

Seminar on Important Aspects on Companies Act,2013 by WIRC, ICAI

Acceptance of Deposits, Loans & Investment by Companies

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Today's Agenda:

- ❑ Acceptance of Deposits – Section 73 to Section 76
- ❑ Important provision of Companies(Acceptance of Deposit) Rules,2014
- ❑ Loans to Directors, "etc."- Section 185
- ❑ Loan and Investment by Company- Section 186
- ❑ Related Party Transaction-Section 188
- ❑ Companies(Amendment) Act, 2017- not notified completely
- ❑ Practical Case Studies

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Acceptance of Deposits

Section 73: Prohibition on acceptance of Deposit from Public (*w.e.f. 01.04.2014*)

(1) *On and after commencement of this Act, no company shall invite, accept or renew deposits under this Act from public except in a manner provided under this chapter:*

Exclusions:

(a) Banking Company

(b) Non- Banking Finance Company registered with RBI

(c) Housing Finance Company registered with NHB

(d) Any other Company specified by RBI

Issue: Whether deposit accepted under Co's Act,1956 renewed after 01.04.2014 need to comply with the provision of this section?

Section 73.....

(2) The **Company** may "accept" deposit from its members on such terms and conditions including security and interest as may be agreed upon between the company and its members:

Requirement:

- Issue a circular giving all the relevant details like for e.g. Financial Position, Credit rating, total depositor.
- Filing the copy of the circular with registrar within 30 days before date of issue of circular.
- Deposit repayment reserve account-Deposit **20%15%** of the amount of deposits maturing during the **following** FY ~~and next following FY~~
- ~~Provide deposit insurance~~
- Certify that the company has not committed any default in repayment of deposit accepted before or after the commencement of act.
- Providing security including creation of charge on property.

Notification dated 13th June 2017

- *Clauses (a) to (e) of Sec 73 (2) – not applicable to a **Private Co**:*
 - *Accepts monies from members > 100% (PSC+ FR+SP); **OR***
 - *Is a ‘start-up’, for five years from date of its incorporation; **OR***
 - *Which fulfils the following:*
 - *(a) which is not an associate or a subsidiary company of any other company;*
 - *(b) 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 fifty crore rupees, whichever is lower; and***
 - *(c) such a company has not **defaulted** in the repayment of such borrowings subsisting at the time of accepting deposits under this section:*

Section 76: Acceptance of Deposit from Public by Certain Companies

- (1) Notwithstanding anything contained in Section 73, **a public company**, having such **net worth or turnover** as may be prescribed, may **accept deposits** from persons **other than its members** subject to compliance with the requirement provided in sub-section (2) of Section 73 and subject to rules as the CG may prescribe.

First Proviso:

"such company need to obtain rating from recognized credit rating agency at the time of inviting the deposit and the rating shall be obtained every year during the tenure of deposit"

Second Proviso:

"Every company accepting secured deposit from the public shall create a charge on its assets within 30 days from acceptance to the extent of amount of deposit accepted"

Section 76 r.w. CAD Rules, 2014

□ Eligible company (Rule 2(e) of CAD Rules 2014):

- Net worth –not less than INR 100 cr.

OR

- Turnover – not less than INR 500 cr.

AND

- Prior consent of the company in General meeting (**Special Resolution**)
- Filed a copy of Resolution before registrar before making invitation
- **Ordinary Resolution** of the deposit is within the limit of Section 1801(1)(c)

□ Term of Deposit (Rule 3 of CAD Rules 2014): **Members + Public**

- Repayable on demand OR
- Upon receiving notice in less than **6 months*** OR
- Upon receiving notice in more than **36 months**
- From the date on which such deposits were taken

* Certain exception for short term requirement of funds

Section 76 r.w. CAD Rules, 2014.....

Limit on quantum of Deposits (Rule 3 of CAD Rules 2014):

□ **Limit* on Deposit from Members:**

- **A company** can take deposit from its members **up to ~~25-35%~~** of the aggregate of the paid up share capital and free reserve of the company
- **Pvt. Co.- 100% of PSC + FR + SP – new inserted CAD Rules 2016**

□ **Limit* for deposits from Public:**

- **An eligible company** can take deposits subject to following limits
 - **From company's members** – up to 10 % of PSC+FR+SP
 - **From Public-** up to 25% of PSC + FR

□ **Limit on deposit from public for Govt. Company:**

- Up to 30% of PSC + FR

* Limit on Total amount of deposit taken and Outstanding + deposit intend to take or renew

Deposit: Rule 2(c) of CAD Rules 2014

Definitions –

- Section 2(31)- **“deposit”** 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 as may be prescribed in consultation with the Reserve Bank of India;

- Rule 2(c) – “deposit includes any receipt of money by way of **deposits** or **loan** or in **any other form**, by a company, but does not include the following:
 - Three elements which will constitute as deposit
 - ***Any receipt of money by way of deposit;***
 - ***Any loan; and***
 - ***Any receipt of money in any other form***

Issue: Whether any receipt of money in the nature of loan is considered as the deposit for the purpose of the Act?

Deposit: Rule 2(c).....

- Certain types of monies received by a company are excluded from the definition of 'deposit'- Following amount received **shall not be considered as "Deposit"**



Deposit: Rule 2(c).....



any securities including share application money

a **director** or relative of director of private company

issue of bonds or debentures secured by first charge on any assets

an employee of the company not exceeding his annual salary in the nature of non interest bearing security

a Non- interest bearing amount received or held in trust

Any amount received in the course of or for the purpose of the business for the following

Deposit: Rule 2(c).....



(a) As advance for the supply of goods or provision of services

(b) As advance received in connection with consideration for property under an agreement or arrangement

(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

Any amount brought in by the promoters themselves or their relatives by way of unsecured loan in pursuance of a stipulation of any lending institution on the promoters

Any amount accepted by a Nidhi Company in accordance with rules made u/s 406 of the Act.

CAD (A) Rules, 2016:

❑ Major amendments in the CAD Rules, 2016 issued on 29th June 2016

❑ ***New sub-clauses in the exemption list:***

- *(xii)(e) as an advance towards consideration for providing future services not exceeding the period prevalent as per common business practice or five years .*
- *(xii)(f) as an advance received and as allowed by any sectoral regulator.*
- *(xii)(g) as an advance for subscription towards publication to be adjusted against receipt of such publication .*

❑ ***New clauses in the exemption list:***

- *(xv)- any amount received by way of subscription by Chit fund company.*
- *(xvi)- any amount received by company under collective investment scheme.*
- *(xvii) – any amount received by "**Start-up**" through convertible note for not more than 5 years.*
- *Start up means a company + recognized by Ministry of Commerce and Industry.*

CAD (A) Rules, 2016:

□ Major amendments in the CAD Rules, 2016 issued on 29th June 2016

□ ***New Rule inserted in the rules: 16A Disclosure in the Financial Statement***

- *(1) Every company, other than a private company, shall disclose in its financial statement, by way of notes, about the money received from the director.*

- *(2) Every private company shall disclose in its financial statement, by way of notes, about the money received from the directors, or relatives of directors.*

Section-76A – Punishment for Contravention of Section 73 or Section 76

- Any company that accepts or invites deposits in contravention of the manner or the conditions prescribed under section 73 or section 76.
- Or if a company fails to repay the deposit or any interest thereon within the time specified.
- *the company shall, in addition to the payment of the amount of deposit or part thereof and interest due, punishable with fine not less than ~~one crore~~ one crore or twice the amount of deposit accepted by the company, which ever is lower but which may extend to ten crore.*
- *Every officer in default with imprisonment of seven years ~~or~~ and with a fine which shall not be less than twenty five lakhs which may extend to two crores.*

Section-185

Loans to Directors, etc.

Section-185:

Save as otherwise provided in this Act,

☐ Prohibition to advance any loan: a company shall not **directly or indirectly** advance any loan, **including any loan represented by a book debt**, to—

- ✓ any of its directors; or
- ✓ any **other person** in whom such director is interested

☐ Prohibition to provide any guarantee or security: a company shall not **directly or indirectly** :

- ✓ give any guarantee; or
- ✓ provide any security
in connection with any loan taken by him or such **other person**.

Section-185:

□ **Provisions not to apply in** the following cases:—

- ✓ giving any **loan to a managing or whole-time director-**
 - ❖ as part of the **conditions of service extended** by the company to **all** its employees; or
 - ❖ pursuant to any **scheme approved by the members** by a Special Resolution.

- ✓ a company which in the **ordinary course of its business provides loans or gives guarantee or securities** for the due repayment of any loan and interest on such loans is charged at a rate not less than the bank rate declared by the RBI.

Section-185:

□ **Provisions not to apply in** the following cases:—

✓ **Wholly owned Subsidiary:**

- ❖ Any loan made by a holding company to its *wholly owned subsidiary company*; or
- ❖ Any guarantee given or security provided by a holding company in respect of any loan made to its *wholly owned subsidiary company*.

✓ **Subsidiary:** Section not to be complied for:

- ❖ Any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its *subsidiary company*.

✓ **Cardinal Condition for Exemptions:** Such loans are utilized by the subsidiary company for its **principle** business activities.

Section-185:

Any other person in whom director is interested – meaning thereof:

- ❑ any **director of the lending company**, or of a company which is its **holding company** or any partner or relative of any such director; or
- ❑ any **firm** in which any **such** director or relative is a partner; or
- ❑ any **private company** of which any **such** director is a director or member; or
- ❑ any **body corporate** at a general meeting of which **not less than 25% of the total voting power** may be exercised or controlled by any **such** director, or by two or more **such** directors, together; or
- ❑ any **body corporate**, the Board of directors, managing director or manager, whereof is **accustomed to act** in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

Section-185:

□ Exemption to Private Companies:

✓ Section 185 shall not apply to Private company-

- ❖ In whose share capital no other "**body corporate**" has invested any money ;
- ❖ If **borrowing** from Banks or FI's or any body corporate is less than **twice of paid up capital or fifty crores**, whichever is lower ;
- ❖ Such a company has **no defaults in repayment of such borrowing** subsisting at the time of making transactions under this section.

Section-185:

❑ Other Exemption (Notification Dated 4th January, 2017)

✓ Explanation to clause (c) of Sec 185 (1)

❖ In case of Specified IFSC Public Company & In case of Specified IFSC Private Company

“any private company of which any such director is a director or member in which director of the lending company do not have direct or indirect shareholding through themselves or through their relatives and a special resolution is passed to this effect;”

IFSC :- International Financial Services Centre

Section-185:

□ Penal provision in contravention of section 185(1):

- ✓ The **company** shall be punishable with fine which shall not be less than five lakh rupees but which may extend to **twenty five lakhs;**
- ✓ **Director** or other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan by him or other person- **imprisonment of six months with minimum fine of five lakhs.**

Section-185: Companies (Amendment) Act,2017

□ Entire provision of Section 185 of the Act substituted by the following provision:

- ✓ **No company** shall advance any loan or give any guarantee or provide any security in connection with;
 - any loan taken by any director of the company; or
 - any director of its holding company; or
 - any partner or relative of such director; or
 - any firm in which any such director or relative is partner.

- ✓ A **company may advance** any loan or give any guarantee or provide any security in connection with loan taken by:
 - any private company- any such director is a director or member;
 - Any body corporate- at GM of which not less than 25% is controlled by any such director;
 - Any body corporate- BOD are accustomed to act in accordance with instruction of the lending company.

Section-185: Companies (Amendment) Bill,2017

❑ **Condition for granting loan to above 3 parties:**

- ❖ a special resolution is passed by the lending company [with explanatory details to disclose full details];
- ❖ the loans are utilised by the borrowing company for its principal business activities.

❑ **Exemptions:**

- giving any loan to a managing director or whole time director;
- Ordinary course of business to provide loans;
- Loan/Security/Guarantee by holding to subsidiary for any loan taken by Subsidiary company;
- Security/Guarantee by holding to subsidiary for any loan taken by Subsidiary company from Banks/ Financial Institution;

Section-185: Case Study

A Ltd. has two directors PM and AM , both holds 50% share each of the company. A Ltd. wishes to give loans to the following and have asked your views on same.

- Loan to Director PM
- Loan to a relative of Director AM
- Director of D Ltd. which is holding company of A Ltd.
- A Partner of Director of Holding Company
- A Partner of Director of A Ltd.
- To a firm in which Mr. PM is partner
- To a firm in which relative of Mr. AM is a Partner
- To a LLP in which PM is partner

Section-186

Loans and Investments by Company

Section-186:

❑ **Investment through two layers of companies only [Section 186(1)]:** A company shall, unless otherwise prescribed, make investment through not more than two layers of **investment companies**.

❑ **Exception:** However, this provision shall not affect—

- ✓ A company from **acquiring any other company incorporated in a country outside India** if such other company has investment subsidiaries beyond two layers as per the laws of such country;
- ✓ A subsidiary company from having any investment subsidiary **for the purposes of meeting the requirements of any law** or under any rule or regulation framed under any law for the time being in force.

Section-186:

□ Limit for making inter-corporate loan, guarantee, providing security or investment [Section 186(2)]:

A company cannot, *directly or indirectly*-

- ✓ give **loan** to any person or other body corporate.
- ✓ give any **guarantee** or provide **security** in connection with a loan to any body corporate or person; or
- ✓ acquire by way of **subscription, purchase or otherwise**, the **securities** of any other body corporate.

CA Act 2017- “ person does not include any individual who is in the employment of the company”

Exceeding:

- ❖ 60% of [Paid Up Share Capital (+) Free Reserves (+) Securities Premium Account]; or
- ❖ 100% of [Free Reserves (+) Securities Premium Account],
whichever is more

Section-186:

□ **If:** Amounts Involved > Specified Limit

□ **Then:** Prior Approval by way of Special Resolution is required [Section 186(3)]

CA Act 2017- Aggregate of loans and investment so far made + the amount for which guarantee or security so far provided+ Investment/Loans/Guarantee/ Security proposed to be made.

□ **Disclosure in F.S.: Particulars & purposes** of such loans, investments etc. required to be disclosed [Section 186(4)];

□ **BOD Approval always required:** Consent by **All** the directors present in the BOD Meeting;

□ **Public Financial Institution Approval – when required:** if any term loan is subsisting;

Section-186:

☐Public Financial Institution Approval – when not required: If:

- ❖ Amounts Involved [present (+) proposed] \leq Ceiling Limit; **and**
- ❖ No default in repayment of their loan installments or payment of interest thereon

☐Default in the repayment of any deposits: Company prohibited to give any loan or give any guarantee or provide security or make an acquisition till such default is subsisting;

☐Register of loan, guarantee, security, or acquisition: To be kept at the registered office, in manual or e-mode, in Form MBP 2 & to be updated within 7 days of such transactions;

☐S. 186(2) to (10) not to apply in certain cases:

- ✓ Loan, Guarantee, Security by Banking Co./ Insurance Co./ HFC/ Company engaged in business of financing companies or providing infra facilities;
- ✓ Acquisitions made by NBFC in ordinary course of business;
- ✓ Acquisitions through Right Issue.

Section-186: Exemptions

Exemption to subsidiary company/joint ventures – conditions thereof:

As per Rule 11(1) of the Companies (Meetings of Board and Its Powers) Rules, 2014:

- ❑ Where a **loan or guarantee** is given or where a **security** has been provided by a company to its:
 - ✓ wholly owned subsidiary company, or
 - ✓ a joint venture company, or

- ❑ Where an **acquisition is made by a holding company**, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of sub-section (3) of section 186 shall not apply.

CA Act 2017- this has been added as 1st Proviso to Sub-section (3).

Section-186: Exemptions

- Nothing contained in this section except sub-section (1) shall apply –
- to an **investment [CA Act 2017], loan made**, guarantee given or security provided by banking company or insurance company or a housing finance company or a company engaged in business of financing or of providing infrastructural facilities
 - to **any acquisition** made by NBFC, principal business is acquisition of securities.

CA Act 2017- any investment made by an “investment company”

Investment company= explanation (a) + Deemed investment company engaged in business of acquisition of shares/debentures/other securities > **50% of Total Assets & > 50% of Total Income.**

Case Studies:

- ❑ ABC Limited proposes to give a loan to Mr. Rajneesh who is a director of its subsidiary company, PQR Limited.
- ❑ ABC Limited proposes to give a loan to M/s XYZ & Associates, a partnership firm in which Mr. Rajneesh (who is a director of its subsidiary company PQR Limited) is a partner.
- ❑ Mr. Rajneesh is a director of ABC Limited and also DEF Limited. ABC Limited proposes to give a loan to DEF Limited.
- ❑ Mr. Rajneesh is a director of ABC Limited and also a member of DEF Limited. ABC Limited proposes to give a loan to DEF Limited.

Case Studies:

- ❑ Mr. Rajneesh is a director of ABC Pvt. Limited and also a member of DEF Limited. ABC Pvt. Limited proposes to give a loan to DEF Limited.
- ❑ Mr. Rajneesh is a member of ABC Limited and also a member of DEF Pvt. Limited. ABC Limited proposes to give a loan to DEF Pvt. Limited.
- ❑ Mr. Rajneesh is a member of ABC Limited and also a director of DEF Pvt. Limited. ABC Limited proposes to give a loan to DEF Pvt. Limited.

Exemption for Pvt. Co's

Exemptions available to Pvt. Co's

❑ **Related Party Transactions:**

- ✓ Definition of related party relaxed with respect to Sec.188.
- ✓ Does not include Holding, Subsidiary, Associates company.
- ✓ Transaction with these parties does not required compliance with section 188 of Act.

❑ **Acceptance of Deposit from Members :**

- ✓ Acceptance of money from members made easier.
- ✓ Private companies can accept deposit from its members up to 100% of PSC and FR.
- ✓ These companies are not required to comply with conditions as prescribed in Section 73(2) (a) to (e).

❑ **Filing of Board Resolution with ROC:**

- ✓ Any board resolution mentioned in Section 179 of read with Rule 8 of the Companies (Meeting of Board & Its power) Rules 2014 is now not required to file with ROC.

Exemptions available to Pvt. Co's

❑ **Loan to Directors:**

- ✓ Under Section 185 of the Companies Act, 2013 (**2013 Act**), companies are not permitted to:
 - ❖ advance loans to their directors or to any 'person' in whom/ which such directors are interested (Restricted Persons); or
 - ❖ provide any guarantee or security in connection with any loan obtained by their directors or by a Restricted Person.
- ✓ The provisions of Section 185 are not applicable to private limited companies which meet certain criteria.

❑ **Restriction on Board Powers:**

- ✓ Section 180 of the 2013 Act lays down certain matters which cannot be transacted by the board of directors without obtaining the approval of shareholders at a general meeting by way of a special resolution.
- ✓ These restrictions are no longer applicable to private limited companies.

Exemptions available to Pvt. Co's

❑ Disclosure of Directors' Interest:

- ✓ The 2013 Act requires directors of companies, who are interested in a contract or arrangement to disclose their interest at the board meeting in which such contract or arrangement is discussed. Further, the disclosing directors are not permitted to participate in such board meetings.
- ✓ While the disclosure requirement continues to apply, the interested directors of private limited companies are now permitted to participate in such board meetings after the disclosure of interest has been made.

❑ Eligibility of Auditors:

- ✓ Section 141 (3) (g) restricts companies from engaging as auditor a person (including a partner of a partnership firm) who is an auditor of more than 20 companies.
- ✓ private limited companies having a paid up share capital of less than INR 1,000 Million, will not be taken into account for the purpose of determining the eligibility of an auditor under Section 141 (3) (g) of the 2013 Act.

Exemptions available to Pvt. Co's

☐ Compliance of Internal Financial Control-Private Company

✓ OPC/ SM or

✓ Turnover < INR 50 cr. as per LAFS ~~OR~~ **AND** Borrowing less than INR 25 cr.

☐ Disclosure of Directors' Interest:

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- ✓ private limited companies having a paid up share capital of less than INR 1,000 Million, will not be taken into account for the purpose of determining the eligibility of an auditor under Section 141 (3) (g) of the 2013 Act.

□ Mandatory Rotation of Auditor: [June 22,2017]

- ✓ All Pvt. Ltd. Companies having paid up share capital of ~~INR 20 cr.~~ **INR 50 cr.** or more cannot appoint or re-appoint an audit firm as auditor for more than two consecutive terms of five years each.

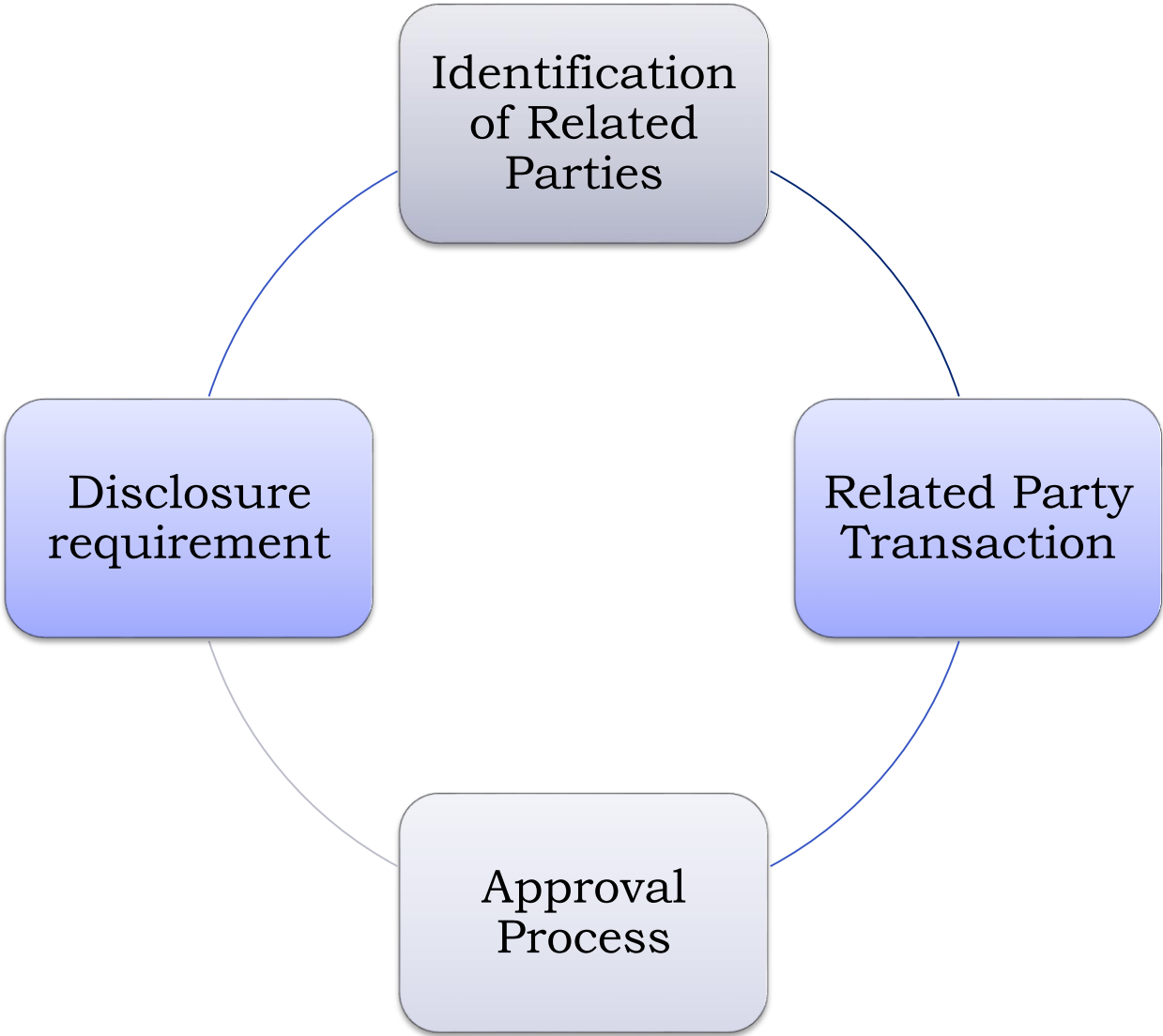
Challenges for Pvt. Co's:

- ❑ **Loans to Directors** etc.- the criteria for private companies are only a theoretical exemption.

- ❑ **Consolidation of Financial statement:**
 - ✓ Mandatory consolidation by all the companies.
 - ✓ Now even if there is no subsidiary but have associates and JV's consolidation is mandatory.
 - ✓ Consolidation of Foreign Subsidiary.

Related Party Transactions

Requirement of Related Party Transaction:



Identification of Related Parties:

Accounting
Standard
18/ Ind AS
24

Section
40A(2)(b) of
Income Tax
Act

Domestic
Transfer
Pricing

LODR for
Listed
Companies

Companies
Act 2013

Related Party Transaction:

□“Except with the consent of the BOD given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to:—”

- ✓ sale, purchase or supply of any goods or materials;
- ✓ selling or otherwise disposing of, or buying, property of any kind;
- ✓ leasing of property of any kind;
- ✓ availing or rendering of any services;
- ✓ appointment of any agent for purchase or sale of goods, materials, services or property;
- ✓ such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
- ✓ underwriting the subscription of any securities or derivatives thereof, of the company:

Related Party Transaction- SH Approval- 1st Proviso

❑ Except with the prior approval of the company by a resolution:

Criteria	Limit
Sale, purchase or supply of any goods or materials directly or through appointment of agents	10 % of Turnover of the Company or INR 100 Crores whichever is lower.
Selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents	10 % of Net worth of the Company or INR 100 Crores whichever is lower.
Leasing of property of any kind	10 % of Net worth of the Company or 10 % of Turnover of the Company or INR 100 Crores whichever is lower.

Related Party Transaction- Shareholder Approval

- Except with the prior approval of the company by a resolution:

Criteria	Limit
Availing or rendering of any services directly or through appointment of agents for purchase or sale of goods, materials ,services or property	10 % of Turnover of the Company or INR 50 Crores whichever is lower.
Appointment to any office or place of profit in the company, its subsidiary company or associate company	Monthly Remuneration of INR 2,50,000/-
Remuneration for Underwriting the subscription of any securities or derivatives thereof, of the company	1% of Net Worth of the Company.

Exemption from Section-188::

- No member of the company shall vote on such resolution to approve any contract if such member is a related party [*Not Applicable to Private Companies*].
- **CA Bill 2017- nothing of 2nd proviso will apply to a company in which 90% or more members, in number, are relatives of promoters or are related parties”.**
- The above subsection will not apply to transactions entered by company in its Ordinary Course of business on arm’s length basis.
- Requirement of passing resolution under first proviso shall not be applicable for transactions entered into between a **holding company and its wholly owned subsidiary** whose accounts are consolidated with such holding company and placed before shareholders at GM approval.

Reporting Requirement

Reporting Requirement:

❑ By the Company:

- ✓Section 186 (4) The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.
- ✓Rule 16A- Every private company shall disclose in its financial statement, by way of notes, about the money received from the directors, or relatives of directors.

Reporting Requirement:

□ By the Auditor: CARO

✓ **Loan given by Company [Clause 3 (iii)]**

- Whether the company has granted any loans, secured or unsecured to companies, firms, LLP or other parties covered in the registered maintained under Section 189 of the Companies Act, 2013. If so,
 - (a) Whether terms and conditions of the grant of such loan are not prejudicial to the company's interest.
 - (b) Whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments and receipts are regular.
 - (c) If the amount is overdue, state the total amount overdue, state the total amount overdue for more than 90 days and whether reasonable steps have been taken by the company for recovery of principal.

Reporting Requirement:

❑ By the Auditor: CARO

✓ **Loan to director and investment by the company [Clause 3 (iv)]**

In respect of loan, investment, guarantees and security whether provision of Sections 185 and 186 of the Companies Act, 2013 has been complied with. If not, provide the details thereof.

✓ **Deposits [Clause 3 (v)]**

In case, the company has accepted deposits, whether the following has been complied with:

- Directives issued by the Reserve Bank of India
- (a) The provision of sec 73 to 76 or any other relevant provision of Companies Act, 2013 and the rules framed there under, and
- (b) If the order has been passed by company law board (CLB) or National company law tribunal (NCLT) or RBI or any court or any other tribunal.
- (c) However, if any of the above are not complied with, the nature of contraventions should be stated.

Companies(Amendment) Act, 2017

Journey of Companies (A) Act, 2017:

- ❑ Company Law Committee (CLC) was constituted on 4th June 2015.

- ❑ 778 suggestions were received by the committee on the Companies Act, 2013 .

- ❑ Committee after deliberation suggested changes in 78 sections and more than 100 changes in the Act.

- ❑ The main focus of these suggestions were around:
 - ✓ Definition of certain terms Subsidiary Company, Free Reserve, Turnover etc.
 - ✓ Raising of the capital.
 - ✓ Declaration and payment of dividend.
 - ✓ Changes to encourage start- up.
 - ✓ Corporate governance.

Journey of Companies (A) Act, 2017::

- ❑ Committee submitted its report on 1st February 2016 with proposed changes in 78 section, consequently 100 amendment in Sections and 50 amendment to Rules.
- ❑ Committee submitted its report in 2nd February, 2016.
- ❑ Companies (Amendment) Bill, 2016 introduced in Loksabha on March 16, 2016 and referred back to Standing Committee.
- ❑ Committee submitted its report on December 7, 2016 and the bill was passed by Loksabha on July 27, 2017.
- ❑ The bill is finally passed by Rajyasabha on **December 19, 2017** and awaiting President assent to formally become an Act.

Companies Act,2017- Important changes:

❑Section 2(6)- Definition of ‘associate company’

- ✓Change from at least 20% of total share capital to have at least 20% of voting power.

❑Section 2(87)- Definition of ‘subsidiary company’:

- ✓company will be treated as a subsidiary in case the holding company exercises or controls more than one-half to the total voting power either at its own or together with one or more of its subsidiary companies.

❑Section 2(91)- Definition of ‘Turnover’ :

- ✓"turnover" will mean the gross amount of revenue recognised in the profit and loss account from the sale.

❑Section 2(57)- Definition of ‘net worth’

- ✓proposed to include the debit or credit balance of profit and loss account in the calculation of net worth.

Companies Act,2017- Important changes:

☐Section 123- Declaration of dividend

- ✓unrealised gain, notional gains or revaluation of assets and any change in carrying value of an asset or of a liability due to FV should be excluded [Ind AS Fair Valuation excluded]- **New Proviso**
- ✓transferred by the company to the **reserve** vs. “transferred by the company to the **free reserve**”-

☐Section 135- CSR Expenditure

- ✓On the basis of immediately preceding financial year earlier 3 FY’s.

☐Section 180- Restrictions on powers of board

- ✓It is proposed to include securities premium along with paid-up share capital and free reserves for calculation of maximum limits on borrowing powers of the Board.

Thank You

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