

SEMINAR ON IMPORTANT ASPECTS OF COMPANIES ACT,2013

PRESENTATION ON

- **ACCEPTANCE OF DEPOSITS**
- **RESTRICTIONS ON ACCEPTANCE OF DEPOSITS – PRIVATE/PUBLIC/ELIGIBLE COMPANIES**
- **THE COMPANIES (ACCEPTANCE OF DEPOSITS) RULES, 2014**
- **RELATED PARTY TRANSACTIONS**
- **LOANS TO DIRECTORS**
- **LOANS / INVESTMENTS BY COMPANIES**

Presented at WIRC

By

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ACCEPTANCE OF DEPOSITS

- Basic provisions
- Rate of interest on Deposits
- Form of Advertisements
- Deposit Insurance
- Creation of security
- Form of Application for Deposits
- Appointment of Deposit Trustee
- Maintenance of Liquid Assets
- Repayment of Deposits
- Penalty



Sec 73
to
Sec 76

ACCEPTANCE OF DEPOSITS

- **Definition**
- **Section 2(31) of the 2013 Act defines deposit as:**
“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.”

ACCEPTANCE OF DEPOSITS

➤ Rule 2 (1)(c) defines deposit as

“ Deposit includes any receipt of money by way of deposit or loan or in any other form, by a company but does not include:

- any amount received **from the Central Govt. or a State Govt.** or any amount on which guarantee is given by Central Govt. or State Govt. or any amount received from local authority or from a statutory authority constituted under an Act of Parliament or a State Legislature;
- any amount received from **Foreign Govt., international banks,** multilateral financial institutions (not including IFC, ADB, CDC, IBFR), foreign credit agencies/collaborators, bodies corporate/citizens/authorities or persons resident outside India subject to the provisions of FEMA, 1999;
- any amount received as a **loan or facility from any banking company** or from the SBI or any of its subsidiary banks or from a banking institution notified by the Central Government, or a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or from a co-operative bank;

ACCEPTANCE OF DEPOSITS

- any amount received as a ***loan or financial assistance from Public Financial Institutions*** or any regional financial institutions or Insurance Companies or Scheduled Banks;
- any amount received ***against issue of commercial paper*** or any other instruments issued in accordance with the guidelines or notification issued by the RBI;
- any amount received by a company from any other company;
- any amount received against subscription to any securities including ***share application money*** provided the securities are allotted within 60 days from the date of receipt of the application money or advance.

Provided that if the securities are ***not allotted within 60 days*** then the same should be ***refunded within 15 days*** else the same shall be treated as deposit after completion of 15 days.

And also any adjustment of the amount for any other purpose shall not be treated as refund.

ACCEPTANCE OF DEPOSITS

- any amount received from a person who, **at the time of the receipt** of the amount, **was a director** of the company or relative of the director of the company:

Provided that the director of the company or relative of the director of the private company, as the case may be, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report;

- any amount **raised by the issue of bonds or debentures secured** on any assets excluding intangible assets of the company or bonds or debentures compulsorily convertible into shares of the company within 5 years:

Provided that the amount of **such bonds** or debentures shall not exceed the market value of such assets as assessed by a **registered valuer**;

- any amount **received from an employee** of the company **not exceeding his annual salary under a contract** of employment with the company in the nature of non-interest bearing security deposit;
- any non-interest bearing amount **received or held in trust**;
- any amount **accepted by a Nidhi company**.

ACCEPTANCE OF DEPOSITS

- any amount received in the course of, or for the purposes of, the business of the company,-
 - (a) as an **advance** (without any legal proceedings) **for the supply of goods** or provision of services accounted provided that such advance is appropriated against supply of goods or provision of services within a period of **365 days** from the date of acceptance of such advance;
 - (b) as advance received in connection with consideration for **an immovable property** under an agreement or arrangement , provided that such advance is **adjusted against such 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**;Provided that if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit;
- 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;

ACCEPTANCE OF DEPOSITS

- **Provision of Acceptance of Deposits**

- **Rule 3 :** On and from the commencement of these rules,—

(1) No company under sub-section (2) of section 73 and no eligible company under section 76 shall accept or renew any deposit, whether secured or unsecured, which is repayable on demand or on notice or within a period of less than six months or more than thirty-six months from the date of acceptance or renewal of such deposit:

Provided that a company may, for the purpose of meeting any of its short-term requirements of funds, accept or renew such deposits for repayment earlier than six months from the date of deposit or renewal, as the case may be, subject to the condition that—

such deposits shall *not exceed ten per cent* of the aggregate of the **paid up share capital, free reserves and securities premium account** of the company, and

such deposits are repayable not earlier than three months from the date of such deposit or renewal thereof.

ACCEPTANCE OF DEPOSITS

(2) Where depositors so desire, deposits may be accepted in joint names not exceeding three, with or without any of the clauses, namely, “Either or Survivor”, “Number one or Survivor”, “Anyone or Survivor”.

(3) No company under sub-section (2) of section 73 shall accept or renew any deposits if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds 25 per cent of the aggregate of the paid-up share capital and free reserves of the company.

ACCEPTANCE OF DEPOSITS

(4) No eligible company under section 76 shall accept or renew:

(a) any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds 10% of the aggregate of the paid-up share capital and free reserves of the co.;

(b) any other deposit, if the amount of such deposit other than the deposit referred to in (a) above, together with the amount of deposits outstanding on the date of acceptance or renewal exceeds 25% of aggregate of the paid-up share capital and free reserves of the company.

(5) No Government company eligible to accept deposits under section 76 shall accept or renew any deposit, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds 35% of the aggregate of its paid up share capital and free reserves.

ACCEPTANCE OF DEPOSITS

- **Rate of Interest of Deposit**

Rule 3(6): No company under sub-section (2) of section 73 or any eligible company under section 76 shall invite or accept or renew any deposits in any form, on a rate of interest or pay brokerage thereon at a rate exceeding the maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by non-banking financial companies.

(Explanation: Only the person who is authorized, in writing, by a company to solicit deposits on its behalf and through whom deposits are actually procured will be entitled to the brokerage and payment of brokerage to any other person for procuring deposits shall be deemed to be in violation of these Rules)

ACCEPTANCE OF DEPOSITS

- **Credit Rating**
- Rule 3(8) Every eligible company shall obtain, at least once in a year, credit rating for deposits accepted by it in the manner specified herein below and a copy of the rating shall be sent to the Registrar of Companies alongwith the return of deposits in Form DPT-3;

Name of the agency

Minimum investment Grade Rating

(a) The Credit Rating Information Services of India Ltd.

FA- (FA Minus)

(b) ICRA Ltd.

MA- (MA Minus)

(c) Credit Analysis and Research Ltd.

CARE BBB(FD)

(d) Fitch Ratings India Private Ltd.

tA-(ind)(FD)

(e) Brickwork Ratings India Pvt Ltd.

BWRF A

(f) SME Rating Agency of India Ltd.

SMERA A”

ACCEPTANCE OF DEPOSITS

- **Form of Advertisement or Circulars**

Rule 4 says that

- Every company referred to in sub-section (2) of section 73 intending to invite deposit from its members shall issue a ***circular to all*** its members by ***registered post*** with acknowledgement due or speed post or by electronic mode in Form DPT-1:

Provided that in addition to issue of such circular to all members in the manner specified above, the circular may be published in English language in an English newspaper and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.

- Every eligible company intending to invite deposits shall issue a circular in the ***form of an advertisement*** in Form DPT-1 for the purpose in English language in an English newspaper and in vernacular language in one vernacular newspaper having wide circulation in the State in which the registered office of the company is situated

ACCEPTANCE OF DEPOSITS

- Every company inviting deposits from the public shall upload a copy of the circular on its website, if any.
- No company shall issue or allow any other person to issue any circular or a circular in the form of advertisement inviting deposits, unless is issued on the authority and in the name of the Board of directors of the company.
- No circular or a circular in the form of advertisement shall be issued unless, not less than thirty days before the date of such issue, there has been delivered to the Registrar for registration a copy thereof approve by the Board.
- A circular or circular in the form of advertisement issued shall be valid until the expiry of six months from the date of closure of the financial year in which it is issued or until the date on which the financial statement is laid before the company in annual general meeting, whichever is earlier, and a fresh circular or circular in the form of advertisement shall be issued, in each succeeding financial year, for inviting deposits during that financial year.

ACCEPTANCE OF DEPOSITS

- **Deposit Insurance**

- Rule 5:**

- “Provided that the companies may accept deposits without deposit insurance contract till the 31st March, 2016 or till the availability of a deposit insurance product, whichever is earlier.”.
 - The deposit insurance contract shall specifically provide that in case the company defaults in repayment of principal amount and interest thereon, the depositor shall be entitled to the repayment of principal amount of deposits and the interest thereon by the insurer up to the aggregate monetary ceiling as specified in the contract.
 - The amount of insurance premium paid on the insurance of such deposits shall be borne by the company itself and shall not be recovered from the depositors by deducting the same from the principal amount or interest payable thereon.\
 - If any default is made by the co. in complying with the terms and conditions of the deposit insurance contract which makes the insurance cover ineffective, the co. shall either rectify the default immediately or enter into a fresh contract within 30 days and in case of non-compliance, the amount of deposits covered under the deposit insurance contract and interest payable thereon shall be repaid within the next 15 days and if such a co. does not repay then it shall pay 15% interest p.a. for the period of delay and shall be treated as having defaulted and shall be liable to be punished in accordance with the provisions of the Act.

ACCEPTANCE OF DEPOSITS

- **Creation of Security**

Rule 6: For the purposes of section 73(2)(f) and second proviso of section 76(1), every company under of section 73(2) and every eligible company under section 76 inviting secured deposits shall provide for security by way of a charge on its assets as referred to in Sch. II of the Act excluding intangible assets of the company for the due repayment of the amount of deposit and interest thereon for an amount which shall not be less than the amount remaining unsecured by deposit insurance as provided in pursuance of section 73(2)(d).

The security (not being in the nature of pledge) for deposits shall be created in favor of a trustee for the deposit holders on:

- specific movable property of the company, or
- specific immovable property of the company wherever situate, or any interest therein.

ACCEPTANCE OF DEPOSITS

- **Appointment of Deposit Trustee**

Rule 7(1) No company under sub-section (2) of section 73 or any eligible company under section 76 shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more deposit trustees for such deposits:

Provided that a written consent shall be obtained from the deposit trustee(s) before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the deposit trustee(s) have given their consent to the company to be so appointed.

Rule 7(2) The company shall execute a deposit trust deed appointing the deposit trustee(s) in Form No. DPT-2 at least 7 days before issuing the circular or circular in the form of advertisement.

ACCEPTANCE OF DEPOSITS

- **Appointment of Deposit Trustee**

Rule 7(3) No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the deposit holders, if the proposed trustee –

- is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company; is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company; has any material pecuniary relationship with the company;
- has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon; is related to any person specified in clause (a) above.

Rule 7(4) No deposit trustee may be removed from office after the issue of circular or advertisement and before the expiry of his term except for valid reasons, to be recorded in writing by the Board.

ACCEPTANCE OF DEPOSITS

- **Form of Application of Deposits**

Rule 10: (1) On and from the commencement of these rules, no company shall accept, or renew any deposit, whether secured or unsecured, unless an *application*, in such form as specified by the company, is submitted by the intending depositor for the acceptance of such deposit.

(2) The form of application referred to in sub-rule (1) shall contain a declaration by the intending depositor to the effect that the deposit is not being made out of any money borrowed by him from any other person.

ACCEPTANCE OF DEPOSITS

- **Maintenance of Liquid Assets**

Rule 13: Every company under sub-section (2) of section 73 and every eligible company shall on or before the 30th day of April of each year deposit a sum which shall not be less than fifteen per cent of the amount of its total outstanding deposits, whether secured or unsecured, maturing during the financial year ending on the 31st day of March next following, in a deposit repayment reserve account, with any scheduled bank which shall be free from charge or lien.

Provided that the amount remaining deposited, as the case may be, shall not at any time fall below fifteen per cent of the amount of deposits maturing until the 31st day of March of that year

ACCEPTANCE OF DEPOSITS

- **Repayment of deposits, etc., accepted before commencement of this Act**
- Section 74(1) says that any deposit accepted prior to new act and interest due thereon if remains unpaid or becomes due at any time on or after commencement of new Act, then:
 - file, within a period of three months from such commencement or from the date on which such payments, are due, with the Registrar a statement of all the deposits accepted by the company and sums remaining unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment {Section 74(1)(a)}
 - repay within one year from such commencement or from the date on which such payments are due, whichever is earlier.{ Section 74(1)(b)}
- Under Section 74(2) Company can make an application to Tribunal for allowing further time to repay the Deposit.

ACCEPTANCE OF DEPOSITS

- Any deposit accepted before the commencement of the Companies Act, 2013, needs to be repaid/refunded on or before 31st March, 2015.
- Amounts received by private companies prior to 1st April, 2014 shall not be treated as 'deposits' under the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 subject to the condition that relevant private company shall disclose, in the notes to its financial statement for the financial year commencing on or after 1st April, 2014 the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement.

ACCEPTANCE OF DEPOSITS

- **Penalty**

Penalty under Section 74(3) (Repayment of deposits, etc., accepted before commencement of this Act):-

If a company fails to repay the deposit or part thereof or any interest thereon within the time specified in sub-section (1) or such further time as may be allowed by the Tribunal under sub-section (2), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

LOAN TO DIRECTORS

- Basic provisions
- Meaning of certain phrases
- Case study



Sec 185

LOAN TO DIRECTORS

What does Section 185 says?

- No company can directly or "indirectly" advance loan to its "directors" or to "other persons in whom directors are interested".
- No company can give any guarantee or provide any security in connection with any loan taken by him or such other person.
- Company can't give loan represented by a book debt to above mentioned person".

LOAN TO DIRECTORS

- **Meaning of Indirect**

The word 'indirect' used means that the co does not give a loan to director through the agency of one or more intermediaries.

The word 'indirect' cannot be read as converting what is not a loan into a loan.

**[Dr. Freddie Ardeshir Mehta V Union of India (1991) 70
Comp Cas 210]**

LOAN TO DIRECTORS

- **Meaning of phrase, “other persons in whom directors are interested”**
 - (a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;
 - (b) any firm in which any such director or relative is a partner;
 - (c) any private company of which any such director is a director or member;
 - (d) any body corporate at a general meeting of which at least 25 % of voting power may be exercised or "controlled" by such director, or by two or more such directors, together ; or
 - (e) 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.

LOAN TO DIRECTORS

- **Sec 185 (1)(a):** Section not applicable for loan given to MD or WTD if such loan is in accordance with the terms of services extended to all employees or is approved by shareholders by SR
- **Sec 185 (1)(b):** Not applicable if a Co. in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the RBI
- **Sec 185 (1)(c):** Not applicable on 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; or
- **Sec 185 (1)(d):** Section not applicable on 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

LOAN TO DIRECTORS

- **Section 185 (2) : Penalty**
 - For Company: Fine of Rs.5 lakhs to Rs.25 lakhs For director/other person to whom the loan is advanced/ security or guarantee is given:
Imprisonment up to 6 months OR Fine of Rs.5lakhs to Rs.25 lakhs.

LOAN TO DIRECTORS

- Section 185 Shall not apply to GOVERNMENT COMPANY in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security under the section. [NOTIFICATION NO. GSR_463(E)[F.NO.1/2/2014-CL-V], DATED 5-6-2015]
- Section 185 shall not apply to a **PRIVATE COMPANY** by fulfilling of three conditions
 - In whose share capital no other body corporate has invested any money;
 - If the borrowings of such a company from banks or financial institutions or any body corporate is less than [lower of (i) Two times of paid up share capital or (ii) Rs. 50 Crore]; and
 - Such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.[NOTIFICATION NO. GSR 464(E) [F.NO.1/1/2014-CL-V], DATED 5-6-2015]
- Section 185 shall not apply to **NIDHI COMPANY**; provided the loan is given to a director or his relative in their capacity as members and such transaction is disclosed in the annual accounts by a note. [NOTIFICATION NO. GSR 465(E)[F.NO.2/11/2014-CL.V], DATED 5-6-2015]

LOAN TO DIRECTORS

Case Study

- Mr. Ram is Director in Lanka Pvt. Ltd and holds investment in Ayodhya Pvt. Ltd (a holding co. of Lanka P. L.)
- Examine the validity / Legality of the following Trans. Under the light of prov. of sec 185
- Case 1: Lanka grants loan to Mithila P. L. where Mr. Laxman (brother of Mr. Ram) holds investment (More than 25% of Paid up Capital)
- Case 2 : Can Ayodhya P. Ltd. give loan to Lanka P.L. or Vice Versa?

LOAN TO DIRECTORS

Case Study

- Mr. DM is a WTD of KH Pvt. Ltd. The policies of the Co. permits grant of loan as the part of the conditions of service extended by the company to ALL its employees. Examine the following actions of the co.
 1. Co gives loan to Mr. DM of Rs. 2.5 lakhs
 2. Co. gives guarantee for Mr. DM for Rs. 5 Lakh
 3. Co. gives letter of comfort in favour of Mr. DM

LOANS & INVESTMENTS BY COMPANY

- Basic provisions
- Case Study



Sec 186

LOAN & INVESTMENTS BY COMPANY

- **186 (1):** Investments to be made through not more than 2 layers of investment companies
- Exemptions
 - i. Company incorporated outside India has investment subsidiary beyond two layer as per the law of land
 - ii. A Subsidiary company from having investment subsidiary for the purpose of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force

LOAN & INVESTMENTS BY COMPANY

- **Sec 186 (2)** No company shall directly or indirectly-
 - a) give any loan to any person or other body corporate;
 - b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and
 - c) Acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,
Exceeding 60% of its paid-up share capital, free reserve and securities premium account or 100% of its free reserves and securities premium account, whichever is more.
- **Sec. 186 (3)** If above limits exceeds , prior approval by means of a SR passed at a General Meeting shall be necessary
- **Sec 186 (4)** Full disclosure of Loan, investment guarantee or security in financial statements

LOAN & INVESTMENTS BY COMPANY

- **Sec 186(5)** : Every Company shall take consent of all the directors present at the board meeting before making any investment, giving loan and guarantee and providing security. In case of Company has already taken loan etc., from any Public Financial Institutions, then it is mandatory to take prior approval from such Public Financial Institution.

Provided that prior approval of Public Financial Institution shall not be required where the aggregate loan, investment, guarantee and security proposed is within the limits as specified under section 186(2) and there is no default in **repayment** of loan or interest thereon to the Public Financials Institution.

LOAN & INVESTMENTS BY COMPANY

- **Sec 186 (6):** Those Companies which are registered under Section 12 of SEBI Act, 1992 and other prescribed Companies can not take inter-corporate loans or deposits exceeding the prescribed limit.
- The intention of government is clear, if the Company is registered under SEBI, this section is not applicable for the part of limit but, simultaneously, prescribed a condition that Provided that such companies shall furnish details of loans or deposit in their Financial Statements.
- **Sec 186 (7):** No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

LOAN & INVESTMENTS BY COMPANY

- **Sec 186 (8):** No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting
- **Sec 186 (9):** Every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a register in Form of MBP 2.
- The Act mandates every Company to maintain a register which shall contain particulars of loan or guarantee given or security provided or investment made.

LOAN & INVESTMENTS BY COMPANY

- **Sec 186 (10):** This register shall be opened for inspection and copies may be furnished to members who demands for the same on payment of prescribed fee.
- **Sec 186 (11):** The Section 186 (except Sub Section 1) of the Companies Act, 2013 does not apply to the following:
 - Banking Company, **Insurance** Company, **Housing Finance** Company etc.,
 - Any Company whose main business of acquisition of shares or securities etc.,
- **S. 186 (13):** Penalty
 - For Company:-fine Rs. 25000/- to Rs. 5 lacs.
 - For Officers:- Every officer of the Company who is default, imprisonment of upto Two Years and fine Rs. 25000/- to Rs. 5 lacs

LOAN & INVESTMENTS BY COMPANY

Case Study

- XYZ Pvt. Ltd having the following Capital structure:(Rs in Crores)

Paid up Share Capital	150
Statutory res	50
Sec prem.	80
Free Res	70
Net worth	350

The co. has following decision pending:

Granting loan / Guarantee to PQC Ltd. Of Rs. 160 Cr.

Acquire through subscription shares of TCS Pvt. Ltd. of Rs 100 Cr

Advice the Co. under the light of prov. Of Co. Act 2013

LOAN & INVESTMENTS BY COMPANY

Case Study

Can Apex Pvt. Ltd. (Mfg. Co.) invest in a company with the holding- subsidiary hierarchy?

Raksha P ltd
(Investment Co.)




Adhik raksha P ltd
(Investment Co.)



Sarvo Raksha P ltd.
(Investment Co.)

RELATED PARTY TRANSACTIONS

- Basic Provision
- Comparison between provisions of Companies Act, 1956
Companies Act, 2013
Accounting Standard 18
- Case Study



Sec 188



RELATED PARTY TRANSACTIONS

- **Section 2 (76): Related Party with reference to a company means:**
 - i. Director or their relatives.
 - ii. KMP or their relative
 - iii. A firm in which a director, manager or his relative is a partner
 - iv. A private company in which a director or manager or his relative is a member or director
 - v. A public company in which a director or manager is a director and holds along with his relatives more than 2% of its paid up share capital
 - vi. Any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with advice, directions, or instructions of a director or manager *
 - vii. Any person on whose advice, directions or instructions a director or manager is accustomed to act *
 - viii. Any Company which is-
 - A holding company
 - A subsidiary company
 - An associate company
 - A fellow subsidiary

*** Will not apply to advice, directions or instructions given in a professional capacity**

As per Rule 2e of Chapter XII - The Companies (Meetings of Board and its Powers) Rules, 2014 'Related Party' means a director or key managerial personnel of the holding company or his relative

RELATED PARTY TRANSACTIONS

- A 'related party' is a person or entity that is related to the company. Parties are considered to be related if one party has the ability to control the other party or exercise significant influence over the other party, directly or indirectly, in making financial and/or operating decisions and includes the following:

RELATED PARTY TRANSACTIONS

- Who are related parties ?

Nature of Relationships	Act	AS 18
KMP and relatives	Yes	Yes
Holding, subsidiary, associate, Joint venture	Yes#	Yes
Individuals holding >20% and their relatives in a Co	Yes ***	Yes
Directors and their relatives	Yes	No *
Entities with common KMP	Yes**	Yes
Director or relative is a partner in a Firm	Yes	No
Body Corporate – Accustomed to act in accordance with Director/KMP	Yes	No##
Any person under who directions directors/KMP act	Yes	Yes##
Director / KMP (or relative) of Holding, subsidiary or associate	Yes	No
Members of Core Management Team (other than BoD)	Yes	No

*Only if they are able to affect policies of both enterprises

** Only if KMP is a director

*** Sufficient for director, KMP to be a member or director or hold 2% in public co. But a shareholder individual who is not a KMP or Director is not RPT for the Act but for AS 18

Joint venture not covered in Act for RPT

Only if control or significant influence is proved

RELATED PARTY TRANSACTIONS

- **Transactions Covered** as per Sec. 188 (1) of Companies Act, 2013:
 - (a) Sale, purchase or supply of any goods or materials
 - (b) Selling or otherwise disposing of, or buying, property of any kind
 - (c) Leasing of property of any kind
 - (d) Availing or rendering of any services
 - (e) Appointment of any agent for purchase or sale of goods, materials, services or property
 - (f) Such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company and
 - (g) Underwriting the subscription of any securities or derivatives thereof, of the company

RELATED PARTY TRANSACTIONS

- Provided that (Proviso 1)
 - No contract in the following cases shall be entered into without the prior approval by the company through Special resolution*:
 - ***Transaction value threshold :**
 - (a) Sale, purchase or supply of any goods or materials - > 10% of Annual Turnover or Rs. 100 crores, whichever is less.
 - (b) Selling or otherwise disposing of, or buying, property of any kind - > 10% of NW or Rs. 100 Crores, whichever is less.
 - (c) Leasing of property of any kind - >10% of NW or 10% of Turnover or Rs. 100 crores, whichever is less.
 - (d) Availing or rendering of any services - > 10% of Turnover or Rs. 100 crores, whichever is less.
 - (e) Appointment of any agent for purchase or sale of goods, materials, services or property
 - (f) Such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company – Remuneration > Rs 2.50 lacs pm
 - (g) Underwriting the subscription of any securities or derivatives thereof, of the company – Remuneration > 1 % of NW

RELATED PARTY TRANSACTIONS

- **As per Companies (Amendment) Bill, 2014, Dated 8th December 2014, Special resolution is replaced by ordinary resolution.*
- *As per Companies (Amendment) Bill, 2014, related party transactions between holding companies and wholly owned subsidiaries are exempt from the requirement of approval of non-related shareholders.*
- *Companies (Amendment) Bill, 2014 has empowered Audit Committee to give Omnibus approvals for related party transactions on annual basis.*

RELATED PARTY TRANSACTIONS

- **omnibus approval for related party transactions on annual basis.-**

Rule 6A: All related party transactions shall require approval of the Audit Committee and the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions as specified.

RELATED PARTY TRANSACTIONS

- **Key aspects to be considered in evaluating whether a transaction is not in the ordinary course of business:**
 - ▶ Whether the transaction is covered in the main objects or object incidental to the main objects as envisaged in the Memorandum of Association;
 - ▶ Whether a transaction is usual or unusual;
 - ▶ Frequency;
 - ▶ Whether transaction is done at arm's length;
 - ▶ Whether transaction is done on similar basis with other third parties;
 - ▶ Business purpose of the transaction;
 - ▶ Size and volume of transaction.

RELATED PARTY TRANSACTIONS

- (proviso 2)- No member of the company shall vote on such special resolution , to approve any contract or arrangement which may be entered into by the company, if such member is a related party
- Nothing in this subsection shall apply to any transactions entered into by company in its ordinary course of business other than transactions which are not on an arm's length basis.
- Every contract / arrangement entered under S. 188 (1) shall be referred to in the Board Report along with justification.

RELATED PARTY TRANSACTIONS

- First and Second proviso shall not apply to –
 - a govt co. in respect co. in respect of contracts or arrangements entered into by it with any other govt co.
 - a govt co., other than a listed co., in respect of contracts or arrangements other than those referred to in clause (a), in each case such co. obtains approval of the ministry or dept of CG which is administratively incharge of the co's, or as the case may be, the state govt before entering into such contract or arrangement

[NOTIFICATION F No 1/2/2014-CL.V DATED 5TH JUNE, 2015]
- Second proviso shall not apply to a private co.
[NOTIFICATION F NO 1/1/2014- CL.V DATED 5TH JUNE, 2015]

RELATED PARTY TRANSACTIONS

- Contract entered in to by the director/employee with out prior approval by the Board/ approval by the Shareholder and if the same is not ratified by the Board/Share holders within 3 months from the date of entering in to contracts, such contracts shall be voidable at the option of the Board
- **Penalty**
 - **Contravening director of a listed Company:** imprisonment for a term of 1 year or fine not less than Rs.25,000/- which may extend to Rs. 5,00,000 or with both.
 - **Contravening director of other Company:** fine not less than Rs.25,000/- which may extend to Rs. 5,00,000.

RELATED PARTY TRANSACTIONS

Companies Act,1956	Companies Act,2013	AS 18
<p>Section 297 covered only sale and purchase of goods, rendering of services , underwriting the subscription of any shares or debentures. Where paid up share capital of the company exceeds Rs. 1crore, prior approval of the Central Govt. required. Not applicable to contracts between two public companies</p>	<p>Also covers leasing of property, appointment of agent for the sale or purchase, related party's appointment to any office or place of profit in the company, its subsidiary or associate company. Prior CG approval done away it and only Members approval required by way of a special resolution. Applicable to contracts between two public companies as well.</p>	<p>Related party - parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions.</p> <p>Related party transaction - a transfer of resources or obligations between related parties, regardless of whether or not a price is charged.</p>

RELATED PARTY TRANSACTIONS

Case Study

- Q** Mr. R, A director of ABC limited is also a director sitting on the board of XYZ private limited. Mr. R does not hold any stake in the paid up capital of XYZ private limited. Will XYZ private limited be related party of ABC limited? Whether the answer would have been similar under RC49?
- Q** Mr. R, A director of ABC limited, is also a practicing lawyer and periodically provides legal advice to XYZ limited. The board of XYZ limited acts in accordance with the legal advice provided by mr. R. Would XYZ be treated as a related party for ABC? Would mr. R be treated as a related party for XYZ?

RELATED PARTY TRANSACTIONS

Case Study

- Q XYZ Limited has issued 10 lakh equity shares fully paid up (FV-Rs.10 each). ABC Limited holds 1.5 lakhs equity shares in XYZ Limited. It has also issued 10 lakh compulsorily convertible preference shares (FV-Rs.10 each). ABC Limited also holds 3 lakh preference shares in XYZ Limited. Is XYZ Limited related to ABC Limited?
- Q ABC Limited, a manufacturing company, sells or leases a vacant flat to its subsidiary? Whether this would be a transaction in the ordinary course of business? Whether the answer would be same if ABC Limited sells or leases entire building constructed solely for this purpose to the subsidiary? Would there be any impact under RC49 on April 1, 2014?

when we are no longer able to
change a situation,
we are challenged to change
ourselves!”

Victor Frank

**FEEL FREE ...
TO ASK QUESTION ...
OR DO CLARIFY**

THANK YOU.....