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COMPANY LAW AND CORPORATE GOVERNANCE COMMITTEE OF ICAI

UNSECURED LOANS AND DEPOSITS UNDER COMPANIES ACT, 2013

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ACCEPTANCE OF DEPOSITS- A GLIMPSE

- 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

- The Companies Acceptance of Deposit rules are **not applicable** to:
 - 1) A Banking Company,
 - 2) A Non Banking Finance Company registered with RBI,
 - 3) A Housing Finance Company registered with National Housing Bank,
 - 4) Any other Company which the Central Government may specify.

ACCEPTANCE OF DEPOSITS

- Section 73(1) effective 1.4.2014, Company needs to follow rules specified for acceptance of deposits- Banking Company & NBFC to follow RBI Guidelines issued;
- Special Resolution to be passed for acceptance of deposit- Section 73(2);
 - issuance of a circular to its members including therein a statement showing the financial position of the company,
 - the credit rating obtained, the total number of depositors;
 - and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars [in such form](#) and in such manner [as may be prescribed](#);
 - filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;
 - depositing, on or before the 30th April each year, such sum which shall not be less than 20% of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;
 - certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default;
 - providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company

TERM DEPOSITS UNDER COMPANIES ACT

- Deposit Includes
 - any receipt of money by way of deposit or loan or in any other form **but excludes**
 - any amount received from the Central Government or a State Government, foreign banks, international banks, co-operative banks etc.
 - Financial assistances received from public financial institutions;
 - any amount received from foreign Governments, foreign or international banks, multilateral financial institutions (including, but not limited to, International Finance Corporation, Asian Development Bank, Commonwealth Development Corporation and International Bank for Industrial and Financial Reconstruction), foreign Governments 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 Foreign Exchange Management Act, 1999 (42 of 1999) and rules and regulations made there under

TERM DEPOSITS UNDER COMPANIES ACT

- Deposit Includes
 - any receipt of money by way of deposit or loan or in any other form **but excludes**
 - any amount received against issue of commercial paper or any other instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India;
 - any amount received by a company from any other company;
 - Share or securities Application money if allotted within for within sixty days.
 - 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;
 - 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;
 - 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;
 - 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;
 - 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 three hundred and sixty five days from the date of acceptance of such advance;
 - as security deposit for the performance of the contract for supply of goods or provision of services;
 - 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 five years, from the date of acceptance of such service whichever is less;

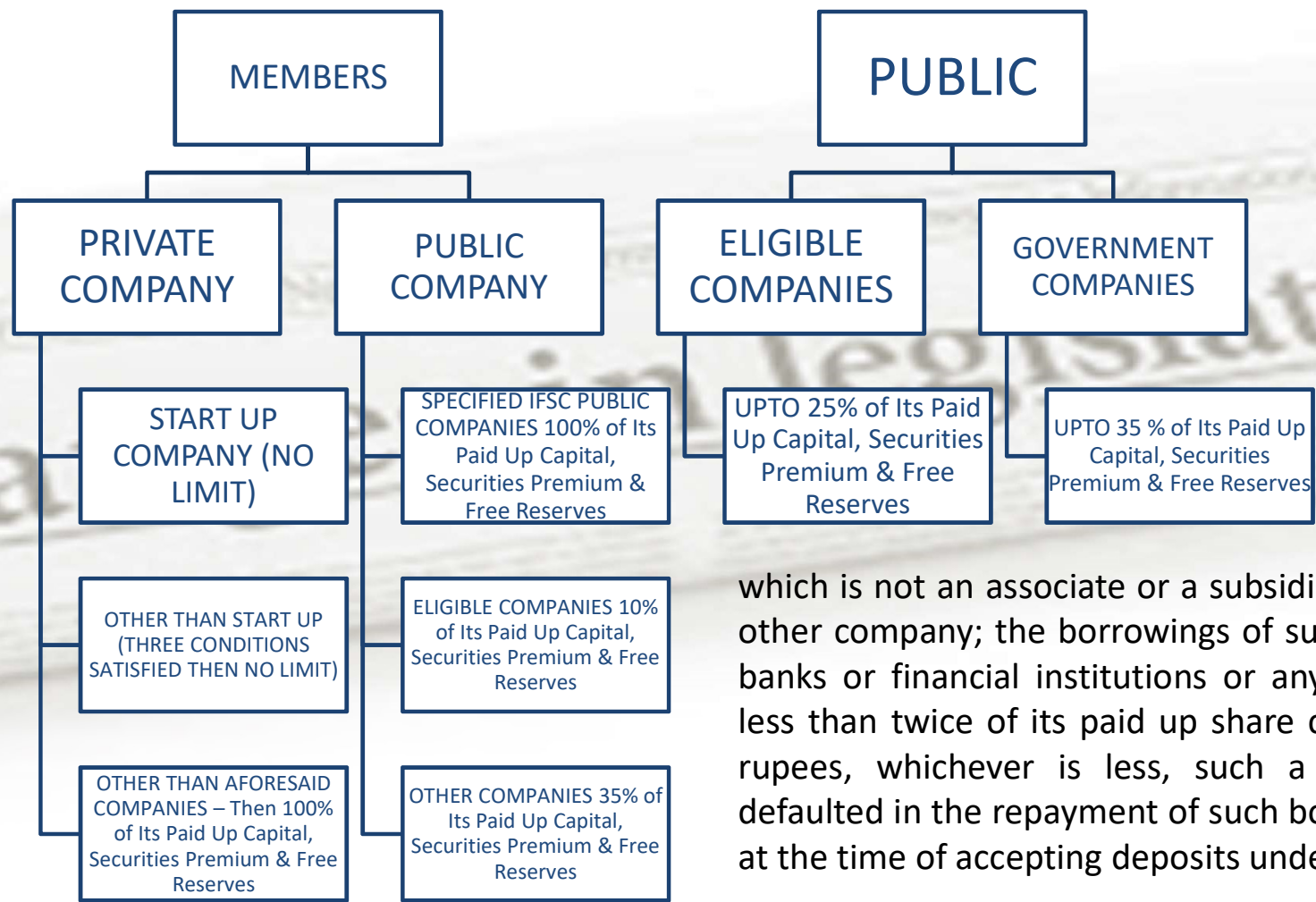
TERM DEPOSITS UNDER COMPANIES ACT

- Deposit Includes
 - any receipt of money by way of deposit or loan or in any other form **but excludes**
 - 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;
 - 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
 - any amount accepted by a Nidhi company in accordance with the rules made under [section 406](#) of the Act.
 - an amount of twenty five lakh rupees 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 ten years from the date of issue) in a single tranche, from a person.

DEFINITION OF “RELATIVE”

- Section 2(77) of the Act
 - Members of HUF;
 - Husband or Wife;
 - Father (includes “step”)
 - Mother (includes “step”)
 - Son
 - Daughter
 - Daughter’s Husband
 - Brother (includes “step”)
 - Sister (includes “step”)

LIMIT FOR ACCEPTANCE OF DEPOSITS



which is not an associate or a subsidiary company of any other company; 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, such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73

CARO 2016 REPORTING

- Clause (v)
 - in case, the company has accepted deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act, 2013 and the rules framed there under, where applicable, have been complied with?
 - If not, the nature of such contraventions be stated;
 - If an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other tribunal, whether the same has been complied with or not?

CARO 2020 REPORTING

In case the company has accepted deposits or **deemed deposits**, whether the company has followed the directives of the RBI as under: – Compliance with the provisions prescribed for accepting deposits under section 73 to 76 of the Companies Act, 2013. – The nature of contraventions, if the above provisions are not followed. – Compliance with any order passed by any court or tribunal. – **Reporting of any non-compliance with the provisions of Companies Act, 2013.**

DISCLOSURES IN DIRECTORS REPORT

MCA has mandated that the company should disclose the details of the money so accepted in its Board's Report in case of all companies

CERTAIN IMPORTANT RULES

- **Rate of Interest of Deposit- Rule 3(6);**
- **Credit Rating- Rule 3(8);**
- **Form of Advertisement or Circulars (Rule-4);**
- **Deposit Insurance (Rule-5);**
- **Creation of Security (Rule-6);**
- **Appointment of Deposit Trustee [Rule-7(1)];**
- **Form of Application of Deposits (Rule-10);**
- **Maintenance of Liquid Assets (Rule-13)**

FORM DPT-3

- To be filed in pursuant to Section 73 r.w.r. 16 of the Company (Acceptance of Deposits) Rules, 2014;
- Notification dated 22nd January, 2019;
- Mandatory information to be filed with MOCA;
- Forms notified to protect and safeguard the interest of deposit holders or creditors of the Company, the Central Government in consultation with the Reserve Bank of India (RBI);
- Amendment to Rule 16A(3)

FORM DPT-3

- The period which is covered for filing this return is from 1st April, 2014 till 22nd January, 2019. [**Vide Gen. Circular 5 dated 12/04/2019, the details are to be given as at 31/03/2019**]
- Also be filed in case the loan/money outstanding is taken from its holding/subsidiary or associate company;
- Fees shall be payable as per the Companies (Registration Offices and Fees) Rules

FORM DPT-3 (CONTD)..

- Every Company shall furnish onetime information about the outstanding receipt of money or loan by a Company but not considered as deposits;
- One-time return in E-Form DPT-3 is required to be filed on or before 29th June, 2019;
- NIL Return is also Compulsory
- All Companies (Private, Public, OPC, etc.) except Government Companies are required to file DPT-3;
- Filing is required to be done for both secured & unsecured outstanding money/loan not considered deposits are mentioned below which are not treated as deposits as per Rule 2(1)(c) of Companies (Acceptance of Deposits) Rules, 2014.

EXEMPTIONS UNDER RULE 2(1)(C)..

DPT-3 needs to file in respect of these transactions.

- Amount received from central government, state government etc;
- Amount received from foreign governments/ banks etc;
- Amount received as loan from banks, banking companies etc;
- Amount received as loan from Private Finance institutions (PFIs), any regional Financial Institutions or insurance companies or scheduled banks;
- Amount raised through issuance of commercial paper;
- Inter- corporate deposits;
- Amount received as subscription money for securities pending allotment;
- Amount received from directors/ relative of directors in case of a private company;

EXEMPTIONS UNDER RULE 2(1)(C)..

- Amount raised by issue of secured bonds/ debentures;
- Amount raised through issuance of unsecured listed NCDs;
- Non-interest bearing security deposit received from employees;
- Non-interest bearing amount held in trust;
- Advance from customers;
- Amount brought by the promoters;
- Any amount accepted by a Nidhi;
- Any amount received by way of subscription in respect of a chit;
- Any amount received by the company under any collective investment scheme;
- Amount received by start- up company by way of convertible note;
- Amount received from Alternate Investment Funds (AIFs), venture capital funds (VCFs) real estate investment trusts (REITs) etc.

ARE THESE DEPOSITS????

- Loans from LLP;
- Loans from the Relatives of Directors;
- Amount received from HUF;
- Trade Advances;
- Share Application Money;
- Loan from Financial Institutions;
- Business Loans

DIFFERENCE IN FORM DPT-3 RETURNS

ONE TIME RETURN

Amount to be stated is the sum received after 1.4.2014 and is outstanding as on 31.3.2019, being Return of deposits' or 'Particulars of transactions by a company not considered as deposit as per rule 2 (I) (c) of the Companies (Acceptance of Deposit) Rules, 2014

Bifurcation of sums of Deposit not required

Was To be filed on or before 29th June, 2019

Auditors Certificate is not compulsory

REGULAR RETURN

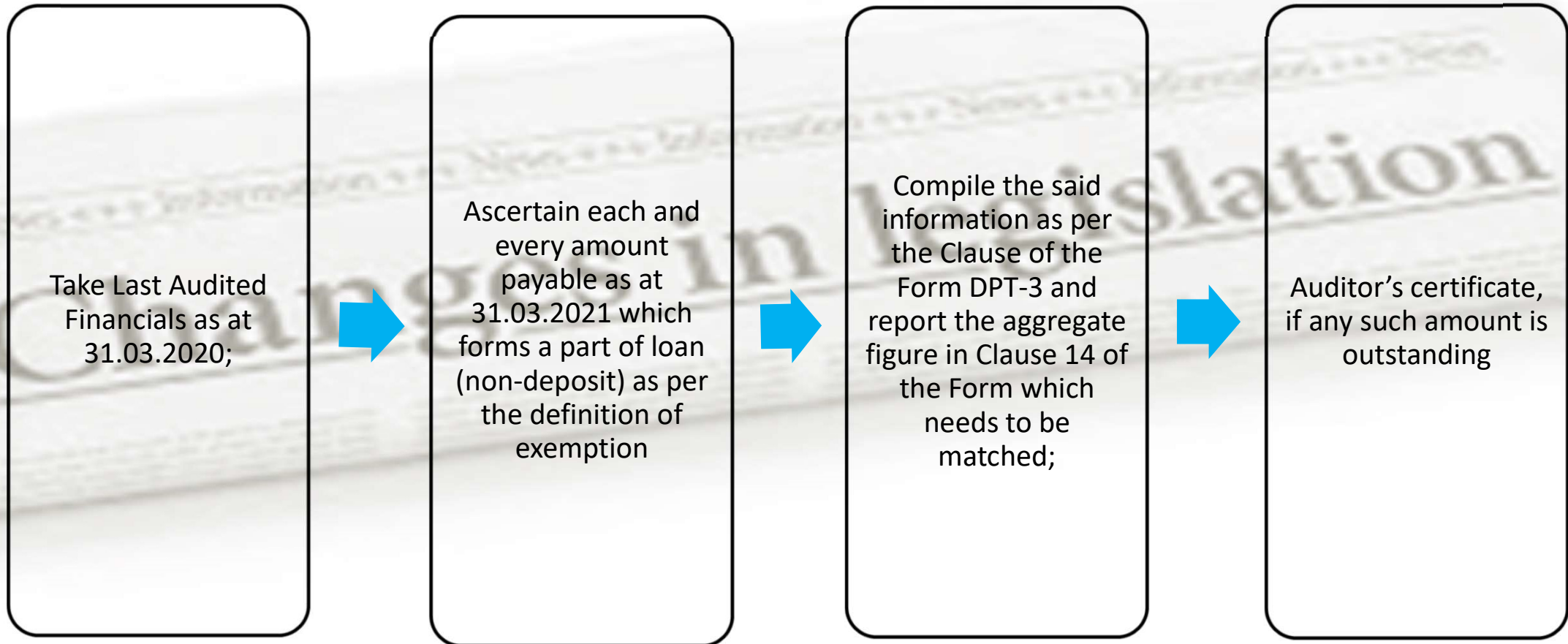
Date of Receipt of Amount is irrelevant, amount outstanding as on end of the financial year needs to be mentioned, received during the period from prior to 31.3.2013 and outstanding till the end of financial year

Bifurcation of sums of Deposit mandatory which is exempted and which is taxable

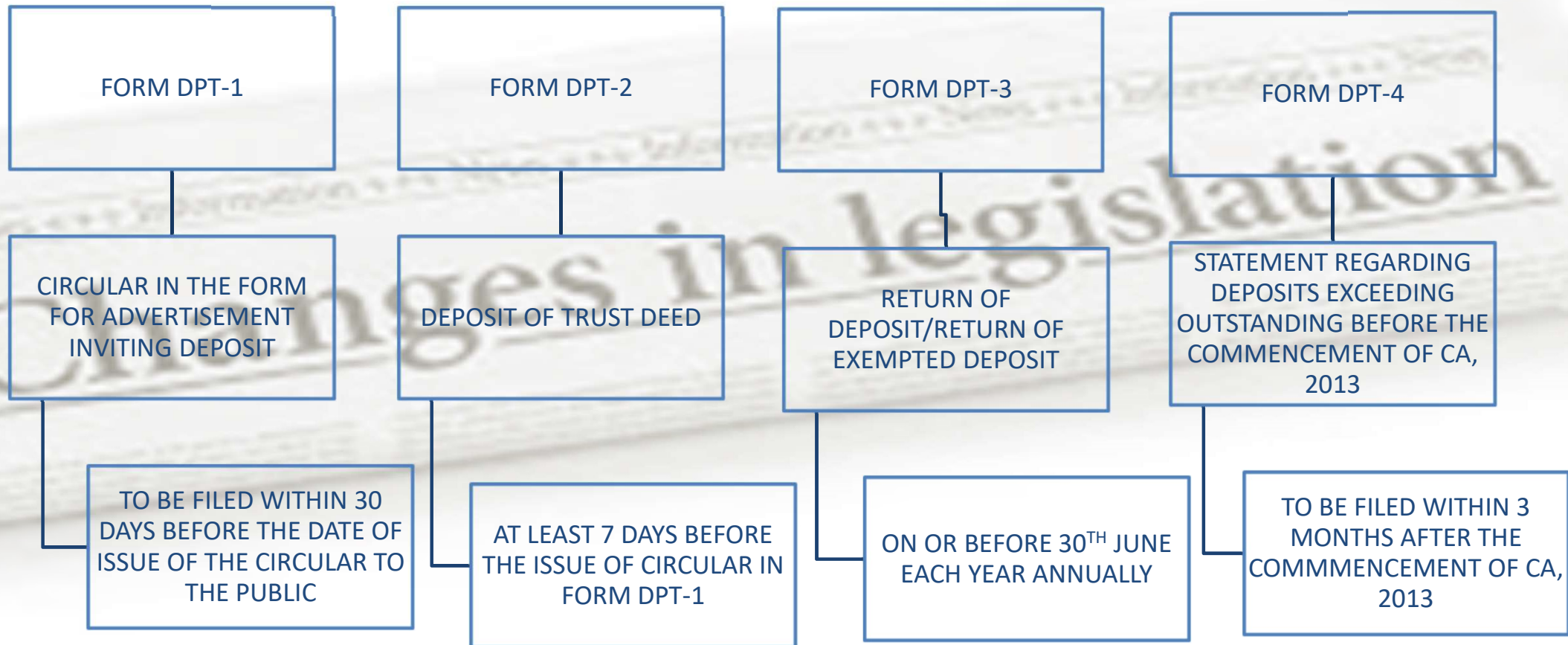
To be filed on or before 30th June for each year

Auditors Certificate is compulsory, in case where such amount is outstanding and claimed by a company not considered as deposit as per rule 2 (I) (c) of the Companies (Acceptance of Deposit) Rules, 2014

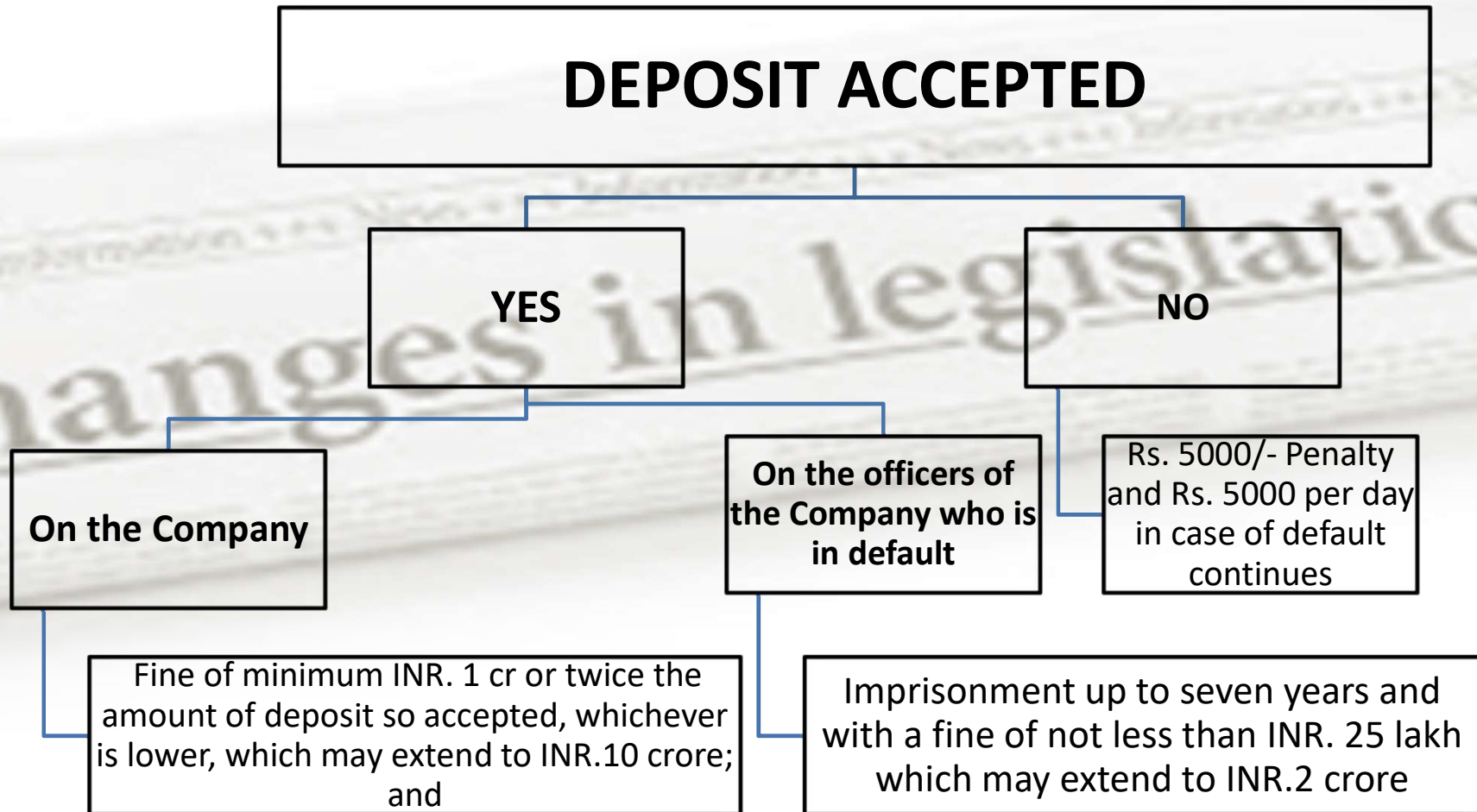
STEP BY STEP LINE OF ACTION FOR DPT-3 FILING



DEPOSIT RELATED FORMS FILING



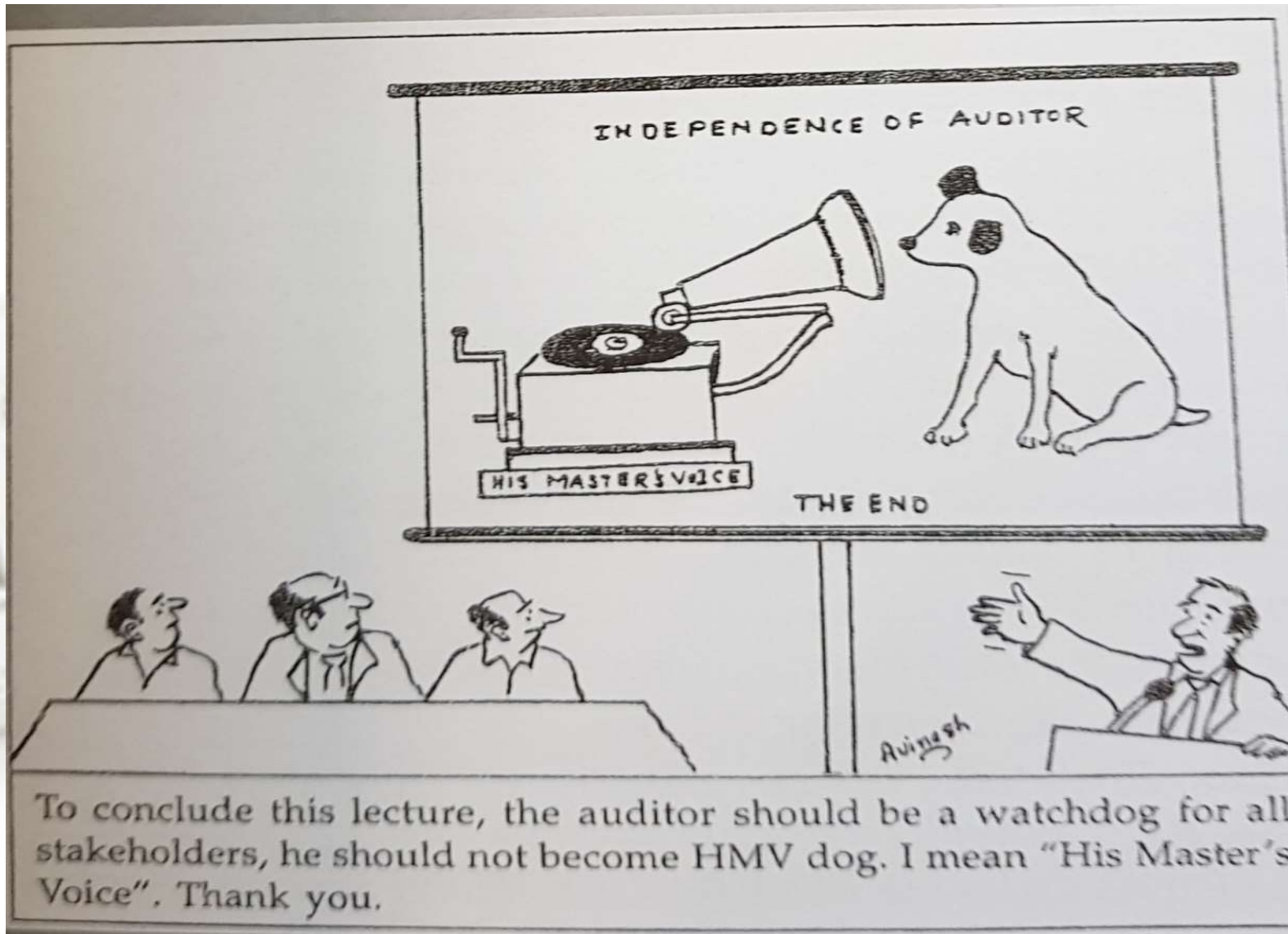
CONSEQUENCES FOR VIOLATION OF DEPOSIT RULES



HASSLED & Co. LLP
CHARTERED ACCOUNTANTS
SINCE 1980

After GST, Ind-AS, ICDS, IBC,
Cos Act 2013, etc., I'm reappearing
for CA Exams.
I need to Unlearn & Relearn!





THANK YOU



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3-C'S OF LIFE- CHOICES, CHANCES AND CHANGES.
THERE IS NO CHOICE BUT TO TAKE A CHANCE TO CHALLENGE THE CHANGE