



# PUNE BRANCH OF WIRC

## Audit of Sourcing of Funds

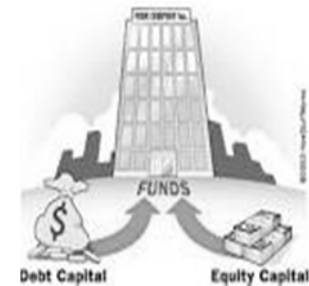
CA Avinash Rawani

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# SCOPE OF DISCUSSION

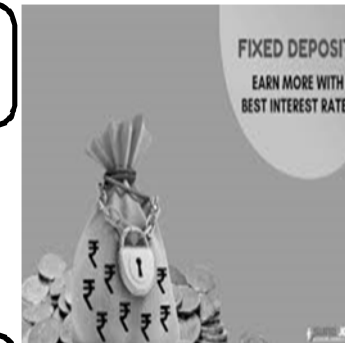
## Share Capital - Types of Allotment and Reporting

- Chapter IV of the Companies Act;
- Section 43 to Section 72 of the Act;
- Related Rules 1 to Rules 9 of the Act



## Deposits - Types and Reporting of Deposits

- Chapter V of the Companies Act;
- Section 73 to Section 76A of the Act;
- Related Rules 1 to Rules 21 of the Act

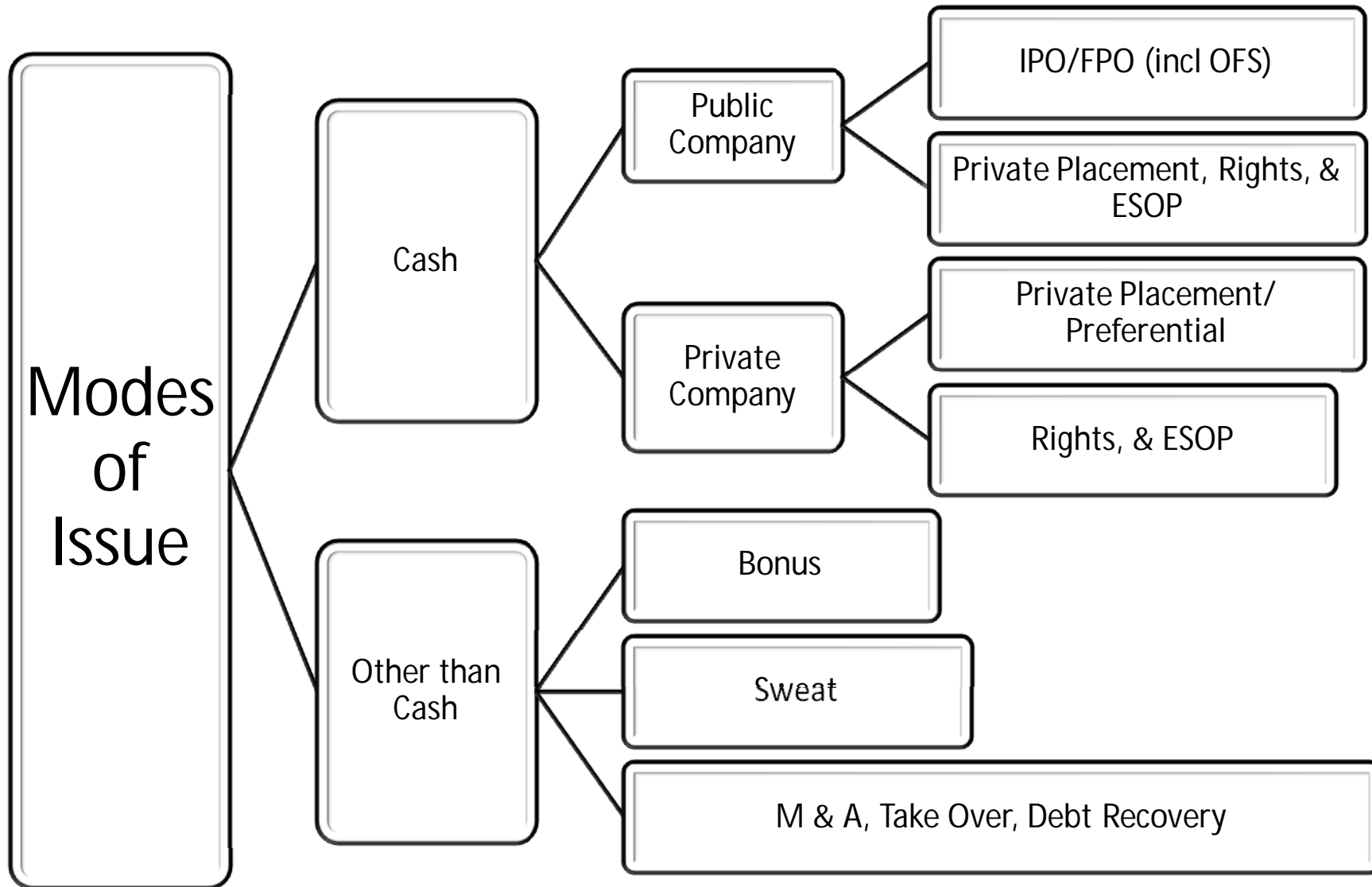


## Loan - Charges and Reporting

- Chapter VI of the Companies Act;
- Section 77 to Section 87 of the Act;
- Related Rules 1 to Rules 12 of the Act



# Raising of Additional Capital

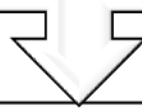


# Private Placement- Sec 42

Maximum allotment to 50 or higher prescribed number of investors (excluding QIBs & ESOP) in one FY



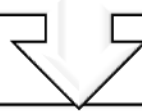
Concept of offer letter introduced, offer to pre-identified persons by name



Cash payment prohibited



Allotment to be made within 60 days, else refund @ 12% interest p.a.



Share application money to be kept in separate bank account

# Types of Share Capital

- Equity
  - With Voting Rights
  - With Differential Rights as to dividend, voting or otherwise as prescribed by the rules (conditions apply)
- Preference
  - Payment of Dividend- Either Fixed Amount or Fixed Rate;
  - Preference in respect of repayment at a premium or otherwise in case of re-payment or winding up whichever is earlier;
  - capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:—
    - that in respect of dividends, in addition to the preferential rights to the amounts specified in sub-clause (a) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;
    - that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in sub-clause (b) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.]

# Certain provisions

- AOA should provide for the terms and conditions;
- Specified IFSC Public Company, relaxations for Section 43;
- Rights of Shareholders, Transfers of Shares can be specified in AOA; (Section 44)
- Share Certificates to be issued containing distinctive numbers in Form SH-3;
- Mandatory issue of shares in Demat for Public Companies;
- Right to vote at the meeting based on the number of shares held (5% restriction for vote for Nidhi Companies);
- Dividend if not paid on preference shares not paid for two years or more then shall have right to vote [Section 47];
- Any resolution effecting rights of the shareholders requires special resolution with consent of 75% ;
- Power to minority shareholders holding less than 10% to approach to Tribunal. [Section 48]

# Certain provisions

- Partly paid up shares- Restriction on Voting Rights;
- Company to Accept Unpaid Share Capital, Although not Called Up [Section 50]
- Shares can be issued at premium and share premium can be utilised for the purpose of issue of bonus shares, writing of preliminary expenses, commission or discount or on premium paid on redeemable preference shares or for buy-back (Companies specified); [Section 52]
- Issue of shares at discount not permitted- relaxation to certain companies given; [Section 53]
- Company can issue Sweat Equity Shares- Rules to be followed;
- Redeemable Preference Shares can be issued for a maximum period of 10 years. Infrastructure Project Companies maximum period can be for 20 years; [Section 55]

# Certain provisions

- Transfer and Transmission of Shares [Section 56]
- Share Certificates to be issued within two months from the date of allotment and within one month from the date of transfer;
- Punishment for Personation of Shareholder; [Section 57]
- Appeal can be filed against Refusal of Transfer; [Section 58];
- Register of Members to be maintained; [Section 59];
- Publication of Authorised, Subscribed and Paid-Up Capital;
- Alteration of Capital can be done through prescribed modes- Time limit of filing is 30 days;
- Further Issue of Shares can be done, conditions to be followed;
- Bonus Shares can be issued by capitalisation of free reserves, securities premium or capital redemption reserve- terms and conditions apply; Defaulting companies in case of repayment of deposit, statutory dues of employees, companies holding partly paid up shares restricted [Section 63]
- Bonus shares cannot be issued in lieu of dividend and also on capitalisation of revaluation reserves



# Certain provisions

- Reduction of Share Capital; [Section 66]
- Restrictions on Purchase by Company or Giving of Loans by it for Purchase of its Shares; [Section 67]
  - Provisions not applicable to private companies in whose share capital no other body corporate has invested any money;
  - If the borrowings of such company from banks and financial institutions or any body corporate is less than twice its paid up capital or Rs. 50 Crores, whichever is lower and
  - Has not defaulted in repayment of the borrowings stated above;
  - Nidhi Companies in case of purchase of shares of its loanees relief given;
  - IFSC public Company provisions not applicable provided the terms and conditions stated above are complied with
- Company can purchase its own shares up to 10% of its paid up capital and free reserves at a time and maximum up to 25% of such amount in any financial year- Guidelines to be followed [Section 68]- Separate for each type of Company;
- Capital Redemption Reserve to be created equivalent to the exhausted capital; [Section 69]

# Certain provisions

- **Prohibition for Buy-Back in Certain Circumstances**
  - through any subsidiary company including its own subsidiary companies;
  - through any investment company or group of investment companies; or
  - if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company [three years time limit apply];
  - Cannot buy back if not paid unpaid dividends, filed Annual Returns or Annual Reports

# Documents Maintenance (Section 88)

- Form No. MGT-1 (for Companies having share capital)
  - Registers of Members for each class of shares;
  - Register of Debenture Holders;
  - Register of any other Security Holders;
- Form No. MGT-2 (for Companies not having share capital)
  - Registers containing full details of Members;
  - Register of Debenture Holders;
  - Register of any other Security Holders;
- Form No. MGT-3 (for Companies having share capital and having foreign security holders or beneficial owners)
- Form No. MGT-4
  - Declaration in respect of beneficial interest in shares;
- Form No. MGT-5
  - Declaration in respect of beneficial interest in shares by registered owner;
- Form No. BEN-1/Form BEN-2/MGT-6
  - Declaration in respect of beneficial interest in shares by beneficial ownership



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# Filing of Documents at a glance

Form PAS-1

- Advertisement giving details of notice of special resolution for varying the terms of any contract referred to in the prospectus or altering the objects for which the prospectus was issued

Form PAS-2

- Information Memorandum for Shelf Prospectus

Form PAS-3

- Return of Allotment

Form PAS-4

- Private Placement Offer

Form PAS-5

- Record of a private placement offer to be kept by the company

Form PAS-6

- Reconciliation of Shares

# Issue of Documents at a glance

Form No. SH-1

- Share Certificate

Form No. SH-2

- Register of Renewed and Duplicate Share Certificates

Form No. SH-3

- Register of Sweat Equity Shares

Form No. SH-4

- Securities Transfer Form

Form No. SH-5

- Notice for transfer of partly paid securities

# Issue of Documents at a glance

Form No. SH-6

- Register of Employee Stock Options

Form No. SH-7

- Notice to Registrar for Alteration of Share Capital

Form No. SH-8

- Letter of Offer for Buy Back of Securities

Form No. SH-9

- Declaration of Solvency

Form No. SH-10

- Register of Shares or other securities bought back

# Certain Important Forms

Form SH-11

- Return in respect of buy-back of securities

Form SH-12

- Trust Deed by Debenture Holders

Form SH-13

- Nomination by Security Holders

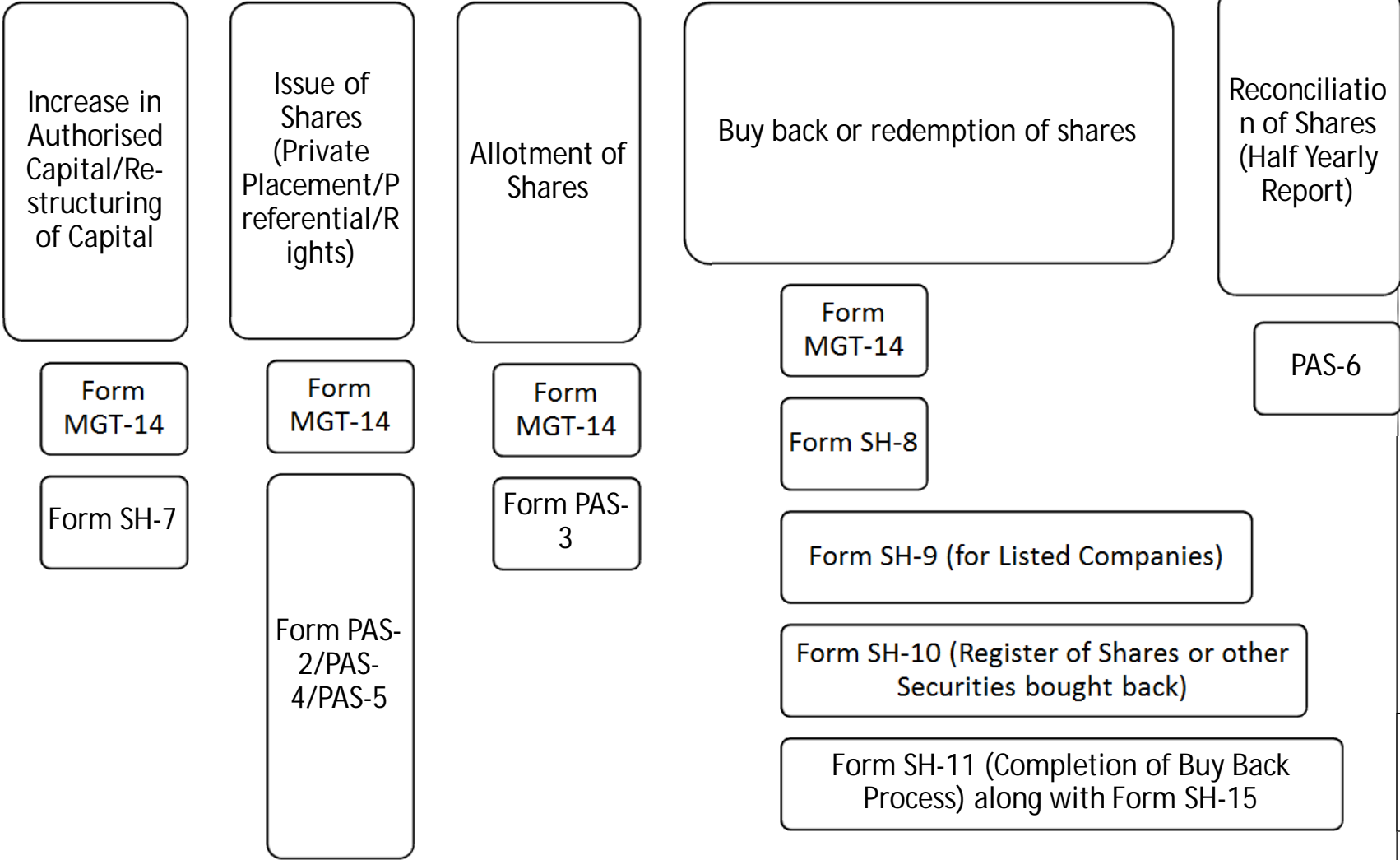
Form SH-14

- Cancellation of Nominee

Form SH-15

- Certificate of compliance in respect of buy-back of securities

# Filing Requirements





# Certain Precautions

- Subscribers to MOA –subscription amount to be paid for obtaining commencement of business certificate;
- Power with the Tribunal to Strike off the name from the Register in cases of non-receipt of subscription money;
- Company can file suit on Subscribers to recover subscription money
- Shares cannot be issued in Cash, Minimum Offer to be not less than Rs. 20000/-
- Share Application amount to be kept in separate bank account and not to be utilised till the Allotment is filed with MCA;
- Non payment of calls in time may lead to forfeiture of shares;
- Re-issue of forfeited shares, subject to certain conditions

# 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



➤ 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:

Provided that the director made a declaration in writing that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others;

- 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;

# Provision of Acceptance of Deposits

- Secured or Unsecured Deposit cannot be accepted which is repayable on demand
- No company under section 73(2) and 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 and free reserves of the company, and
- such deposits are repayable not earlier than three months from the date of such deposit or renewal thereof.
- Aggregate amount of other deposits outstanding as on the date of acceptance or renewal of such deposits should not exceed thirty five per cent of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.

# Acceptance of Deposits

- IFSC Public company and a private company may accept from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in Form DPT-3.
- Provided further that the maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies, namely:-
  - (i) a private company which is a start-up, for five years from the date of its incorporation;
  - (ii) a private company which fulfils all of the following conditions, namely:-
    - (a) which is not an associate or a subsidiary company of any other company;
    - (b) 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 less ; and
    - (c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:
- All the companies accepting deposits shall file the details of monies so accepted to the Registrar in Form DPT-3.



# Acceptance of Deposits

- Maximum Acceptance Limit of acceptance or renewal of deposit from members shall not exceed exceeds ten per cent of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company;
- Aggregate of deposits, outstanding on the date of acceptance or renewal not to exceed 25% (35% for Govt. companies) of aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.
- Rate of interest or pay brokerage and interest maximum to be as payable by NBFC.

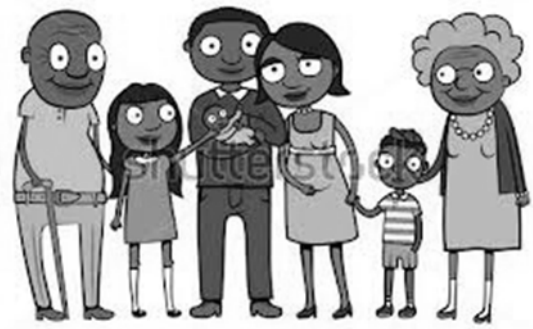
# Acceptance of Deposits

- (7) The company shall not reserve to itself either directly or indirectly a right to alter, to the prejudice or disadvantage of the depositor, any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract after circular or circular in the form of advertisement is issued and deposits are accepted.
- (8)
  - (a) Every eligible company shall obtain, at least once in a year, credit rating for deposits accepted by it and a copy of the rating shall be sent to the Registrar of Companies alongwith the return of deposits in Form DPT-3.
  - (b) The credit rating referred to in clause (a) shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits, from any one of the approved credit rating agencies as specified for Non-Banking Financial Companies in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, issued by the Reserve Bank of India, as amended from time to time.”]

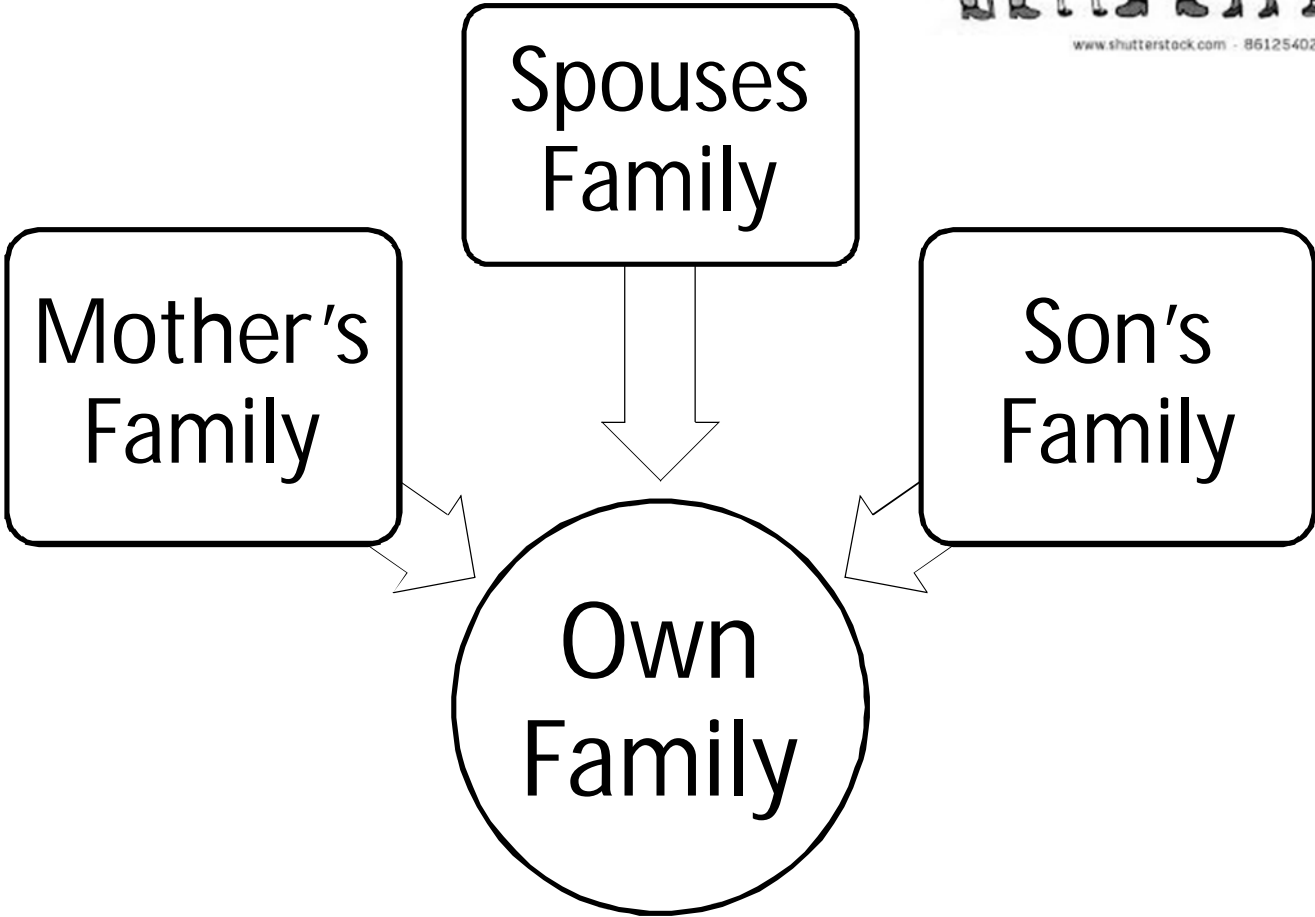
# Acceptance of Deposits

- Acceptance of Deposit from Director or relative of a Director is exempted;
- Deposit to be given from own funds, copy of declaration to be filed with company and to mention about the deposit in Directors' Report ;(Circular No. 1/8/2013-CL-V dated 15.09.2015)
- New Section 76A inserted after Section 76 for punishment for deposits accepted in violation of the provisions of the said Act.
- Financials to reflect the Deposits as per the requirements of Schedule III of the Act and Board's Report requirements to be fulfilled;
- Depositor can approach to the Tribunal in case of non payment of deposits;
- Deposit Repayment Reserve Account to be created and the sum should not be used for any other purpose

# Relatives



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# Summary of Rules for Deposits

- Advertisement for Acceptance of Deposit to be in Form DPT-1;
- Certificate from the Auditor to be part of Form DPT-1;
- Creation of Security in the form of Movable or Immovable for Secured Deposits to cover principal amount and interest;
- Appointment of Trustee for Depositors- Such Trustee cannot be removed after the issue of circular or advertisement;
- Trustee of Depositors to convene meeting on request of 1/10<sup>th</sup> of the Depositors in value;
- Deposit to be accepted in valid Deposit Application Form;
- Nomination of Deposit to be compulsorily done;
- Receipt of Deposit to be given by the Company to all the Depositors within 21 days of the receipt of deposit or renewal;

# Other Summary of Rules for Deposits

- Maintenance of Liquid Assets and Creation of Deposit Repayment Reserve Account which should not be less than 20% of the Deposits maturing during the financial year and the said amount to be deposited in Scheduled Bank;
- Register of Deposit to be maintained by the Company and updated within 7 days from the date of transaction;
- Premature repayment of deposit to be done after the expiry of the six months period in compliance of provisions;
- Form DPT-3 to be filed with the Registrar on or before 30<sup>th</sup> June each year (Government Companies excluded);
- Penal Interest @ 18% per annum to be paid on the over due deposits, whether secured or unsecured, matured and claimed;
- Central Government has powers to modify the rules;
- Deposit accepted in the earlier Act and continued in new Act to be informed by filing Form DPT-4

# Summary of Deposit Forms

Form DPT-1

- Circular or circular in the form of advertisement inviting deposits

Form DPT-2

- Deposit Trust Deed

Form DPT-3

- Return of deposits

Form DPT-4

- Statement regarding deposits existing on the commencement of the Act

# Registration of Charges

- All types of charges are required to be registered in contrast to specified list under the earlier Act. [Section 77]
- Can be on the property situated in India or out of India;
- 30 days time limit fixed for registration, maximum 300 days for filing with Additional Fee;
- Approach to CLB or Tribunal thereafter.
- Certificate of Charge to be issued by Registrar in Form CHG-2;
- No charge will be taken into consideration by the liquidator or any other creditor, unless it is registered and has the certificate Section 77(3);
- Shall not prejudice any contract or obligation for repayment of the money secured by charge.
- Charge Holder can apply for registration, in case the Company fails to register by giving Notice; [Section 78]
- The necessary fees and additional fees can be recovered from the Company;



# Registration of Charges

- Any modification of charge also to be registered, certificate for modification of charge to be issued in Form CHG-3;
- Any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration. [Section 80];
- Registrar to keep Register of Charges for every Company and shall be open for public inspection [Section 81];
- Satisfaction of Charge to be completed within 30 days to be filed in Form CHG-4 [Section 82);
- Issue of Certificate by the Registrar on Satisfaction of Charge in Form CHG-5 (Section 83);
- Registrar to have powers to Register the Intimation of appointment of receiver or manager and also to note the changes (Section 84);
- Company to keep Register of Charges at the Registered Office (Section 85)

# Registration of Charges

- Powers with Central Government to rectify the omission or complete satisfaction base on Form CHG-8 filed by party [Section 87]
- The necessary fees and additional fees can be recovered from the Company;
- Any modification of charge also to be registered, certificate for modification of charge to be issued in Form CHG-3;
- Any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration. [Section 80];
- Registrar to keep Register of Charges for every Company and shall be open for public inspection [Section 81];
- Satisfaction of Charge to be completed within 30 days to be filed in Form CHG-4 [Section 82);
- Issue of Certificate by the Registrar on Satisfaction of Charge in Form CHG-5 (Section 83);
- Registrar to have powers to Register the Intimation of appointment of receiver or manager and also to note the changes (Section 84);
- Company to keep Register of Charges at the Registered Office (Section 85)

<b>S.No.</b>	<b>E- Forms</b>	<b>Purpose</b>
<b>1</b>	<u>CHG-1</u>	Creating or Modifying the Charge (for other than Debentures)
<b>2</b>	CHG-2	Certificate of registration
<b>3</b>	CHG-3	Certificate of modification of charge
<b>4</b>	<u>CHG-4</u>	intimation of the satisfaction to the Registrar
<b>5</b>	CHG-5	Memorandum of satisfaction of charge (Certificate of Satisfaction of Charge)
<b>6</b>	<u>CHG-6</u>	Notice of appointment or cessation of receiver or manager
<b>6</b>	CHG-7	Register of charges
<b>7</b>	<u>CHG-8</u>	Application for condonation of delay shall be filed with the Central Government
<b>8</b>	<u>CHG-9</u>	Creating or modifying the charge in (for debentures including rectification)
<b>9</b>	CHG-10	Application for delay to the registrar

# EVERY CHANGE IS A CHALLENGE UNTIL YOU HAVE FACED IT

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*Thank You*

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