

Latest Amendments introduced in Companies Act 2013

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Coverage of Session

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Filing of e-Form for exempted Deposits



Compliance relating to provisions of Significant Beneficial Ownerships



Certificate of Commencement of Business



Banning of Unregulated Deposit Schemes Ordinance, 2019

Filing of e-Form for exempted Deposits – DPT 3

**Companies (Acceptance of Deposits)
Amendment Rules, 2019**

**MCA Notification GSR. 42 [F.NO.1/8/2013-
CL-V], dated 22-1-2019**

What are deposits?

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- Sec. 2(31) of Cos. Act, 2013 defines **Deposits**:
- 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 RBI.
- Chapter V [Sec. 73 – 76A of Cos. Act, 2013] – relates to acceptance of deposits by companies.

Limited discussion on 'Deposits'

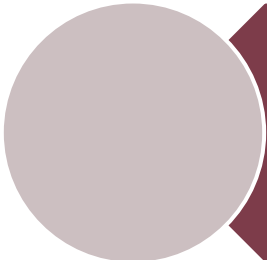
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Acceptance of 'deposits' from member of Co. – T&C has been prescribed;



Repayment of 'deposit' accepted before commencement of Cos. Act, 2013 (i.e. 01-04-2014)



Acceptance of 'deposits' from public by certain Cos. (other than members) – T&C has been prescribed.

Cos. (Acceptance of Deposit Rules) 2014

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Rule 2(1)(c) – ‘Deposit’ includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include:

List of 18 transactions [such transactions are referred to as ‘exempted deposits’]

Analysis of the definition of ‘Exempted Deposits’

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Inclusive
Definition

Any
receipt of
money

Exceptions
provided
i.e.
Exempted
Deposits

Question –
Whether
‘exempted
deposits’
are
‘deposits’?

Money or Loan not amounting to ‘Deposit’

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- Any amount received from the Central Government or a State Government, or any amount received from any other source whose repayment is guaranteed by the Central Government or a State Government, or any amount received from a local authority, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature.

Money or Loan not amounting to ‘Deposit’

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- Any amount received from foreign Govts., foreign or international banks, multilateral financial institutions (including.....), foreign Govts. owned development financial institutions, foreign export credit agencies, foreign collaborators, foreign bodies corporate and foreign citizens, foreign authorities or persons resident outside India subject to the provisions of FEMA and rules and regulations made there under.

Money or Loan not amounting to ‘Deposit’

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- Any amount received as a loan or facility from any banking company or from the State Bank of India or any of its subsidiary banks or from a banking institution notified by the Central Government under section 51 of the Banking Regulation Act, 1949

Money or Loan not amounting to ‘Deposit’

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- Any amount received as loan or financial assistance from Public Financial Institutions notified by the Central Government in this behalf in consultation with RBI or any regional financial institutions or Insurance Companies or Scheduled Banks as defined in RBI Act.

Money or Loan not amounting to ‘Deposit’

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- Any amount received against issue of commercial paper or any other instruments issued in accordance with the guidelines or notification issued by the RBI.

Money or Loan not amounting to 'Deposit'

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- Any amount received by a company from any other company

Money or Loan not amounting to ‘Deposit’

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Any amount received and held pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities, **including share application money or advance towards allotment of securities pending allotment**, so long as such amount is appropriated only against the amount due on allotment of the securities applied for.

Explanation.—For the purposes of this sub-clause, it is hereby clarified that -

- a. Without prejudice to any other liability or action, if the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from the date of completion of sixty days, such amount shall be treated as a Deposit under these rules:
- b. Any adjustment of the amount for any other purpose shall not be treated as refund.

Money or Loan not amounting to ‘Deposit’

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Any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company:

Subject to following T&C:

- ✓ 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
- ✓ Company shall disclose the details of money so accepted in the Board's Report;

Money or Loan not amounting to ‘Deposit’

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- **BONDS or DEBENTURES – SECURED or COMPULSORY CONVERTIBLE?**
- Any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets (referred to in Schedule III of the Act excluding intangible assets of the company) or bonds or debentures compulsorily convertible into shares of the company within 10 years:
 - Provided that if such bonds or debentures are secured by the charge of any assets referred to in Schedule III of the Act, excluding intangible assets, the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a Registered Valuer.

Money or Loan not amounting to ‘Deposit’

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Any amount raised by issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by SEBI.

i.e. Listed & unsecured NCD \neq Deposit

Money or Loan not amounting to ‘Deposit’

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- 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 and held in trust

Money or Loan not amounting to ‘Deposit’

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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 of services accounted for in any manner whatsoever 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:

Provided that in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of 365 days shall not apply:

Money or Loan not amounting to ‘Deposit’

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- ❑ As advance, accounted for in any manner whatsoever, received in connection with consideration for an immovable property under an agreement or arrangement, provided that such advance is adjusted against such property in accordance with the terms of agreement or arrangement;
- ❑ As security deposit for the performance of the contract for supply of goods or provision of services;
- ❑ As advance received under long term projects for supply of capital goods except those covered under item (b) above:
- ❑ As an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or 5 years, from the date of acceptance of such service whichever is less.

Money or Loan not amounting to ‘Deposit’

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- As an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;
- As an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;

Money or Loan not amounting to ‘Deposit’

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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 fulfillment of the following conditions, namely:-

- a) Loan is brought in pursuance of the stipulation imposed by the lending institutions on Promoters to contribute such finance;
- b) Loan is provided by the promoters themselves or by their relatives or by both; and
- c) Exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter;

Money or Loan not amounting to ‘Deposit’

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- Any amount accepted by a Nidhi company in accordance with the rules made under section 406 of the Act;
- Any amount received by way of subscription in respect of a chit under the Chit Fund Act, 1982;
- Any amount received by the company under any CIS in compliance with regulations framed by SEBI;
- An amount of Rs. 25 lacs or more received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding 5 years from the date of issue) in a single tranche, from a person;
- Any amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds, Infrastructure Investment Trusts, Real Estate Investment Trusts and Mutual Funds registered with SEBI in accordance with regulations made by it.

Reporting of 'Exempted Deposits'

Introduced by Companies (Acceptance of Deposits) Amendment Rules, 2019

**Notification GSR. 42 [F.NO.1/8/2013-CL-V],
dated 22-1-2019**

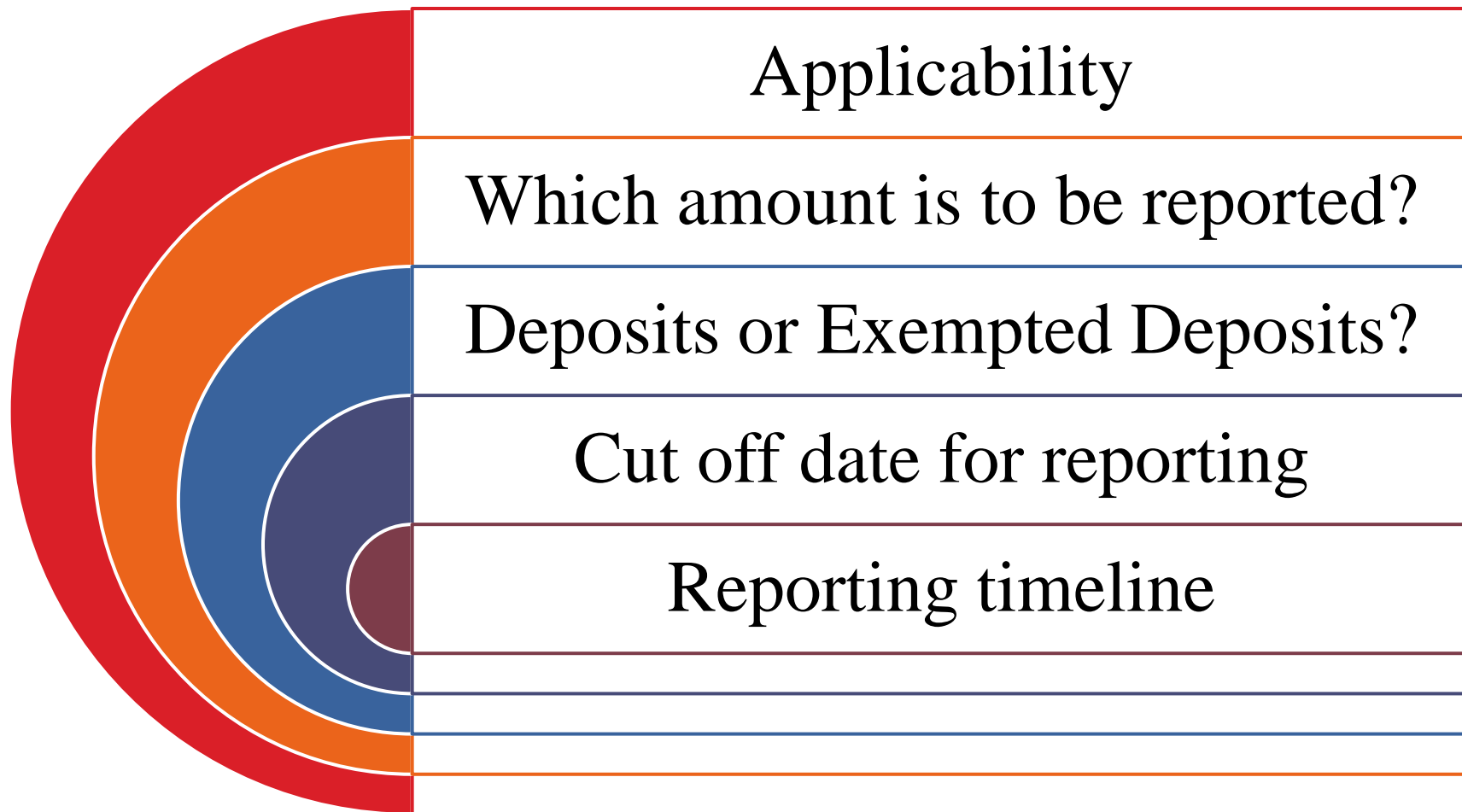
Companies (Acceptance of Deposits) Amendment Rules, 2019

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- Every company other than Government company shall file a one-time return of outstanding receipt of money or loan by a company but not considered as deposits, in terms of clause (c) of sub-rule 1 of rule 2 from April 1, 2014 to the date of publication of this notification in Official Gazette (Jan. 22, 2019), as specified in Form DPT-3 within 90 days from the date of said publication of this notification along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014

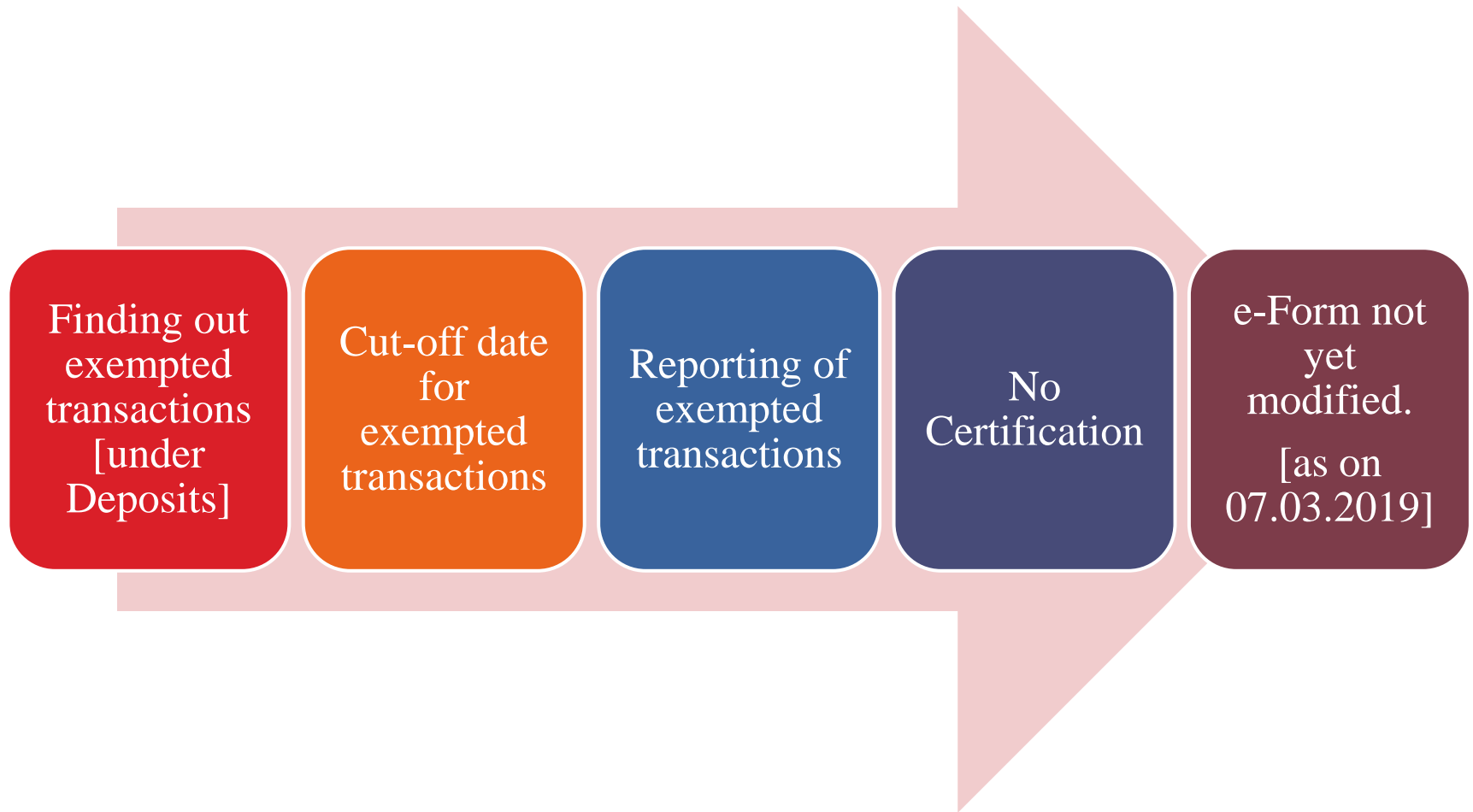
Questions on DPT – 3

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Timeline for DPT – 3

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Compliance relating to provisions of Significant Beneficial Ownerships

Introduction of the provisions

Background of introducing provisions

Companies (Amendment) Act, 2017

Basic provision – U/s 90(1) of Cos. Act, 2013

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Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than 25% or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of Significant Influence or Control, over the company (herein referred to as ‘Significant Beneficial Owner’, SBO), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed.

What is a Reporting Company?

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‘Reporting Company’ means a company as defined in clause (20) of section 2 of the Act, required to comply with the requirements of section 90 of the Act;

Who is ‘Significant Beneficial Owner’?

31

SBO in relation to a reporting company means an individual referred to in sec. 90(1), who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:

- i. Holds indirectly, or together with any direct holdings, not less than 10% of the shares;
- ii. Holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares;
- iii. Has right to receive or participate in not less than 10% of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;
- iv. Has right to exercise, or actually exercises, *significant influence* or control, in any manner other than through direct holdings alone. [***Significant influence means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies***].

For the purpose of this clause, if an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii) or (iii), he shall not be considered to be a SBO.

In case of an 'individual', how to determine beneficial interest?

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An individual shall be considered to hold a right or entitlement directly in the reporting company, if he satisfies any of the following criteria, namely:

- i. Shares in the reporting company representing such right or entitlement are held in the name of the individual;
- ii. Individual holds or acquires a beneficial interest in the share of the reporting company u/s 89(2), and has made a declaration in this regard to the reporting company.

Where the member of the reporting company is body corporate (in India or outside India), other than LLP:

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Where the member of the reporting company is a body corporate (whether incorporated or registered in India or abroad), other than a limited liability partnership, and the individual:

- (a) Holds majority stake in that member; or*
- (b) Holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member;*

Where the member of the reporting company is HUF (through Karta):

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Where the member of the reporting company is a Hindu Undivided Family (HUF) (through karta), and the individual is the karta of the HUF

Where the member of the reporting company is partnership entity (Partnership Firm or LLP):

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Where the member of the reporting company is a partnership entity (through itself or a partner), and the individual:

- a) is a partner; or*
- b) holds majority stake in the body corporate which is a partner of the partnership entity; or*
- c) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.*

Where the member of the reporting company is Trustee:

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Where the member of the reporting company is a trust (through trustee), and the individual:

- a. Is a trustee in case of a discretionary trust or a charitable trust;*
- b. Is a beneficiary in case of a specific trust;*
- c. Is the author or settlor in case of a revocable trust.*

Where the member of the reporting company is Pooled Investment vehicle (member of FATF or IOSCO):

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Where the member of the reporting company is,

- i. Pooled investment vehicle; or
- ii. An entity controlled by the pooled investment vehicle,

based in member State of FAFT on Money Laundering and regulator of the securities market in such member State is a member of the International Organization of Securities Commissions, and **the individual in relation to the pooled investment vehicle,-**

- i. Is a general partner; or
- ii. Is an investment manager; or
- iii. Is CEO where the investment manager of such pooled vehicle is a body corporate or a partnership entity.

What is ‘acting together’?

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- If any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or *significant influence*, over a reporting company, pursuant to an agreement or understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be, shall be deemed to be ‘acting together’.

- *Significant influence* means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies.

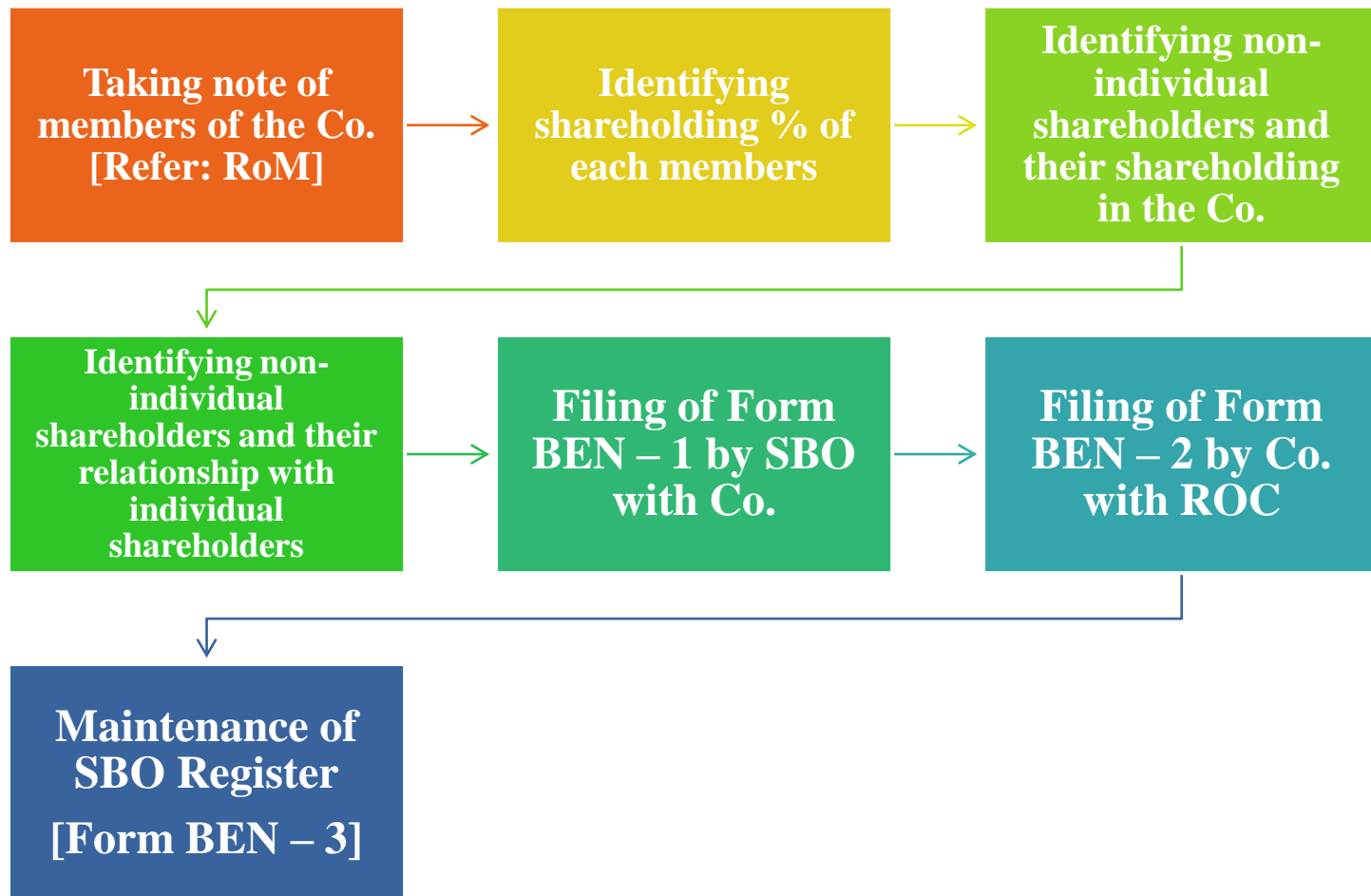
How are CCPs / CCDs / GDR considered for SBO?

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Instruments in form of Global Depository Receipts, Compulsorily Convertible Preference Shares or Compulsorily Convertible Debentures shall be treated as 'shares'.

Broad check-list for compliance procedure u/s 90 of the Act read with SBO Rules

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Forms u/s 90 of the Act read with SBO Rules

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Sr. No.	Particulars	Form No.
1	Every individual who is SBO in a Reporting Co. shall file Declaration:	Form BEN – 1
2	Where SBO undergoes any changes, such individual shall file Declaration:	Form BEN – 1
3	Reporting Co. shall file Return with ROC:	Form BEN – 2
4	Maintenance of Register of SBO:	Form BEN – 3
5	Reporting shall give notice to any person whom the Co. knows / has reasonable cause to believe:	Form BEN – 4

SBO Rules shall not be made applicable to the extent the share of Reporting Co. is held by:

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Authority constituted u/s 125(5) of the Act

It's Holding Reporting Company (However, the details of such holding reporting company shall be reported in Form No. BEN-2)

Central Government, State Government or any local Authority;

Reporting company, or Body corporate, or an entity controlled by the Central Government or by any State Govt.(s), or partly by the Central Govt. and partly by one or more State Govt(s);

SEBI registered Investment Vehicles such as Mutual Funds, Alternative Investment Funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs) regulated by SEBI;

Investment Vehicles regulated by RBI, or IRDA, or PFRDA.

Procedural aspect w.r.t. SBO Rules

Ref. Section 90 of the Act & SBO Rules

Duty of the reporting company?

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Section 90(5) of Cos. Act, 2013: A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe:

- a) To be SBO of the company;
- b) To be having knowledge of the identity of SBO or another person likely to have such knowledge; or
- c) To have been SBO of the company at any time during the 3 years immediately preceding the date on which the notice is issued, and who is not registered as SBO with the company as required u/s 90.

A company shall give notice seeking information in accordance with u/s 90(5) of the Act, in Form No. BEN – 4.

Declaration -> Company -> ROC

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- **Section 90(6) of Cos. Act, 2013:** Where any declaration u/s 90 is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within 30 days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fees or additional fees as may be prescribed.

- Rule 2A: Every Reporting Co. shall take necessary steps to find out if there is any individual who is SBO in relation to that Reporting Co., and if so, identify him and cause such individual to make a declaration.

- Without prejudice to the generality of the steps stated, every Reporting Co. shall in all cases where its member (other than an individual), holds not less than 10% of its: (i) shares, or (ii) Voting rights, or (iii) Right to receive or participate in the dividend or any other distribution payable in a financial year – give notice to such member, seeking information [in Form No. BEN– 4].

Declaration of SBO u/s 90 of Companies Act, 2013

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- On the date of commencement of the Companies (SBO) Amendment Rules, 2019, every individual who is a SBO in a reporting company, shall file a declaration in Form No. BEN-1 to the reporting company within 90 days from such commencement;
-
- Every individual, who subsequently becomes SBO, or where his SBO any *change* shall file a declaration in Form No. BEN-1 to the reporting company, within 30 days of acquiring such significant beneficial ownership or any change therein.

Return of SBO in shares

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- Upon receipt of declaration, the reporting company shall file a return in Form No. BEN-2 with the ROC in respect of such declaration, within a period of 30 days from the date of receipt of such declaration by it, along with the prescribed fees.

Maintenance of Register of SBO

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- The company shall maintain a register of significant beneficial owners in Form No. BEN-3.
- The register shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding Rs. 50/- for each inspection.

Company to apply to NCLT in certain cases

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The company shall,—

- a) Where that person fails to give the company the information required by the notice within the time specified therein; or
- b) Where the information given is not satisfactory,

apply to the Tribunal within a period of 15 days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.

Tribunal procedure

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- ❑ On any application made, the NCLT may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of 60 days of receipt of application or such other period as may be prescribed. [Sec. 90(8) of Cos. Act, 2013].
- ❑ The company or the person aggrieved by the order of NCLT may make an application to NCLT for relaxation or lifting of the restrictions placed under subsection (8), within a period of one year from the date of such order.
- ❑ However, if no such application has been filed within a period of 1 year from the date of the order, such shares shall be transferred, without any restrictions, to the authority constituted u/s 125(5) i.e. IEPF.
- ~~❑ The company or the person aggrieved by the NCLT order may make an application to NCLT for relaxation or lifting of the restrictions placed u/s 90(8) of the Act.~~

Certificate of Commencement of Business

Sec. 10A of Cos. Act, 2013

**Inserted by the Companies (Amendment) second
Ordinance, 2019, w.e.f. November 2, 2018**

**e-Form INC – 20A [notified and available from
January 26, 2019]**

Provisions relating to commencement of business

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Company having a share capital *shall not commence any business or exercise any borrowing powers unless:*

- (a) Declaration is filed by a director within a period of 180 days of the date of incorporation of the company in eForm 20A with ROC that every subscriber to MoA has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and
- (b) Company has filed with the RoC a verification of its registered office [INC – 22].

Provisions relating to commencement of business

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- Where no declaration has been filed with RoC within a period of 180 days of the date of incorporation of the company and RoC has reasonable cause to believe that the company is not carrying on any business or operations, ROC may, initiate action for the removal of the name of the company from the register of companies.

- Attachment to the eForm: Subscribers proof of payment for value of shares.
 - Question is can share subscription money be accepted in cash or mandatorily by transfer of funds via internet banking.

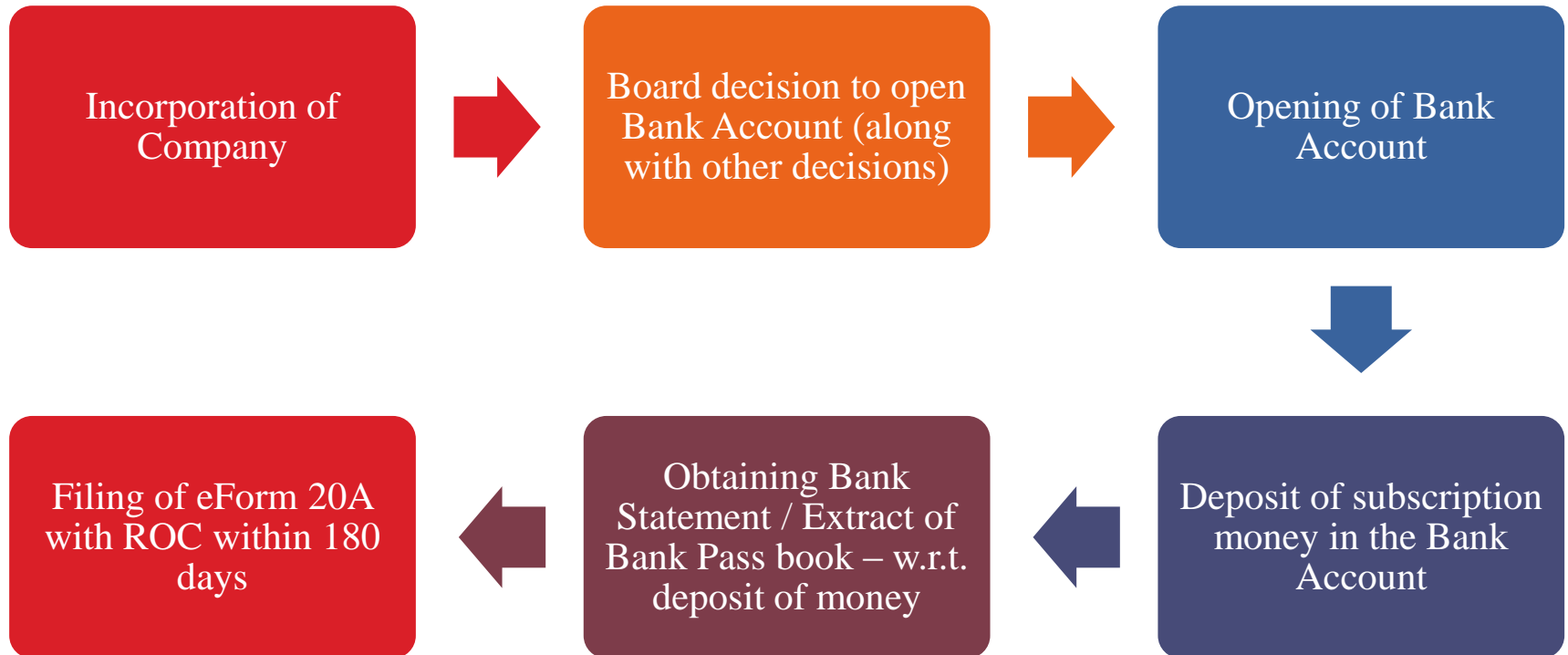
Role of Professionals

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- **Certification by practising professional:** *I declare that I have been duly engaged for the purpose of certification of this form. It is hereby certified that I have gone through the provisions of the Companies Act, 2013 and Rules thereunder relevant to this form and I have verified the above particulars (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.*
- **e-Form 20A approved under STP. The e-Form will be taken on the ROC records through electronic mode and on the basis of statement of correctness given by the company.**

Post incorporation compliance [w.r.t. eForm 20A]

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Q&A Session

Thank you professional colleagues for your active participation!

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