

Finalization of Audit for FY 2014-15

Companies Act 2013



LUNAWAT & CO.

Chartered Accountants

14th March 2015

CA. PRAMOD JAIN

FCA, FCS, FCMA, LL.B, MIMA, DISA

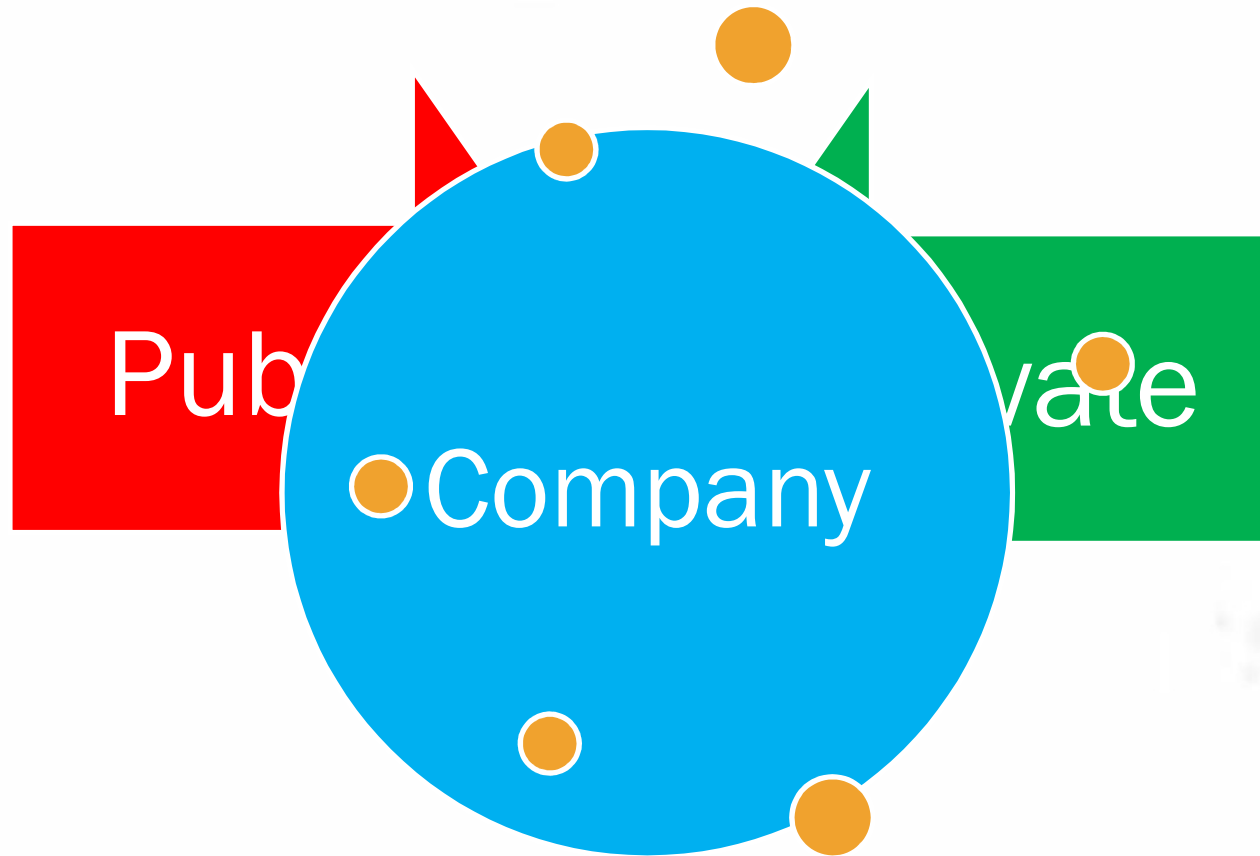
AGENDA

- × **Overview**
- × **Companies (Amendment) Bill 2015**
- × **Private Placement**
- × **Deposits**
- × **Accounts**
- × **Depreciation**
- × **Audit**
- × **Loans**
- × **Fraud**





- × **Why so many Seminars on Companies Act 2013?**
- × **What has changed so drastically?**
- × **Why is management not worried but Professionals are a feared lot?**
- × **How to overcome the fear?**
- × **What should Auditors take care of while finalising Audits of Companies for FY 2014-15**



NEW PROVISIONS

- **OPC**
- **Small Co.**
- **Dormant Co**
- **NCLT & NCALT**
- **CSR**
- **NFRA**
- **Registered Valuers**
- **Fraud**



STRESS CREATORS

- **Huge Penalties**
- **Rampant Prosecution Provisions**
- **Fraud – 19 Provisions**
- **Imprisonment – 61 Provisions**
- **Class Actions**
- **Penalties for late filings**
- **Even Board Resolutions to be filed**
- **Bringing in monies made tough**
- **Loans to be given only on interest**

STRESS CREATORS

- **Detailed Annual Returns**
- **Detailed Directors Reports**
- **SA compliance made mandatory for auditors**
- **Director duties – conflict of interest**
- **Hosting on Website made mandatory – 17 provisions including:**
 - **Closure of members Register**
 - **GM notice**
 - **Director Resignation**

OPPORTUNITIES

- **Women Directors**
- **Independent Directors**
- **Resident Directors**
- **Registered Valuers**
- **OPC & Dormant Cos**
- **NCLT & NCALT**
- **Cash Flow Statement**
- **Consolidated Financial Statements**

OPPORTUNITIES

- **Internal Audit**
- **Fixed Asset Registers to ascertain actual life of each asset**
- **Internal Financial Control Systems**
- **Secretarial Records and compliance audits**
- **Fast Track Merger**
- **Conversion into LLP**

COMPANIES (AMENDMENT) BILL 2014

- × Omitting requirement for **minimum paid up share capital**, and consequential changes. (For ease of doing business)
- × Making **common seal** optional, and consequential changes for authorization for execution of documents. (For ease of doing business)
- × Prescribing specific **punishment for deposits** accepted under the new Act. This was left out in the Act inadvertently. (To remove an omission)

COMPANIES (AMENDMENT) BILL 2014

- × Prohibiting public inspection of **Board resolutions** filed. (To meet corporate demand)
- × Including provision for writing off **past losses/depreciation** before declaring dividend for the year. (This was missed in the Act but included in the Rules).
- × Rectifying the requirement of **transferring equity shares** for which unclaimed/unpaid dividend has been transferred to the **IEPF** even though subsequent dividend(s) has been claimed. (To meet corporate demand)

COMPANIES (AMENDMENT) BILL 2014

- × Enabling provisions to prescribe **thresholds beyond which fraud** shall be reported to the Central Government (below the threshold, it will be reported to the Audit Committee). Disclosures for latter category also to be made in the Board's Report. (Demand of auditors)
- × Exemption u/s **185** (Loans to Directors) provided for **loans to wholly owned subsidiaries** and guarantees/securities on loans taken from banks by subsidiaries. (Provided under Rules but included as a matter of abundant caution).

COMPANIES (AMENDMENT) BILL 2014

- × Empowering **Audit Committee** to give omnibus **approvals for related party transactions** on annual basis. (Align with SEBI policy and ease)
- × Replacing '**special resolution**' with '**OR**' for approval of **related party transactions** by non-related shareholders. (Meet problems faced by large stakeholders who are related parties)
- × **Exempt related party transactions** between **holding companies and wholly owned subsidiaries** from requirement of approval of non-related shareholders. (corporate demand)

COMPANIES (AMENDMENT) BILL 2014

- × **Bail restrictions** to apply only for offence relating to fraud u/s 447. (Though earlier provision is mitigated, concession is made to Law Ministry & ED)
- × **Winding Up cases** to be heard by 2-member Bench instead of a 3-member Bench. (Removal of an inadvertent error)
- × **Special Courts** to try only offences carrying imprisonment of two years or more. (To let magistrate try minor violations).

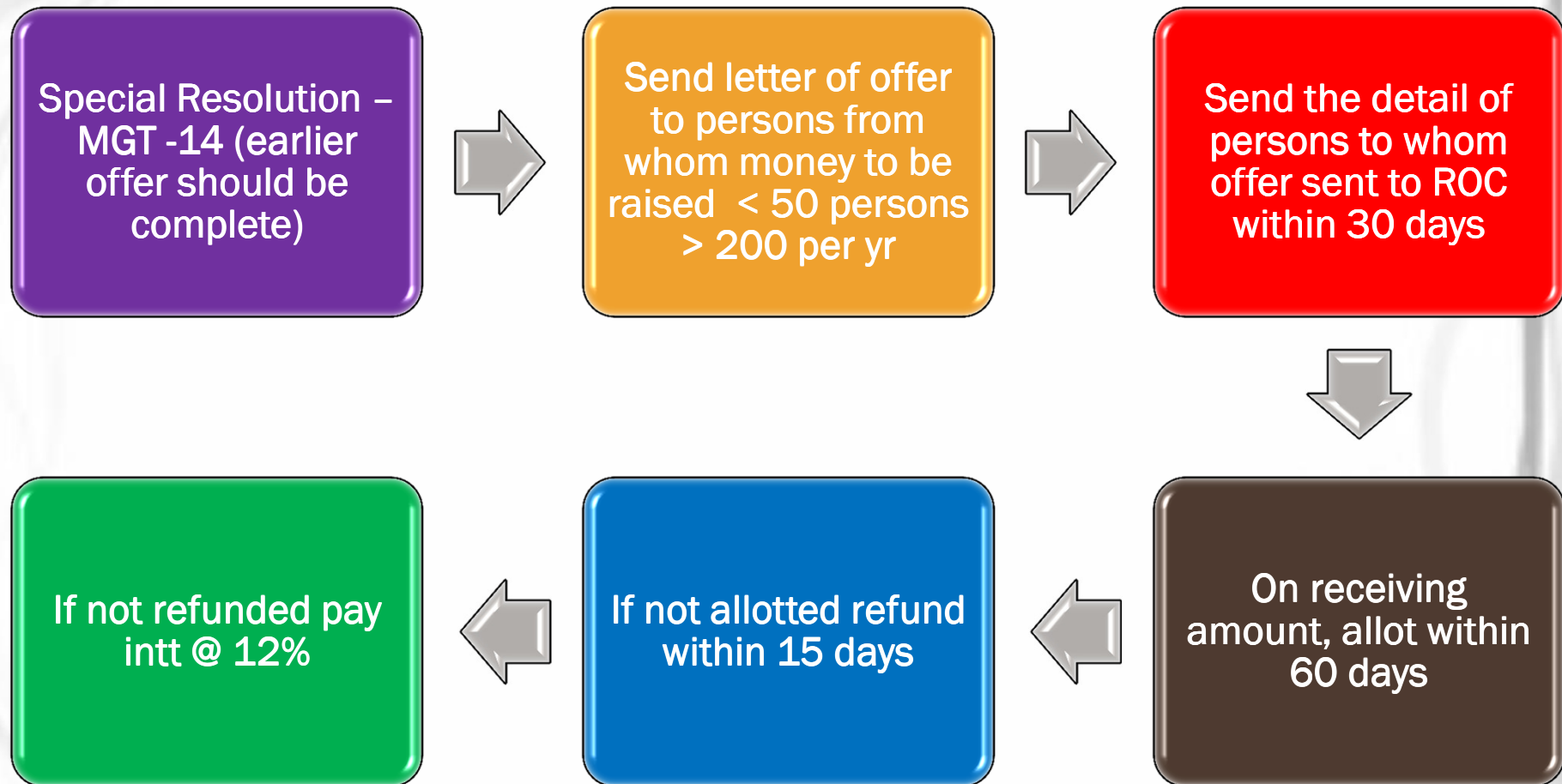
PARTNERSHIPS

- ✘ **Earlier limit of Max. 20 in partnerships.**
- ✘ **Now 50 but shall not exceed 100**
- ✘ **Limits not applicable for an association or partnership, if it is formed by professionals who are governed by special Acts (464)**





PRIVATE PLACEMENT



PRIVATE PLACEMENT - PROCEDURE

- **Offer letter in PAS 4 + application form serial numbered + addressed to specific person – to be sent in writing or electronic mode**
- **While passing special resolution – basis or justification of pricing (including premium) to be made in explanatory statement**
- **Offer per person can not be for less than Rs. 20K**
- **Payment to be made from bank A/c of person subscribing**
- **Company to keep record of such Bank A/c**
- **To maintain complete record in PAS – 5 and PAS 4 to be filed with ROC**

PRIVATE PLACEMENT – OFFER LETTER

- **Business carried out by Co & subsidiaries**
- **Management's perception of risk factors**
- **Details of default including interest – statutory dues, deposit, loan, etc**
- **Time schedule for which offer is valid**
- **Price of offer and its justification**
- **Name & Address of the valuer who did valuation**
- **Purpose and object of offer**
- **Contribution by promoters or directors**
- **Disclosure of interest of director, promoter or KMP**
- **Details of litigation pending**

PRIVATE PLACEMENT – OFFER LETTER

- **Remuneration of directors for current + last 3 yrs**
- **Related party transaction for last 3 years relating to loans, guarantee or securities**
- **Auditors' reservations or qualifications or adverse remarks for last 5 years – its impact on FS & corrective action taken / proposed for each comment**
- **Material frauds last 3 years**

PRIVATE PLACEMENT – OFFER LETTER

- **Financial position –**
 - **Capital structure before & after;**
 - **Profit before & after tax for 3 years**
 - **Dividend last 3 years**
 - **Interest coverage ratio for last three years (Cash profit after tax plus interest paid/interest paid)**
 - **Summary of financial position including Cash Flows - last 3 years – audited**
 - **Change in Accounting policies in last 3 years and its effect on profits & Reserves**
- **Declaration by director of compliance**

PRIVATE PLACEMENT - CAUTION

- **Money to be kept in separate bank A/c**
- **On allotment file PAS -3 in 30 days, detail to include PAN & e-mail id**
- **Cannot be in cash**
- **If not followed - Penalty on company, promoters and directors**
 - **Amount involved or 2 Cr, whichever is **high****
 - **Refund money within 30 days of imposing penalty**
- **Effective from 01.04.2014 – Auditors to be careful**

FURTHER ISSUE (62)

- **To existing shareholders (Right Issue)**
 - **To send letter of offer by notice – time – 15- 30 days**
 - **Notice to be sent at least 3 days before by Registered Post, Speed post or electronic mode**
 - **Renunciation unless articles provide otherwise**
 - **After time board to dispose of them in such manner not disadvantageous to shareholder & Co.**

FURTHER ISSUE (62)

- **ESOP subject to SR and Rules**
- **Preferential Issue – to comply with PP**
- **No partly paid shares in Preferential issue**
- **Not applicable to**
 - **Conversion of deb. Or loan into equity if earlier SR already passed**
 - **Conversion when loan or debenture taken from Govt.**

SHARES OTHER THAN CASH

- **No specific provision in the Act (62 (1) (c))**
- **Form PAS 3 - SR required**
 - **Property and assets required**
 - **Goodwill**
 - **Services**
 - **Conversion of debentures**
 - **Conversion of Loans**
- **Debt structure of co after allotment of securities to be given in PAS 3**

DEPOSITS



DEPOSITS

- ✘ **Following may invite, accept or renew deposits :**
 - + **Banking companies - (RBI);**
 - + **Non Banking Financial Companies (NBFC) – (RBI);**
 - + **Notified companies;**
 - + **Public company having net worth > 100 Cr or turnover > 500 Cr (Rules)**
- ✘ **Others – only from its members subject to certain conditions (73(2)).**

ACCEPTANCE OF DEPOSIT RULES 2014

- ✘ **Apply to all companies except Bank, NBFC & HFC**
- ✘ **Deposit includes receipt of money by way of loan, deposit or other form, but does not include:**
 - + **Amount received from CG, SG, L Auth., Stat. Auth.**
 - + **Amount from foreign govt, bank, etc as per FEMA**
 - + **Amount received from Banks, PFIs, CPs**
 - + **ICD**
 - + **Share appl. money, except not allotted/refunded**
 - + **Amount received from director out of his own funds**
 - + **Convertible bond / debenture – shares within 5 years**
 - + **Interest free security deposit – employee – 1 yr salary**

ACCEPTANCE OF DEPOSIT RULES 2014

- ✘ **Interest free amount received in Trust**
- ✘ **Business advances:**
 - + **Supply of goods / services – within 365 days**
 - + **Against property – if adjusted as per agreement**
 - + **Security deposit for performance of contract for supply of goods or provision of services**
 - + **Advance under long term projects or for supply of capital goods**
- ✘ **If Co. accepting money does not have necessary permission or approval to deal in goods or properties or services -Deposit**

ACCEPTANCE OF DEPOSIT RULES 2014

- ✘ **Promoters - stipulation of any FI or a banks:-**
 - + loan is brought in pursuance of stipulation imposed by lending institutions on promoters to contribute such finance; and
 - + loan is provided by the promoters themselves and/or by their relatives.
 - + Exemption available only till loans are repaid
- ✘ **Amt. received by Nidhi companies**
- ✘ **Public / Eligible – deposit – 6 m to 36 m**
- ✘ **If <6, 3 months - 10% of capital + free reserves**
- ✘ **Total deposit from members <25% of C + F. Reserve**
- ✘ **Rate of Intt & commission not to exceed NBFC norms**
- ✘ **Auditors should take suitable note of violation of these provisions**

DEEMED DEPOSITS

- × **Deposit would also include:**
 - + **Amounts received by company, whether in form of **instalments or otherwise**, from a person **with promise or offer to give returns, in cash or in kind**, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever,**
 - + **Any additional contributions, over and above the amount received by company, whether in form of **instalments or otherwise**, made by the company as part of such promise or offer.**

EXISTING DEPOSITS

- ✘ **Prepare a list and file with ROC within 3 months from 1.4.2014 in DPT 4 - Currently as attachment to GNL 2**
- ✘ **Repay to the depositors within 1 year**
- ✘ **Non-compliance (effective from 6th June 2014):**
 - + **amount to be repaid along with interest**
 - + **fine on Company –**
 - ✘ **minimum Rs. 1 Crore,**
 - ✘ **Maximum Rs. 10 crore**
 - + **on every officer in default –**
 - ✘ **imprisonment upto 7 years or**
 - ✘ **fine minimum Rs. 25000,**
 - ✘ **maximum Rs. 25 L or both**

EXISTING DEPOSITS

- ✦ **74 (1) Where in respect of any deposit accepted by a co. before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall—**
- ✦ **(a) 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, notwithstanding anything contained in any other law for the time being in force.....**

FILING RESOLUTIONS



RESOLUTIONS TO BE FILED WITH ROC

- ❑ **Special Resolutions**
- ❑ **Resolutions agreed by all members of Co., but which if not so agreed would not have been effective unless passed as SR**
- ❑ **Board resolution or agreement relating to appointment, renewal or variation in terms of appointment of MD**
- ❑ **Resolutions agreed by any class of members of Co., but which if not so agreed would not have been effective unless passed by specified majority or otherwise in some particular manner**

RESOLUTIONS TO BE FILED WITH ROC

- ❑ **Resolutions passed u/s 180 (a) & (c) i.e.:**
 - ❑ **To sell, lease or otherwise dispose whole or substantially whole of undertaking.**
 - ❑ **To borrow money in excess of paid up capital and free reserves other than temporary loans**
 - ❑ **w.e.f. 12.9.13 – Late filing – F – Co - 5 L - 25 L, OID F – 1 L – 5 L**
- ❑ **Voluntary winding up resolutions u/s 304**
- ❑ **Others u/s 179 (3)**

BOARD RESOLUTIONS [179(3)]

- To make calls on shareholders in respect of money unpaid on their shares;**
- To authorise Buy-back of securities u/s 68;**
- To issue securities, including debentures, whether in or outside India;**
- To approve amalgamation, merger or reconstruction;**
- To take over a Company or acquire a controlling or substantial stake in another company.**

BOARD RESOLUTIONS [179(3)]

- To borrow monies;**
- To invest the funds of the company**
- To grant loans or give guarantee or provide security in respect of loans**
- To approve FS and Board's Report;**
- To diversify the business of the Company;**
- To make political contribution**
- To appoint or remove KMP**
- To note appointment / removal of 1 level below KMP**

BOARD RESOLUTIONS [179(3)]

- **To appoint internal auditor and secretarial auditor**
- **To take note of disclosure of director's interest and shareholding**
- **To buy, sell investments (other than trade investments), constituting 5% or more of the paid up share capital & free reserves of investee co.**
- **To invite or accept or renew public deposits;**
- **To approve quarterly, half yearly & annual FS**
- **Filing after date with additional fee – penalty of Rs. 5 L – 25 L**



Accounting

BOOKS

- ✘ **Permits the maintenance of books of a/cs & other books & papers in electronic mode**
 - + **Shall remain accessible in India**
 - + **Retained completely in the format in which they were originally generated, sent or received**
 - + **Back up to kept in server located in India**
 - + **To intimate to ROC along with FS**
 - ✘ **Name of the service provider;**
 - ✘ **IP address of service provider;**
 - ✘ **Location of the service provider (wherever applicable);**
 - ✘ **Where the books maintained on cloud, such address as provided by the service provider.**

MAINTENANCE OF BOOKS

- ✘ **To be maintained at R.O.**
 - + **Books, Papers & FS**
 - + **Summarized periodical returns from branches**
- ✘ **Summarised returns of books of a/c kept and maintained outside India to be sent to R.O at quarterly intervals**
- ✘ **If not at RO then intimate in AOC 5 [16.1.15]**
- ✘ **Non- compliance – MD, WTD in charge of finance, CFO or other person in charge by Board- Imprisonment upto 1 yr or Fine – 50 k to 500 k**

FINANCIAL STATEMENTS

- **Financial Year – 31/3**
- **Financial Statement defined - Includes notes on B/s, Profit & Loss statement, Cash Flow**
- **Cash Flow for all except OPC, SC, DC.**
- **Small Company Definition - Clarified**
- **Shall give true and fair view.**
- **Shall comply with Accounting Standards**
- **Shall be in form of Schedule III.**

FINANCIAL STATEMENTS

✘ **Has to be AS compliant:**

- + **FS to disclose deviation from AS**
- + **Reason for deviation**
- + **Financial effect arising of deviation**

✘ **Non- compliance**

- + **MD,**
- + **WTD incharge of finance**
- + **CFO**
- + **Any other person charged by Board**
- + **If no one – all directors**
- + **Imprisonment upto 1 yr or F – 50 k to 500 k or both**

CONSOLIDATED FINANCIAL STATEMENTS

- ✘ **One or more subsidiaries – CFS**
- ✘ **Intermediary Subs. not required. No exemption if Foreign Co. [14.10.2014]**
- ✘ **Subsidiary shall include associate co. & Joint Venture – exemption if no subsidiary till 31.3.15**
- ✘ **If only foreign subsidiary – no CFS for FY 2014-15 [16.1.15]**
- ✘ **While preparing CFS not to merely repeat the disclosures made under stand-alone accounts being consolidated. To give all disclosures relevant for CFS only [14.10.2014]**

CONSOLIDATED FINANCIAL STATEMENTS

- ✘ **Provisions under Companies Act 2013**
applicable for:
 - + Preparation
 - + Adoption
 - + Audit
- ✘ **Appointment in AGM??**
- ✘ **Appointment for 5 Years??**
- ✘ **20 limit??**

APPLICABILITY OF ACCOUNTING STANDARDS

- ✘ **Companies (Indian Accounting Standards) Rules 2015**
- ✘ **Two Standards:**
 - + **Indian Accounting Standards (Ind As)**
 - + **Companies (Accounting Standards) Rules 2006**
- ✘ **Ind AS Optional for all w.e.f. 1st March 2015**
- ✘ **If prepare then for comparison for 31st March 2015 too.**
- ✘ **If prepared voluntary, then mandatory thereafter**
- ✘ **Not mandatory for insurance, banking & NBFC**

ROADMAP TO IND AS

w.e.f. 1.04.2016	w.e.f. 1.04.2017
Cos. whose equity / debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of Rs. 500 Crs. or more	Cos. whose equity / debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of less than Rs. 500 Crs. Except those on SME Exchange
Unlisted Cos. having net worth of Rs. 500 Crs. or more	Unlisted companies having net worth of Rs. 250 Crs. or more but less than Rs. 500 Crs.
Holding, subsidiary, joint venture or associate companies of above companies	Holding, subsidiary, joint venture or associate companies of above companies

FS & DR LAYING IN AGM

- ✘ **FS & CF to be approved before signed by BOD by:**
 - + Chairperson or two directors out of which 1MD
 - + CEO if he is director
 - + CFO
 - + CS
- ✘ **Every FS to be issued, circulated, published with:**
 - + Notes
 - + Auditors report
 - + Board Report
- ✘ **Non- compliance – Co- 25K to 2500K; OI – Imp. upto 3 yrs or fine – 50K to 500k or both**

FILING OF FS

- ✘ To be filed with ROC in Form AOC -4 within 30 days of AGM – To be certified by CA only**
- ✘ Notified Companies in XBRL**
- ✘ After 300 days –**
- ✘ Fine on**
 - + Company – 1k p. d > 10 L;**
 - + MD, etc in charge by Board- if no one – all directors**
 - ✘ Imp. upto 6mnths or**
 - ✘ Fine – 1L k to 5L or Both**

INTERNAL AUDIT

✘ Listed company. In case of unlisted public Co:

- + Capital \geq 50 Cr. in preceding FY; or**
- + Turnover \geq 200 Cr. in preceding FY; or**
- + Outstanding loans from banks or PFIs \geq 100 Cr. At any point of time in preceding FY; or**
- + Outstanding deposits \geq 25 Cr. at any point of time in preceding FY;**

✘ Private Co:

- + Turnover \geq 200 Cr. in preceding FY; or**
- + Outstanding loans from banks or PFIs \geq 100 Cr. at any point of time in preceding FY**

AUDITOR'S ROLE

- 1. In order to certify that Financial Statements are true and fair and in compliance with AS**
- 2. Provisions, auditor need to take care of in case of depreciation:**
 - + Section 123 - Declaration of dividend.**
 - + Section 198 - Computation of net profit for purpose of calculation of overall maximum managerial remuneration u/s 197.**
 - + AS 6 - Depreciation Accounting.**
 - + AS-26 - Intangible Assets.**

USEFUL LIVES

- 1. Buildings**
- 2. Bridges, Culverts, bunders, etc.**
- 3. Roads**
- 4. Plant & Machinery**
- 5. Furniture & Fixture**
- 6. Motor Vehicles**
- 7. Ships**
- 8. Aircrafts & Helicopters**
- 9. Railway sidings, Locomotives, Rolling Stocks, Tramways...**

USEFUL LIVES

- 10. Ropeway Structures**
 - 11. Office Equipment**
 - 12. Computers and Data Processing Units**
 - 13. Laboratory Equipment**
 - 14. Electrical Installations and Equipment**
 - 15. Hydraulic Works, Pipelines & Sluices**
- × 12 Industry Specific Rates**
 - × Double shift – increase by 50%, triple shift – 100% - reduction in useful life**
 - × 100% on assets below 5K – not required**

DEPRECIATION

- ✘ **The useful live of asset is period over which an asset is expected to be available for use or the no of production unit expected to be obtained**
- ✘ **No rate for Intangible assets (except toll) – AS**
- ✘ **Useful lives changed Eg:–**
 - + **Factory Building from 58 Yrs to 30 Yrs:**
 - + **General FF– 15 to 10; Motor Car - 10 to 8**
 - + **Plant & Mach. General – 20 to 15;**
 - + **Laptop, computer - 6 app to 3**
- ✘ **On commencement – would be depreciated over remaining useful life; Where - nil –trf to Surplus**

SCHEDULE II – [29.8.2014]

- ✘ **A Company can adopt different useful life; or**
- ✘ **Different Residual Value**
- ✘ **In such case**
 - + **Disclose difference in FS and**
 - + **Provide justification duly supported by technical advice.**
- ✘ **Component accounting is voluntary w.e.f. 1.4.14 & mandatory w.e.f. 1.4.15**
- ✘ **If asset's useful life as on 31.3.2015 is Nil, Co. has now an option to transfer the balance after retaining residual value to Surplus. Earlier it was mandatory.**

CHANGE IN METHOD

- ✘ **If required by statute; or**
- ✘ **For compliance of AS; or**
- ✘ **If change would result in a more appropriate presentation of FS**
- ✘ **If change is made – recalculate it from date of asset put to use.**
- ✘ **It is a change in Accounting Policy.**
- ✘ **As per AS-6, if change in method results in surplus / deficit to be transferred to PL– effect to be quantified and disclosed.**

QUALIFICATION

- ✘ **Must be a CA**
- ✘ **A firm including LLP whereof majority of partners practicing in India are qualified for appointment as auditor**
- ✘ **Where such firm/LLP is appointed as an auditor of a company, only the partners who are CAs shall be authorized to act and sign on behalf of the firm.**

DISQUALIFICATIONS

- ✘ **A body corporate other than LLP;**
- ✘ **An officer or employee of the company;**
- ✘ **A person who, or his relative or partner—**
 - + **Is holding any security of or interest in Co. or its subsidiary, or of its holding or associate Co. or a subs. of such holding co. Relative – Rs. 1 L**
 - ✘ **Corrective action to bring within limits (relative) – 60 days**
 - + **Is indebted to the co.... – Rs. 5 L (ICAI – 10K)**
 - + **Has given a guarantee / provided security – 1 L**

RELATIVES 2(77)

Father (Step. F)
Mother (Step. M)

Brother (Step. B.)
Sister (Step. S)

Husband
/ Wife

Son (Step Son);
Son's Wife

Daughter ;
Daughter's
Husband

DISQUALIFICATIONS

- ✘ A person or a firm who, whether directly or indirectly, has business relationship with co., or its of nature i.e., any transaction entered into for commercial purpose except:
 - + In nature of professional services permitted
 - + In the **ordinary course of business of co.** at ALP like
 - ✘ sale of products or
 - ✘ services
 - + To **auditor, as customer, in the ordinary course of business**, by companies engaged in business of telecommunications, airlines, hospitals, hotels & such other similar businesses

DISQUALIFICATIONS

- ✘ **A person who is a partner, or who is in the employment, of an officer or employee of Co**
- ✘ **A person whose relative is a director or is KMP of the company;**
- ✘ **A person who is in full time employment elsewhere**
- ✘ **A person or a partner of a firm holding appointment as auditor of more than 20 cos**
- ✘ **A person who has been convicted by a court of an offence involving fraud & a period of 10 Yrs has not elapsed from date of such conviction**

DISQUALIFICATIONS

- ✘ **Any person whose:**
 - + subsidiary or
 - + associate company or
 - + any other form of entity,
 - + is engaged as on the date of appointment in consulting and specialized services as provided in s. 144.

- ✘ **If the auditor after appointment incurs any of the disqualifications – vacate his office by casual vacancy**

OTHER SERVICES BY AUDITOR

- ✘ Auditor not to provide other services directly or indirectly to the company or its holding company or subsidiary company:
 - + Accounting and book keeping services;
 - + Internal audit;
 - + Design and implementation of any financial IS;

OTHER SERVICES BY AUDITOR

- + Actuarial services;**
- + Investment advisory services;**
- + Investment banking services;**
- + Rendering of outsourced financial services;**
- + Management services;**
- + Others Prescribed**
- ✘ Cannot be appointed as Cost auditor
[148(3)]**

OTHER SERVICES BY AUDITOR

- ✘ **Other services restriction in case of firm applies to:**
 - + **Audit firm itself**
 - + **Any of its partners**
 - + **Its parent, subsidiary or associate entity**
 - + **Any other entity in which the firm or any of its partners has significant influence / control , or whose name / trade mark / brand, is used by firm or any of its partners**
- ✘ **Compliance to be made by 31.03.2015**

OTHER SERVICES BY AUDITOR

- ✘ **Other services restriction in case of individual applies to:**
 - + himself or
 - + through his relatives or
 - + any other person connected or associated with such individual or
 - + through any other entity whosoever, in which such individual has significant influence or control or whose name, trade mark, or brand is used by such individual.

APPOINTMENT

- ✘ **1st appointment to be within 30 days by Board, if not then members in 90 days in EGM**
- ✘ **Appointment of auditor at 1st AGM. To hold office till conclusion of its 6th AGM. To appoint:**
 - + **An individual, or**
 - + **A firm including LLP**
- ✘ **Co to inform auditor & ROC in 15 days - ADT-1**
- ✘ **Appointment for 5 Years - to be ratified annually at AGM – Non Ratification – Board to appoint**

APPOINTMENT

- ✘ **Members of the co. may resolve to rotate auditing partner & his team at specific interval**
- ✘ **Casual vacancy other than by resignation to be filled by Board.**
- ✘ **If vacancy caused by resignation to be filled by members in 3 months**

RE-APPOINTMENT

- ✘ **Retiring auditor may be re-appointed at AGM, if—**
 - + **He is not disqualified for re-appointment;**
 - + **He has not given Co. a notice in writing of his unwillingness to be re-appointed; and**
 - + **A SR has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed**
- ✘ **Automatic reappointment of existing auditor at AGM if not re-appointed.**

AUDIT COMMITTEE

- ✘ **Following Companies to constitute Audit committee:**
 - + **Listed companies**
 - + **Public companies having capital \geq Rs. 10 Crore ;**
 - + **Public companies having turnover \geq Rs. 100 Crore;**
 - + **Public companies, having in aggregate, outstanding loans, borrowings, deposits, etc $>$ Rs. 50 Crore**
- ✘ **Limits as per last audited FS**
- ✘ **Existing Companies to constitute committee within 1 year or if required to have independent director, by that time, whichever is earlier**

CONDITION FOR APPOINTMENT

- ✘ **Board/Audit Committee to consider qualification & experience of auditor. To be commensurate with size & requirements of co.**
- ✘ **Board/Audit Committee to consider completed and pending proceedings against auditor before ICAI/NFRA/Tribunal/Other Court.**
- ✘ **CA to issue certificate that:**
 - + **He is eligible for appointment and is not disqualified under the Act, the CA Act, & related Rules**
 - + **The proposed appointment is within the term allowed**
 - + **The proposed appointment is within the limit**
 - + **List of proceedings against auditor pending w.r.t. professional matters of conduct, as disclosed, is true & correct**

ROTATION OF AUDITORS

- ✘ **Rotation mandatory if auditor is an individual after 1 term of 5 consecutive yrs; and**
- ✘ **If auditor is firm – 2 terms of 5 consecutive yrs.**
- ✘ **Mandatory for**
 - + **All listed companies**
 - + **Unlisted Public Cos. having capital \geq Rs.10 Crs.**
 - + **Pvt. Ltd. Cos. having capital \geq Rs. 20 Crs.**
 - + **All companies having public borrowings from financial institutions, banks or public deposits of Rs. 50 Crs. or more**
- ✘ **Compliance to be made by 31.03.2017**

AUDITOR TO INQUIRE

- ✘ **Whether loans and advances made by co. on basis of security have been properly secured and whether terms on which they have been made are prejudicial to the interests of the company or its members;**
- ✘ **Whether transactions of co. which are represented merely by book entries are prejudicial to interests of co.;**
- ✘ **Where Co. not being an investment company or a banking company, whether so much of the assets of Co. as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;**

AUDITOR TO INQUIRE

- ✘ **Whether loans and advances made by the company have been shown as deposits;**
- ✘ **Whether personal expenses have been charged to revenue account;**
- ✘ **Where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading:**

AUDIT REPORT

- ✘ **Report to state that to the best of auditor's information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year**
- ✘ **Report to include:**
 - + **Matters specified u/s 143(3)**
 - + **Matters specified in Rules**
 - + **Any order made u/s 143(3) for specified Companies in consultation with NFRA**

AUDIT REPORT

- ✘ Whether he has **sought and obtained** all the information.....
- ✘ Whether, proper books of a/c as required by law have been kept ...& proper returns adequate for purposes of his audit have been received from branches not visited by him
- ✘ Whether any director is disqualified u/s 164(2)
- ✘ Observation or comments which may have adverse effect on functioning - **thick /italics** not required.
- ✘ Reasons for negative or qualified report

INTERNAL FINANCIAL CONTROL- IFC

- × **Voluntary for Auditor to report on adequacy of IFC & operating effectiveness of such controls – for 2014-15 but mandatory for Director Report**
- × **IFC means policies & procedures adopted by co. for ensuring orderly & efficient conduct of its business, including:**
 - × **Adherence to company's policies,**
 - × **Safeguarding of its assets,**
 - × **Prevention and detection of frauds and errors,**
 - × **Accuracy and completeness of the accounting records,**
 - × **Timely preparation of reliable financial information**

AUDIT REPORT

- ✘ **Any qualification, reservation or adverse remark relating to maintenance of accounts**
- ✘ **Company has disclosed effect, if any, of pending litigations on its financial position in its FS**
- ✘ **Provision has been made for foreseeable losses, if any, on long term contracts including derivative contracts**
- ✘ **Is there any delay in transferring amounts, required to be transferred, to IEPF by company**

AUDITING STANDARDS

- ✘ Auditor to comply with auditing standards
- ✘ NFRA to notify auditing standards. Till NFRA does – as by ICAI
- ✘ Total 37 SAs

SA. No.	Sub-division	No.
100-199	Introductory Matters	0
200-299	General Principles & Responsibilities	9
300-499	Risk Assessment and Response to Assessed Risks	6
500-599	Audit Evidence	11
600-699	Using Work of Others	3
700-799	Audit Conclusions and Reporting	5
800-899	Specialized Areas	3

DOCUMENTATION

- ✘ **Have checklists, tell articles to cross verify**
- ✘ **Seniors to cross verify**
- ✘ **Take necessary certificates / representation from management**
- ✘ **External Confirmations**
- ✘ **Ensure Compliance of ASs**
- ✘ **Ensure all applicable regulatory compliances including Companies Act, 2013**
- ✘ **Comply with SAs**
- ✘ **Work not documented is work not done.**



IMPORTANCE OF AUDIT REPORT

- ✘ **Shall be attached to every financial statement**
- ✘ **Director's report to contain explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer in the report.**
- ✘ **Management's comments required on every qualification, reservation or adverse remark or disclaimer for last 5 years along with corrective action taken / to be taken – in Offer letter for Private Placement**

BRANCH AUDITOR

- ✘ **May be different person than company's auditor, but should be qualified to be appointed as auditor**
- ✘ **To be appointed u/s 139 as branch auditor**
- ✘ **Company auditor to comply SA 600**
- ✘ **Same duties as that of auditor – ss. 143 (1) to 143(4) applicable**
- ✘ **He has to submit his report to company's auditor**
- ✘ **Fraud Reporting u/s 143(12) also applicable to him.**

RESIGNATION

- ✘ Auditor may resign before his term.
- ✘ To file a statement with ROC in ADT-3 as well as the Co. within 30 days, indicating reasons
- ✘ In case of Government companies to be filed with CAG too.
- ✘ Non compliance – fine on auditor:
 - + Minimum – 50K
 - + Maximum - 500K

REMOVAL BEFORE TERM

- ✘ **Removal before term**
 - + **Special Resolution; and**
 - + **Prior CG approval – application in ADT-2 within 30 days of Board resolution & filing fee to be paid:**
 - ✘ **OPC & small - < 25 L – 1000; 25 – 50 L – 2500**
 - ✘ **Others - < 25 – 2000; 25 to 50 L – 5000; 50L to 5 Cr – 10000; 5 Cr to 10 Cr – 15000; above 10 Cr - 20000**
 - + **Reasonable opportunity of hearing to be given**
 - + **Co. to hold GM within 60 days of CG approval for SR**
- ✘ **Special notice required at AGM to appoint other auditor than the retiring auditor except in case of rotation**

REMOVAL BY TRIBUNAL

- ✘ **Tribunal suo moto or on application of CG or any person concerned may change auditor if it is satisfied, that auditor has directly or indirectly:**
 - + **Acted in fraudulent manner, or**
 - + **Abetted, or**
 - + **Colluded in any fraud by or in relation to, Co. or its directors or officers**
- ✘ **If on CG application – Tribunal on satisfaction change in 15 days. CG to appoint another auditor**
- ✘ **On final order - shall not be appointed for 5 yrs in any other Co. and shall be liable u/s 447**

RIGHTS, POWER & DUTIES

- ✘ **To have access to books of accounts & vouchers**
- ✘ **Sign Audit report**
- ✘ **Has to attend AGM unless otherwise exempted**
- ✘ **Has to attend EGM unless otherwise exempted**
- ✘ **To report fraud (in course of audit) being or has been committed against co. by officers or employees – to CG in ADT-4 (on his letter head with address, e-mail, Phn) within 60 days after following procedure.**
- ✘ **Non- compliance fine - Rs. 1 Lac to Rs. 25 Lacs**

FRAUD REPORTING PROCEDURE

Send Report to Board / AC immediately on knowledge give 45 days time

On receipt of reply send report to CG in 15 days – ADT 4

If no receipt – send the report within 15 days

Send by Regd. Post AD or Speed post followed by e-mail



PENALTIES (147)

- ✘ **General – Co - Fine 25 K to Rs. 500K;
OID – imp upto 1 yr or fine 10k to 100k
or both**
- ✘ **Auditor – Fine - 25k to 500 k if**
 - + **Wrong appointment (139);**
 - + **Incorrect contents of audit report & non-compliance of auditing standards (143);**
 - + **Rendering prohibited services (144); or**
 - + **Fail to sign audit report (145)**

PENALTIES (147)

- ✘ **Imprisonment up to 1 yr and fine from 1 L to 25 L in case there is intention to deceive:**
 - + **Company; or**
 - + **Shareholders; or**
 - + **Creditors; or**
 - + **Tax authorities.**

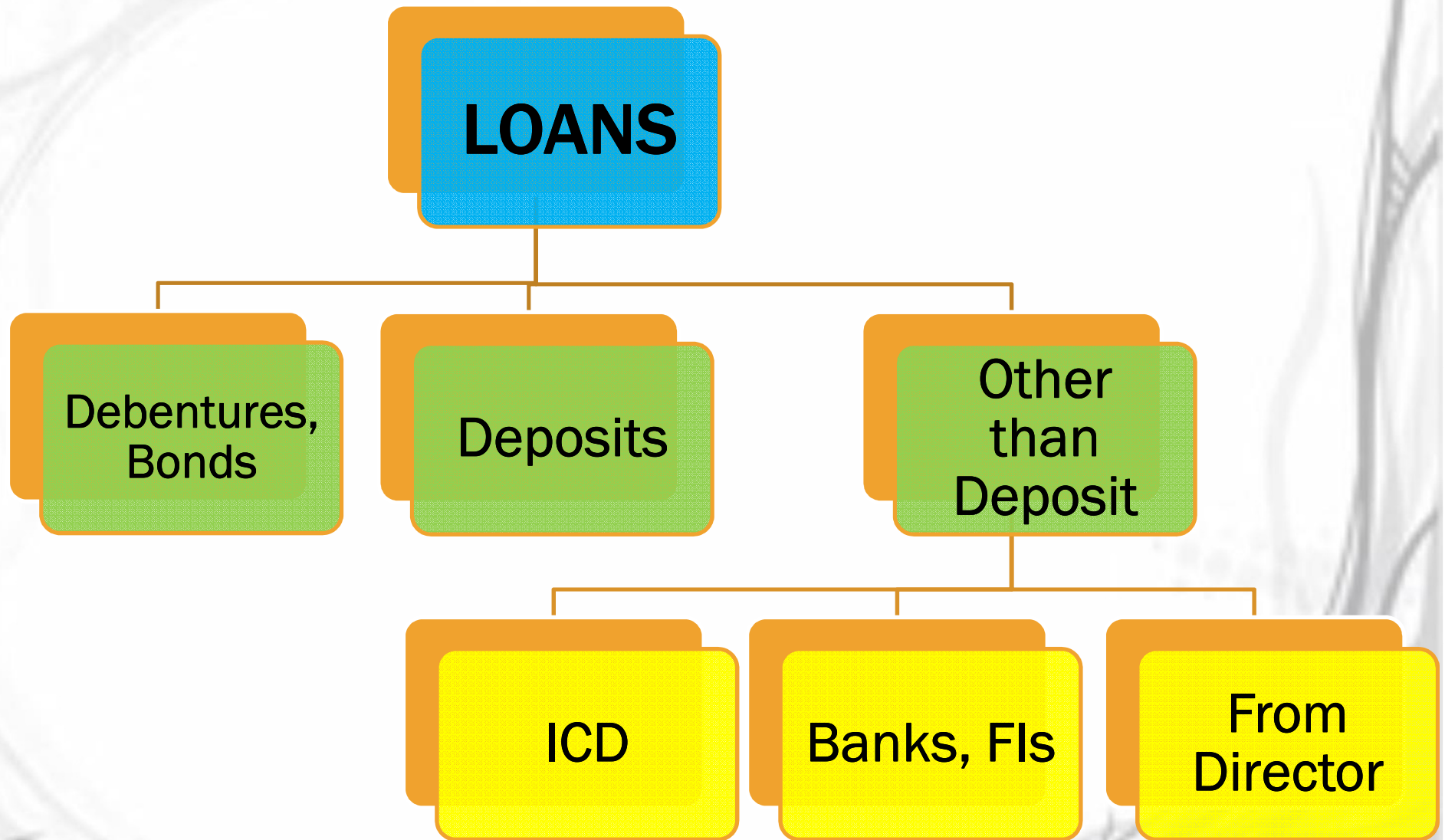
- ✘ **Where he is convicted for above, then liable to:**
 - + **Refund the remuneration received to the company;**
 - + **Pay damages to co, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his report.**

PENALTIES (147)

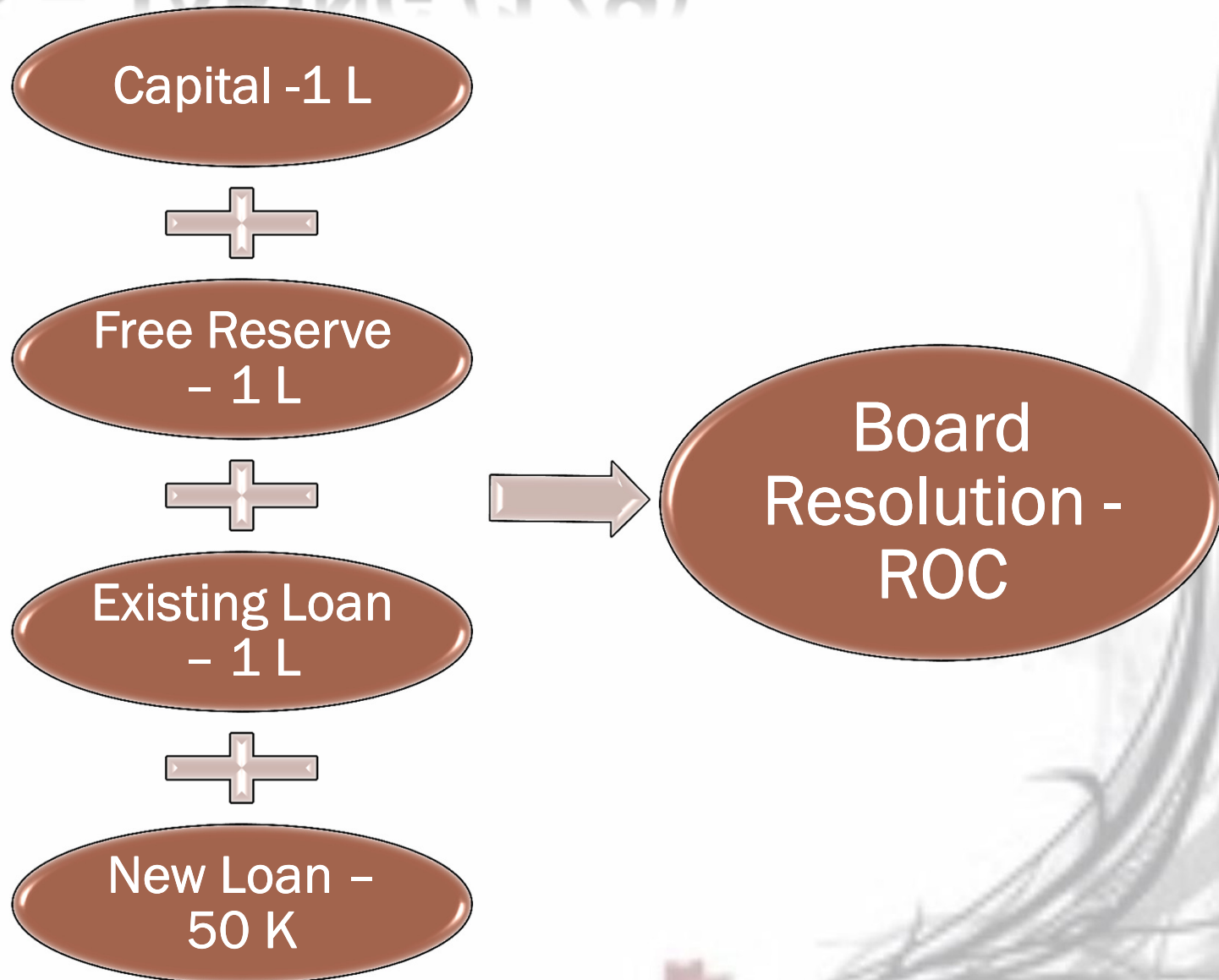
- ✘ **When it is proved that partner or partners of the audit firm has or have acted in fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the co. or its directors or officers, then liability of the firm jointly and severally for civil as well as criminal liability**
- ✘ **Penalties by NFRA**
- ✘ **Can ABC & Co. being statutory auditors issue Form 15CB certificate related to co?**
- ✘ **If yes, what is to be done?**

PENALTIES (147) – THE SAVING GRACE

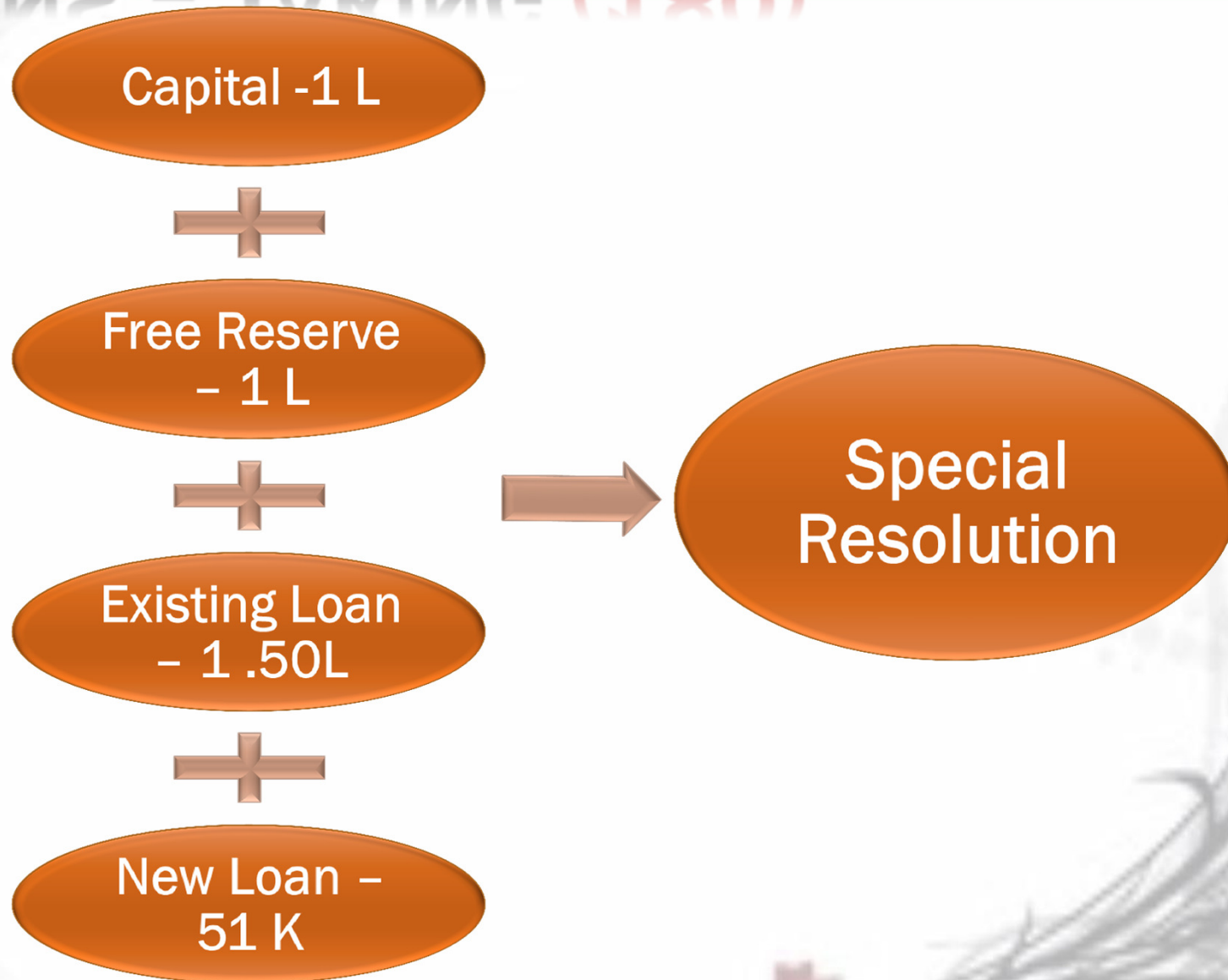
- ✦ **In case of criminal liability of any audit firm, the liability other than fine, shall devolve only on the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud (Rule 9)**



LOANS - TAKING (179)



LOANS – TAKING (180)



TAKING LOANS (180)

- ✘ For s. 180, loans includes loans from banks too**
- ✘ Temporary loans from bankers in ordinary course of business not included in limits**
- ✘ Temporary loans means repayable on:
 - + Demand**
 - + Within 6 months – short term**
 - + CC, Bill discounting, short term seasonal loans**
 - + But does not include loan for capital purpose****

PENALTY FOR DELAY IN FILING

- **Delay upto 270 days – 12 times filing fee**
- **After 300 days:**
 - **On company – fine Rs. 5 L – 25 L; and**
 - **On officer in default – fine Rs. 1 L – 5 L**

INTER CORPORATE DEPOSIT (ICD)

- ❑ **Can a company take ICD?**
- ❑ **What if the company from whom you take ICD has same director as your company?**
- ❑ **What if the company from whom you take ICD has a member who is also a director in your company?**

LOAN TO DIRECTOR (185)

- ✘ **Co. not allowed directly or indirectly to advance any loan or any loan represented by book debt or give guarantee or provide security in connection with loan taken to:**
 - + **Director of lending co or its partner or relative**
 - + **Director of its holding co or its partner or relative**
 - + **Firm in which such director or relative is partner**
 - + **Pvt. Co. in which such director is Dir. or member**
 - + **Co in which all directors hold >25% voting power**
 - + **Co. or BOD or MD or Manager acts in direction or instruction of such director or BOD of lending co.**

LOAN TO DIRECTOR – EXCEPTIONS

- ✘ **MD or WTD if condition of service - all employees**
- ✘ **Any scheme approved by members by spl resolution**
- ✘ **Co in business of providing loans - Intt rate > bank rate by RBI**
- ✘ **Loan, Guarantee, etc by holding co. to its WOSC**
- ✘ **Guarantee given or security provided by a holding in respect of loan made by bank or FI to its subsidiary**
- ✘ **However, it should utilised by Subs. Co. for principle business activities**

LOAN TO DIRECTOR – PENALTY

✘ On Giver i.e., Company:

+ Minimum Rs. 5 Lacs

+ Maximum Rs. 25 Lacs

✘ On Taker i.e., director:

+ Imprisonment upto 6 months

+ Penalty - Minimum Rs. 5 Lacs

+ Penalty - Maximum Rs. 25 Lacs

✘ Auditor should ensure adequate disclosure in case of non-compliance

FRAUD



DEFINED (447)

- ✘ Any act or omission,
- ✘ Concealment of fact or
- ✘ Abuse of position of any person (by him or herself or by any other person in connivance in any manner).
- ✘ With the intent to deceive or to gain undue advantage to injure the interest of
 - + Company, or
 - + Shareholders, or
 - + Creditors, or
 - + Any other person (whether or not there is any wrongful gain or loss).

PUNISHMENT

- ✘ Imprisonment not less than 6 months to 10 years**
- ✘ + Fine not be less than amount involved in the fraud which may extend to 3 times.**
- ✘ If fraud in question involves public interest then the imprisonment shall not be less than 3 years.**

FALSE STATEMENT (448)

✘ **If any person makes a false statement in any:**

+ **Return**

+ **Report**

+ **Certificate**

+ **FS**

+ **Prospectus**

+ **Other document under this Act**

✘ **Is false in any material particulars, knowing it to be false**

✘ **Omits any material fact knowing it to be material**

✘ **Action u/s 447**

FALSE EVIDENCE (449)

- ✘ **If any person gives intentionally a false evidence:**
 - + **Upon examination on**
 - ✘ **oath or**
 - ✘ **solemn affirmation**
 - + **In an**
 - ✘ **Affidavit**
 - ✘ **Deposition**
 - ✘ **Solemn affirmation**
- ✘ **Imp. 3 years to 7 years; and**
- ✘ **Fine upto Rs. 10 Lacs**

FRAUDULENTLY INDUCING PERSON TO INVEST MONEY

- ✘ Any person who, either knowingly or recklessly makes any **statement, promise or forecast** which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into:
 - + any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities;
 - + any agreement, purpose / pretended purpose of which is to secure a profit to any of parties from yield of securities or by reference to fluctuations in value of securities; or
 - + any agreement for, or with a view to **obtaining credit facilities** from any bank or financial institution,
- ✘ shall be liable for action u/s 447. (36)

SUMMARIZE..

- ✘ **Resolutions**
- ✘ **Share Capital, Deposits**
- ✘ **Committees**
- ✘ **CSR**
- ✘ **Schedule II**
- ✘ **Internal Auditor**
- ✘ **AS and SA Compliances**
- ✘ **New Engagement Letter**
- ✘ **New Audit Report**
- ✘ **Documentation**





**INCREASE YOUR
VALUE**

THANK YOU!

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