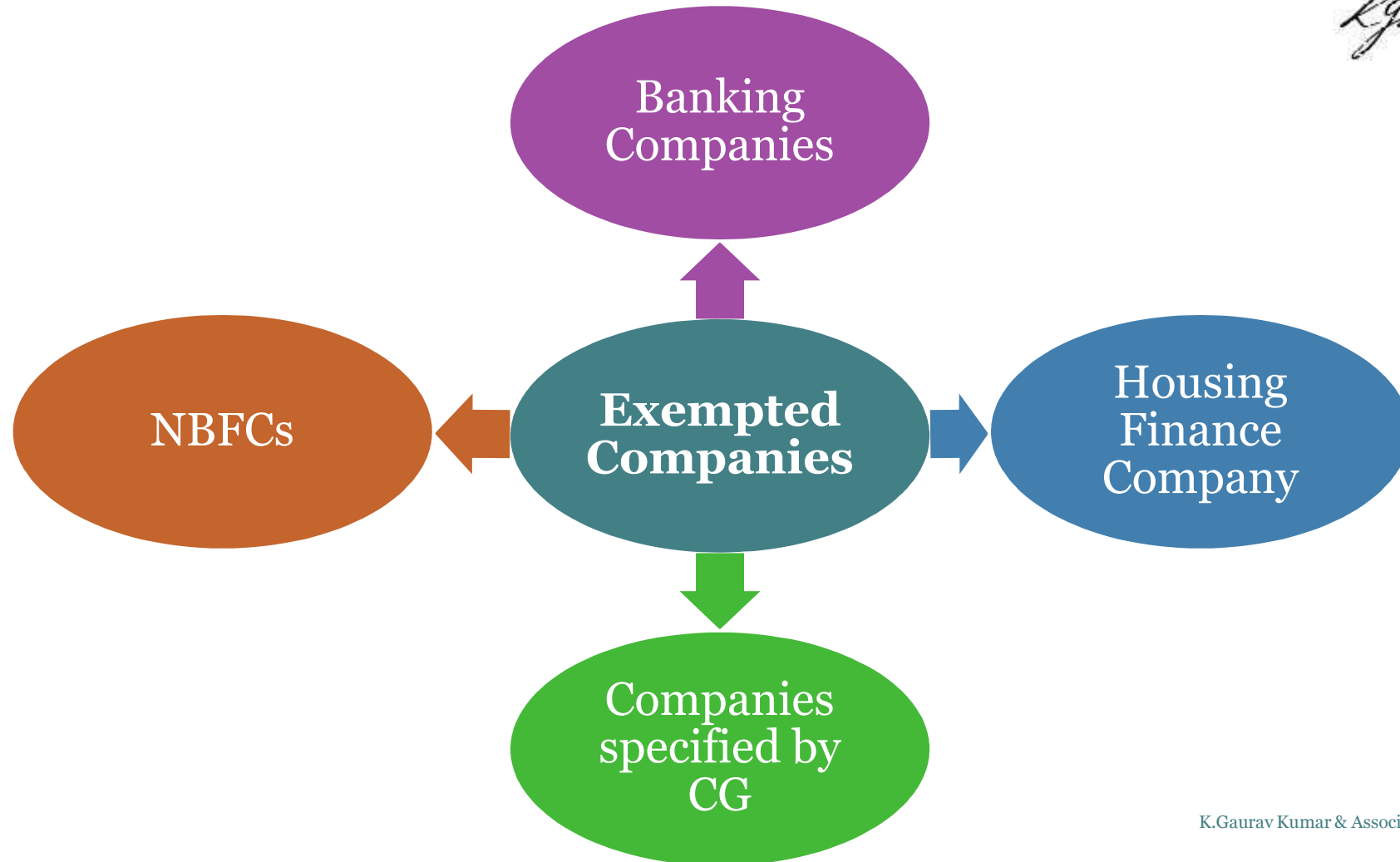


- Section 2(31) of the Act, defines “deposit” which includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount received as provided in Rule 2(1)(c).

Overview on Dealing Sections



- Chapter V of the Act.
- Four sections viz. sections 73 to 76.
- Section 73, 74(1) and 76 are operative from 1st April, 2014.
- All Sections of Deposits operative from June 6th 2014
- The Companies (Acceptance of Deposits) Rules, 2014 (Rules) – notified
- Applies to all companies except





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Exempted Deposits



- As per Rule 2(1)(c) the following amounts received by a company are not to be considered as Deposits under the above provisions.
 - (i) Receipt from the SG, CG ;
 - (ii) Receipt from FIG,FG,;
 - (iii) Any loan or facility from any banking company,



- (iv) Any loan or financial assistance from any Public Financial Institutions notified by the Central Government;
- (v) Any amount received against issue of commercial paper;
- (vi) Inter-corporate Deposits;
- (vii) Any amount towards share application money received up to 60 days;



- (viii) Receipt from a person who was a director along with declaration;
- (ix) Any amount raised by issue of secured bonds or debentures or bonds or debentures.
- (x) Any amount received from an employee of the company not exceeding his annual salary
- (xi) Any non-interest bearing amount received or held in trust;
- (xii) Any amount received in the course of, or for the purposes of, the business of the company,-



- (a) as an advance for the supply of goods or provision within a period of 365 five days. There was no such limit of 365 days under the Old Act.
- (b) as advance, against consideration for sale of any property;
- (c) as security deposit for the performance of the contract for supply of goods or provision of services;
- (d) as advance received under long term projects for supply of capital goods.
- (xiii) Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to specified conditions.



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Deemed Deposit



- a. **Share application money.**
- b. **When money is received from the director or shareholder** without obtaining a declaration.”
- c. **Bonds and debentures** issued exceeding market value of the assets.
- d. **Deposits by Employees in excess of their annual salary** in the nature of Non-interest bearing security deposits.
- e. If the company does not refund the amount received in the course of business as **advance** for dealing in goods or properties or services even when it does not have any permission to deal in the same.



Eligible Companies



Eligible Companies

Section

- 76(1)

Criteria

- Public Co
- Networth > 100 crs or Turnover > 500 crs

Approval

- Ord. Resoln. – amt is within 180(1)(c) limits
- Spl. Resoln. – amt exceeds 180(1)(c) limits



Points of Differentiation



Points of Differentiation	Private Company	Public Company	Eligible Company
Source	From Directors and Members	From Directors and Members	From Directors and Members and Public
Directors	No Limits , Declaration Required	No Limits , Declaration Required	No Limits , Declaration Required
Members	25 % of P +R, Compliance of 73 (2) of the Act	25 % of P +R, Compliance of 73 (2) of the Act	10 % of P +R, Compliance of 73 (2) of the Act and 76 of the Act
Public	Not Allowed	Not Allowed	25 % of the P+ R. Gov.Co -35 %



Points of Differentiation	Private Company	Public Company	Eligible Company
Advertisement	Not Required	Not Required	Required
Credit Rating	Required	Required	Required
Website Display	Optional	Optional	Mandatory



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Points of Parity

Common Points For All Companies



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Secured / Unsecured

- Both can be issued

Tenure

- 6 > 36 months
- 10 % of P+ R not less than 3 Months

Joint Ownership

- 3 > for joint ownership

**Common
Provision
For All
Compani
es**

Rate of Interest

- < RBI rate

Deposit Insurance

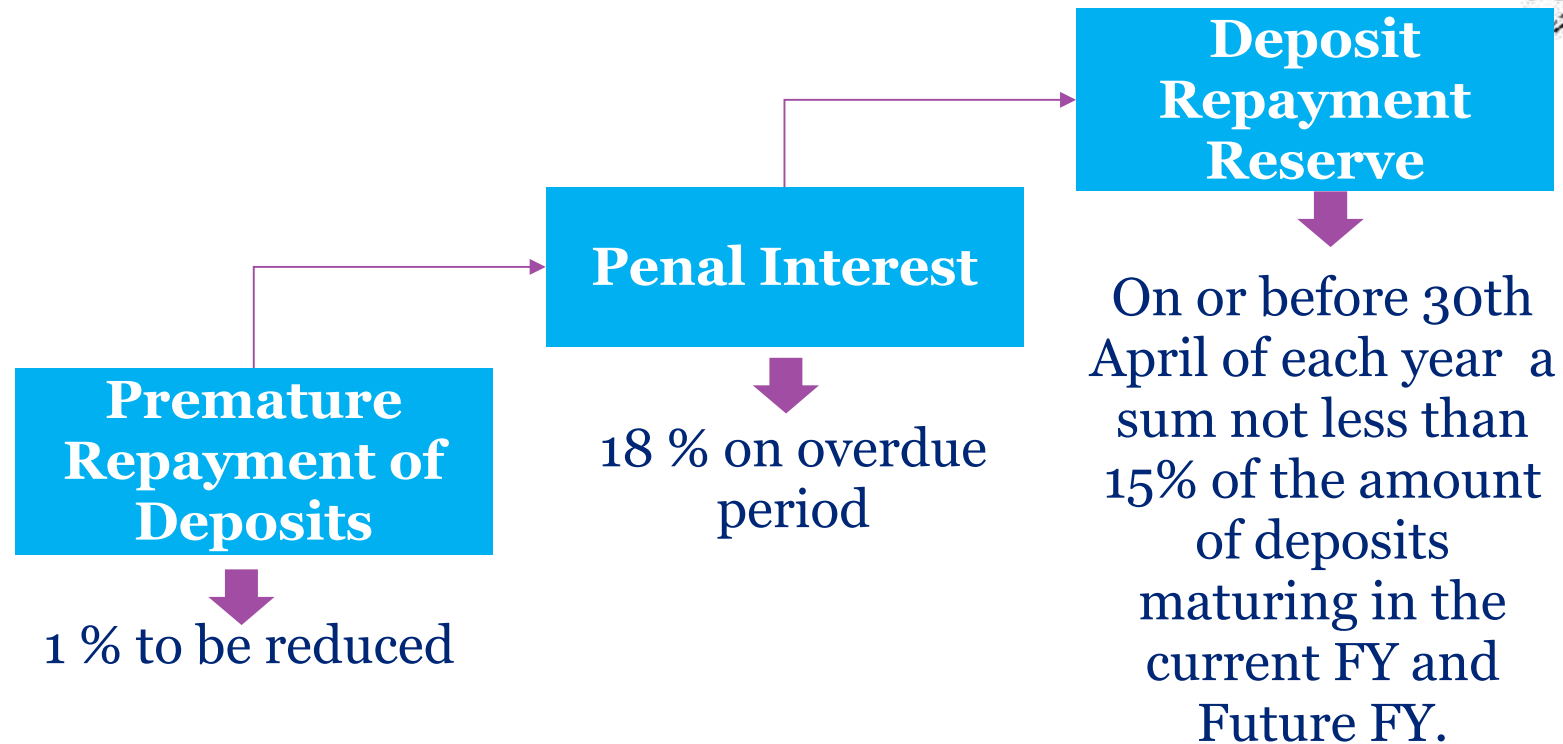
- Before the issue of circular

Unsecured Deposits

- To be quoted at all places



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Types of deposits

Secured

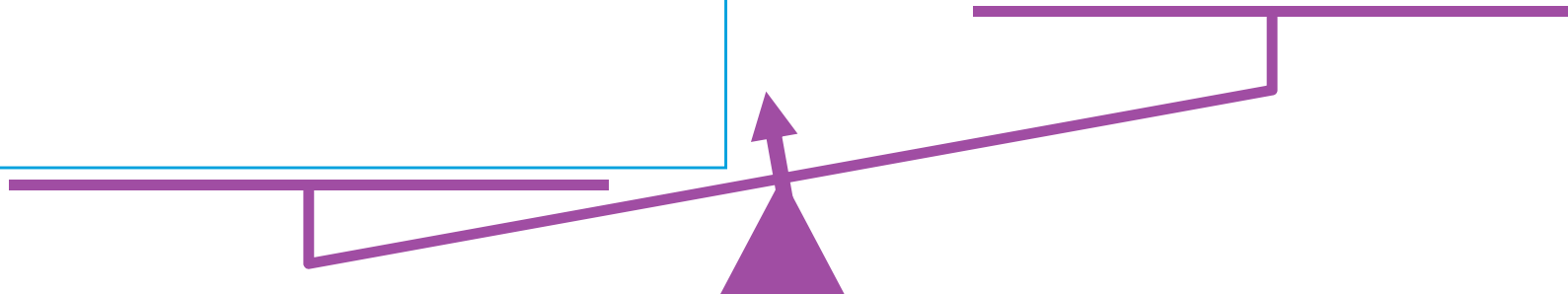
Requirements

- Appointment of trustee
- Form DPT-2 – at least 7 days before issue of circular
- Meeting of deposit holders

Unsecured

Requirements

- Appointment of trustee – N.A.
- Form DPT-2 – N.A.



Procedure



Special/ Ordinary Resolutions from the members (Prior approval in case of eligible companies+MGT-14 before invitation)

Credit Rating (Intial+every year)

Secured deposits - Appoint trustees (consent)

Deposit Insurance - 30 days before issue of circular/ advertisement (exemption till 31st March 2015 – notification dated 06th June 2014)

Board resolution - deposits+circular by majority+signing of deposit receipts + DPT 1

Secured deposits - DPT-2 (Trust deed), CHG-9
(creation of charge within 30 days of acceptance)

Copy of Circular with RoC before 30 days of issue
of Circular (GNL-2)

Issue circular +upload on the website – validity

advertisement in English & Vernacular
Newspaper

Application from intending depositor containing
declaration





Joint holders and power to nominate

receipt within 21 days

Creation of DRR on or before 30th April with Sch.

Bank Return of Deposits in DPT-3 on or before
30th June

Register of deposits

Companies which have accepted the Deposits as per new act.



- Havells India Limited
- Godrej & Boyce Manufacturing Company Limited

Gold Deposit Schemes



- Schemes – Not covered under C.Act 1956
- Rule 2 (a) of C.Act 2013
- A promise to pay cash or kind.(Usually Kind)
- Current RBI Rate
- Offering more than RBI Rate- Rule 3 (6)

UNDERSTANDING OF DEPOSITS FOR A PRIVATE LIMITED COMPANY

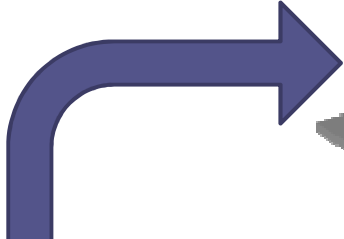


- 1. The family having net owned funds of Rs. 50.00 lacs starts business in pvt. Limited company.
- 2. There are only two directors who are also the shareholders of the Company v.i.z. Father and daughter.
- 3. Directors have net owned funds of Rs. 25.00 lacs only.



- 4. Under the current scenario, they need Rs. 25.00 lacs to run the business which their relatives, can made available to them.
- 5. Unfortunately they can not do so, because they are not directors/ members (upto 25%) of the company.
- 6. Even directors also can not borrow such money from those relatives in their individual capacity for further bringing the same in to the company. Because there is restriction of borrowed funds also.

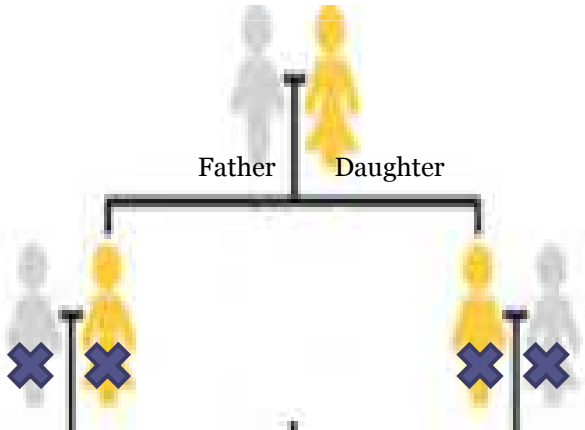
Thus the Company is forced to take financial assistance from bank despite having own money in their pocket.



Company



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CONTENTIOUS ISSUES

- Compliance Cost Goes Up
- Mandatory Insurance Cost
- Mandatory Credit Rating Cost
- Family having self Sufficient Funds are forced to approach banks.
- Employment of Trustees



- Retail investors sufferers -especially retired persons / widows.
- 73 (2) (e) – No Earlier Defaults in Deposits
- Section 74 - repayment of deposits - states that the deposits accepted before commencement of the new Act have to be repaid within one year from the commencement of the new Act. However, in Rule 19 provides that earlier deposits accepted under the 1956 Act can be repaid on the due dates for the remaining period of such deposits.



Existing Deposits under old act

Section 74

- DPT-4 on or before 30th June 2014
- Repay within 1 year or due date whichever is earlier
- Can approach Tribunal for extension of time
- 06th June 2014- granted powers of Tribunal to CLB

Explanation to Rule 19

- Overriding the Act
- Applicable to public deposits
- R+I in accordance with T&C of such deposits
- But comply with the new act and rules requirements



Recent Notifications

Companies can accept deposits without deposit insurance for one year i.e. till 31.03.2015

Investors who were defaulted under section 73 (4) can now approach the CLB.

CLB) has been allowed to exercise the powers to allow further time to companies for repayment of deposits/interest in certain cases



PENALTY PROVISIONS



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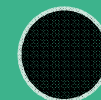
- **Company** - Deposit Amount+Fine not less than Rs. 1 cr but upto Rs. 10 crs
- **Officer in default** - imprisonment upto 7 yrs or fine not less than Rs. 25 L but upto Rs. 2 crs

Section 74(3) – Non-repayment of deposit/ interest on time



- Every officer responsible – personally liable for all the losses/ damages incurred by depositors without any limitation to liability
- Liability under section 447 – imprisonment (6m to 10 yrs)+fine upto 3 times the amount of fraud

Section 75 – For Fraudulent intentions



- Company and officer in default – fine upto Rs. 5000
- Continuing offence – Further fine of Rs. 500 per day

Rule 21 – Penalty for contravention of provisions of act and rules not provided for



CASE STUDY 1



ABC Private Ltd has a Share Capital of Rs 5 Crore and it wishes to raise another Rs 5 Crore by the following means:-

- 2.5 Crore from Government Agency, Financial institutions, Banks or by way of Commercial Paper.
- 25 Lakhs by way of Share Application.
- 25 Lakhs from Director by way of Loan.
- 25 Lakhs from issue of bonds and debentures.
- 25 Lakhs from ICD.



- 12.5 Lakhs from Employees.
- 25 Lakhs as business advance from customer.
- 25 Lakhs as Advance against property Sale.
- 12.5 Lakhs as security deposit.
- 25 Lakhs from promoter or Relative.
- 25 Lakhs from relative of a Director.
- 25 Lakhs from a shareholder.

CASE STUDY 2



On 1st April 2014, following loans are standing outstanding in the books of M/s ABC Pvt Ltd. The board has sought your advice regarding the treatment of them.

- Rs 1 Crore from Director.
- Rs 50 Lac from shareholder.
- Rs 50 Lac from relative of a Director
- Rs 50 Lac as a business Advance.



- Rs 2 Crore as advance against property.
- Rs 1 Crore as share application money.
- Rs 2 Crore as ICD
- Rs 1 Crore from unknown sources or non relatives



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THANK YOU