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August 17, 2023

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CS Jigar Shah – JMJA & Associates LLP

ICSI-WIRC
RESURGE & RELEARN Series

**Acceptance of
Deposits by
companies**

&

**Registration of
Charges**

Disclaimer

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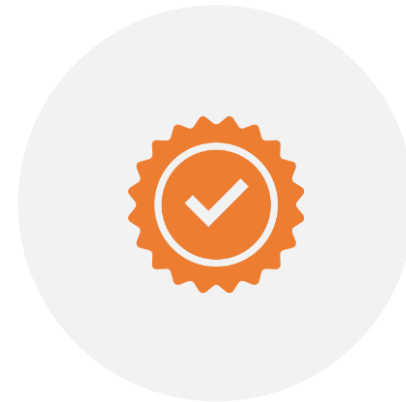
Meet The Speaker

- Partner at JMJA & Associates LLP, Practising Company Secretary Firm.
- Speaker and Trainer on various topics related Corporate Laws, ESG, CSR, Digital Branding etc.
- JMJA & Associates LLP is a team of CS and currently we have 20 + employees looking after execution work
- Worked with Companies like Datamatics, MCX, Welspun Group in the past.
- Can be reached at Jigar@jmja.in

Agenda



DEPOSIT



CHARGE

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Acceptance of Deposits



Deposits (Section 73 to 76A)

- 73) Prohibition on Acceptance of Deposits from Public
- 74) Repayment of Deposits, etc., Accepted before Commencement of this Act
- 75) Damages for Fraud
- 76) Acceptance of Deposits from Public by Certain Companies
- 76A) Punishment for Contravention of Section 73 or Section 76

The Companies (Acceptance of Deposits) Rules, 2014



Introduction

- Broadly 3 types of Deposits
 - Public Deposit, Exempted Deposits and Deemed Deposits
- Broader aspects on regulations of Money
- THE BANNING OF UNREGULATED DEPOSIT SCHEMES ACT, 2019
- Reporting in Boards Report, CARO and Secretarial Audit, if applicable.

Disclosure in Boards Report

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Companies (Accounts) Rules, 2014: Rule 8

- (v) the details relating to deposits, covered under Chapter V of the Act,-
 - (a) accepted during the year;
 - (b) remained unpaid or unclaimed as at the end of the year;
 - (c) any default in repayment of deposits or interest thereon and if so, number of such cases and the total amount involved-
 - (i) at the beginning of the year; (ii) maximum during the year; (iii) at the end of the year;
- (vi) the details of deposits which are not in compliance with the requirements of Chapter V of the Act;

Example – Boards Report

20. LOANS FROM DIRECTORS AND DIRECTORS' RELATIVES:

Subject to the Companies (Acceptance of Deposits) Second Amendment Rules, 2015, Company has accepted Loans from Directors and their relatives after receiving a declaration in writing to the effect that the amount is not being given out of funds acquired by them by borrowing or accepting loans or deposits from others. The details of the amount outstanding as on the close of the financial year are as follows:

Particulars	2021-22 (In Rs.)	2020-21 (In Rs.)
Loan form Directors	70,00,000/-	-
Loan from Director's Relatives	15,64,460/-	2,23,00,000/-

Penalties

- **On the Company:**

- In addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall **not be less than 1 crore rupees** or twice the amount of deposit accepted by the company, **whichever is lower** but which may **extend to ten crore rupees**;

- **Officer in Default**

- Punishable with **imprisonment** which may extend to **seven years** **AND** with fine which shall **not be less than 25 lakh rupees** but which may extend to **2 crore rupees**.
- If it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.

Sources for Deposits



Public Deposits - Eligible Public Companies



Other Companies from Members



Exempted Deposits

Eligible Companies

- A public company having:
 - a net worth of not less than 100 crore rupees;
OR
 - a turnover of not less than 500 crore rupees;
- which has obtained the prior consent of the company in general meeting by means of a **special resolution**; and
- also filed the said resolution with the ROC before making any invitation to the Public for acceptance of deposits

Deposits & Limits

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- No Company can accept deposits which are repayable on Demand.
- Term shall be 6 months to 36 months.
- Eligible Companies – 10% from Members and 25% from others
- Not Eligible Companies : Upto 35% Members
- IFSC Public Company may accept up to 100% from Members.
- Startup Companies – No limits
- Private Companies if:
 - borrowings from Bank or FI upto twice the Paid up capital or 50 Crores whichever is less
 - Not an associate or Subsidiary company
 - Not defaulted in provisions related to Deposits

Definition - Deposit

“Deposit” includes- any receipt of money by way of deposit or loan or in any other form by a company

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Details required to be given?

Particulars	Details of loan (in INR)					Ageing of loan (in Years)		
	Opening balance	Additional loan during the year	Repaid during the year	Any other adjustment	Closing balance	Loans outstanding for less than or equal to 1 year	Loans outstanding for more than 1 year and less than 3 years	Loans outstanding for more than 3 years

Exempted Deposits

- Amount received from the Government;
- any amount received from foreign Governments subject to FEMA
- any amount received as a loan or facility from any banking company
- any amount received as a loan or financial assistance from PFI
- Commercial papers
- **any amount received by a company from any other company**
- Received from an employee of the company not exceeding his annual salary
- non-interest bearing amount received and held in trust

Application Money

- any amount received towards subscription to any securities so long as such amount is appropriated only against the amount due on allotment of the securities applied for
- if securities cannot be allotted within 60 days such application money if not refunded within 15 days such amount shall be treated as a deposit under these rules.
- Any adjustment of the amount for any other purpose shall not be treated as refund.

Loan from Directors

- 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**
- Furnish 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
- The company shall disclose the details of money so accepted in the Board's report

Debentures

- Secured Bonds or Debentures - by a first charge or a charge ranking pari passu with the first charge
 - Excluding INTANGIBLE ASSETS
 - Amount of such bonds or debentures shall not exceed the market value of such assets
- Compulsory Convertible Debentures which are to be converted within 10 years.
- Unsecured NCDs which are listed on Recognised Stock Exchanges

Business Advances

- advance is appropriated within 365 days from the date of acceptance:
- Any legal proceedings before any court of law, time limit shall not apply:
- Received for an immovable property under an agreement;
- as security deposit;
- advance received under long term projects :
- an advance for providing future services **as per written agreement** or arrangement – period does not exceed five years or common practice;
- As allowed by any sectoral regulator;
- For subscription towards publication

Business Advances (contd.)

- If the amount received (in certain cases) 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 under these rules.**
- **The amount shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund.**

Case Study

- An advance given for a particular purpose cannot be treated as deposits.
- A mere monetary advance given without any purpose but intended to be refunded, with or without interest, would still be a deposit.
- However, if money is received as advance against any purpose, it is an advance and not a deposit.
- Only advances which are received without any purpose will amount to “deposit”.
- [Banwari Lal Arora & Sons V/s S. R. Foils & Hygiene Private Limited \(2023\)](#)

Other exemptions

- Promoters contributing unsecured loan as stipulated by lending institution
- any amount accepted by a Nidhi company
- amount received by way of subscription in respect of a chit under the Chit Fund Act, 1982.
- Received by Company under CIS, AIF, Domestic Venture Capital Funds, InvIT, REITs

Startups – Convertible Notes (CN)



Amount of Rs. 25 Lakhs or more in a single tranche



To be converted or repayable within 10 years.



Startup means – only those companies which are registered as Startup with DIPP.



CN - receipt of money as a debt - repayable at the option of the holder or convertible into Equity Shares

Error in DPT - 3

Any amount of twenty-five lakh rupees or more received by a startup company, by way of convertible note (convertible into equity shares or repayable within a period not exceeding five years from the date of issue) in a single tranche, from a person.	0	0	0	0	0	0	0	0
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DPT 3

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How to access form?

The screenshot displays the MCA21 website interface. The top navigation bar includes links for Home, About MCA, Acts & Rules, My Workspace, My Application, MCA Services, Data & Reports, E-Consultation, Help & FAQs, and Contact Us. The 'MCA Services' menu is open, listing various services such as DSC Services, DIN Services, Master Data, LLP e-Filing, FO Services, LLP Services, Company e-Filing, Company services, Complaints, Document Related Services, Fee And Payment Services, Investor Services, Independent Director databank services, Track SRN transaction Status, Address For Sending Physical Copy of G.A.R 33, Public Search of Trademark, LLP Services For Business User, and Application for MHA Security Clearance. The 'Deposits related filings' option is highlighted. On the right, the 'Form language' dropdown is set to English. The main content area shows the 'Form No. DPT-3' page, titled 'Return of deposits', with a sub-heading '[Pursuant to rule 16 and...]' and the Ministry of Corporate Affairs logo. A search bar for 'Enter Company Name To find' is visible at the bottom of the page.

<https://www.mca.gov.in/content/mca/global/en/mca/e-filing/Deposits-related-filings/DPT-3.html>



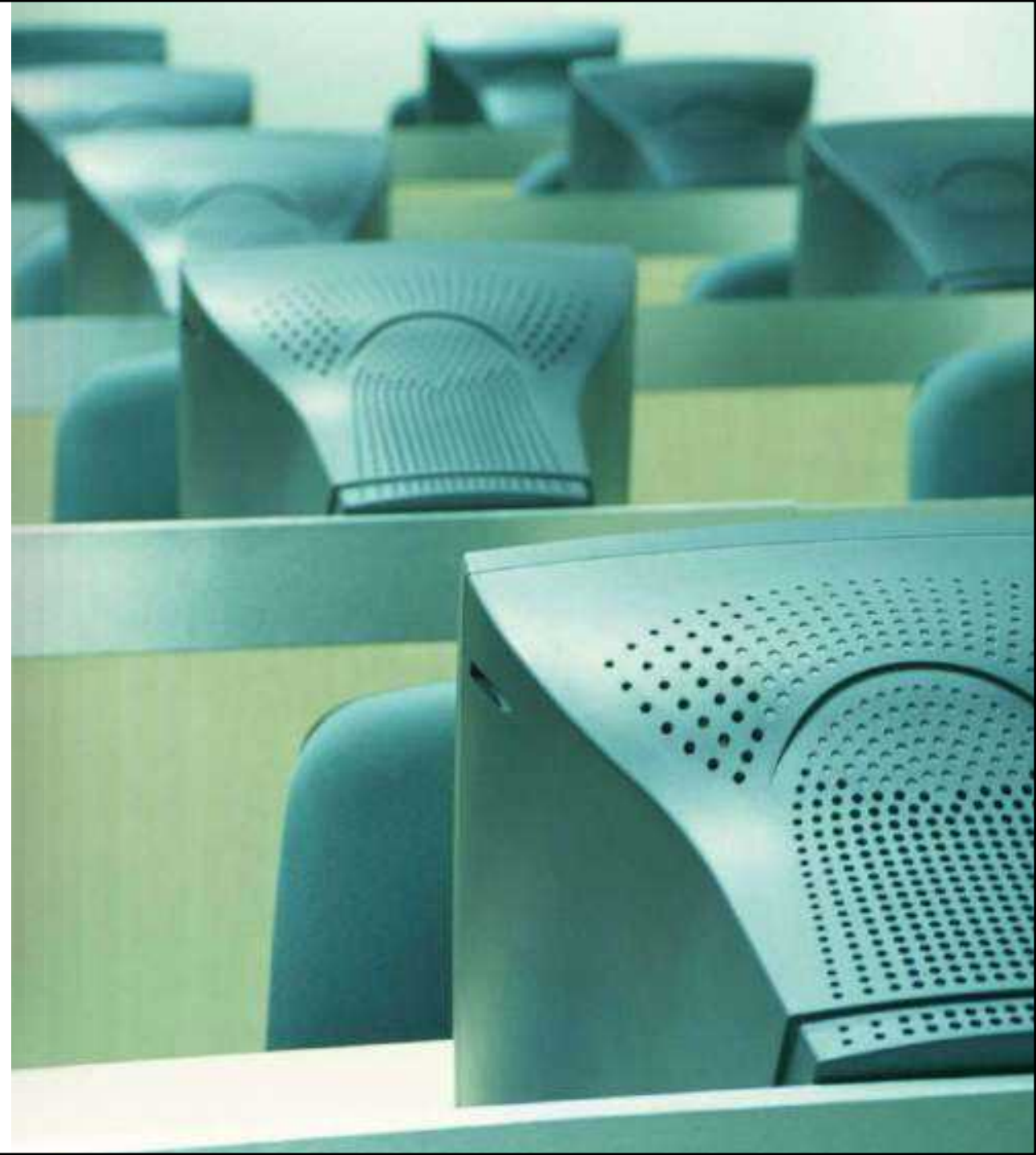
Loan received from LLP,
Partnership Firm, HUF (having
Directors as members/karta)
will be treated as a Deposit?

- Yes, as these parties will not form part of Director or relatives and hence money received from LLP, HUF or Partnership Firms shall be treated as Deposits.

Who are required to file DPT 3?

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- Rule 16: Every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3.
- Except for Government Companies, Banking Companies, NBFC and HFC are required to file DPT 3.



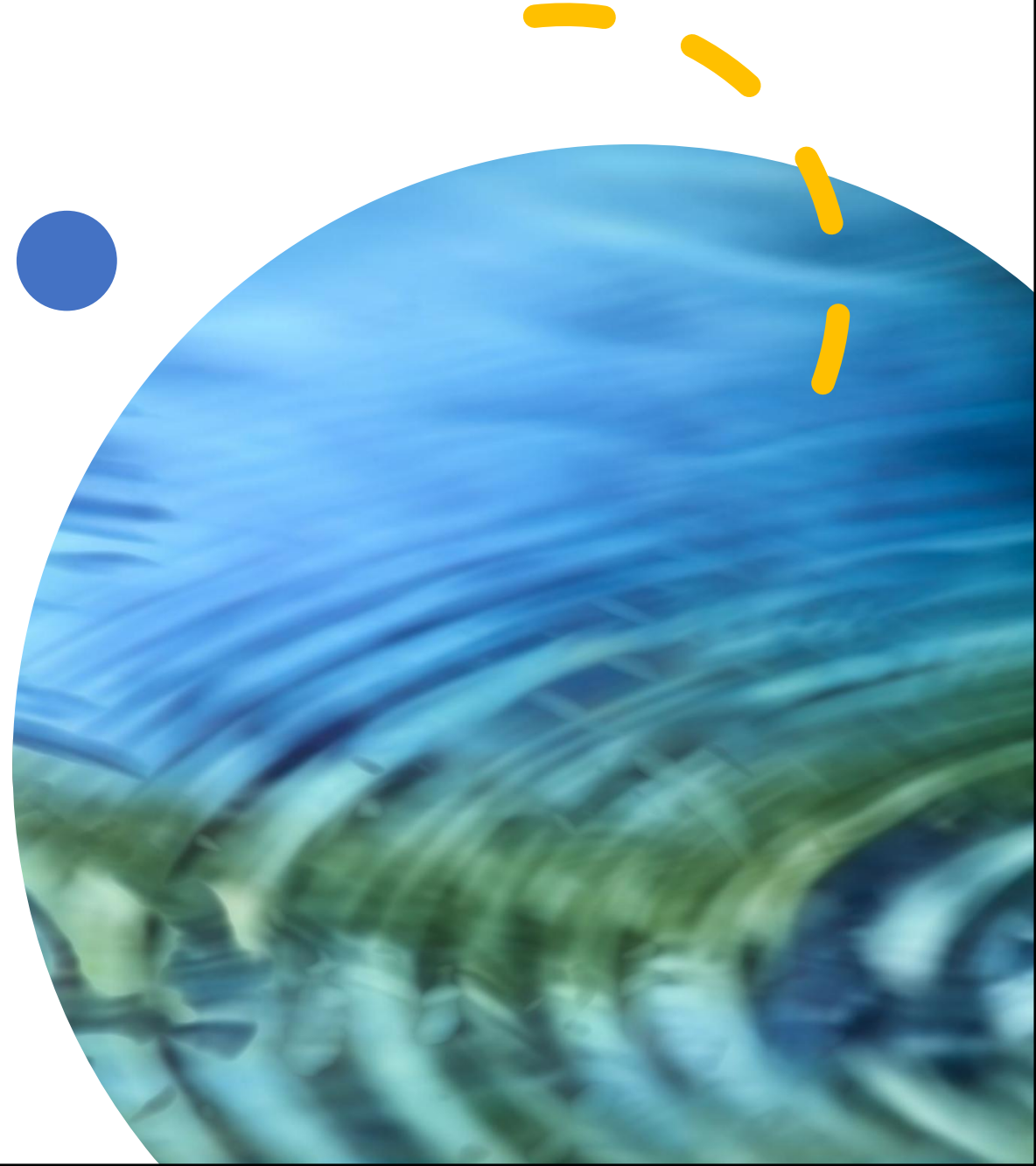
NIL Return mandatory?



No*



* Subject to Terms and Conditions.



Rule 16 : Return of Deposits to be Filed With the Registrar

Every company to which these rules apply, shall on or before the 30th June, file with the Registrar, a return in Form DPT-3 and furnish the information contained therein as on 31st March duly audited by the auditor of the company and declaration to that effect shall be submitted by the auditor in Form DPT-3.

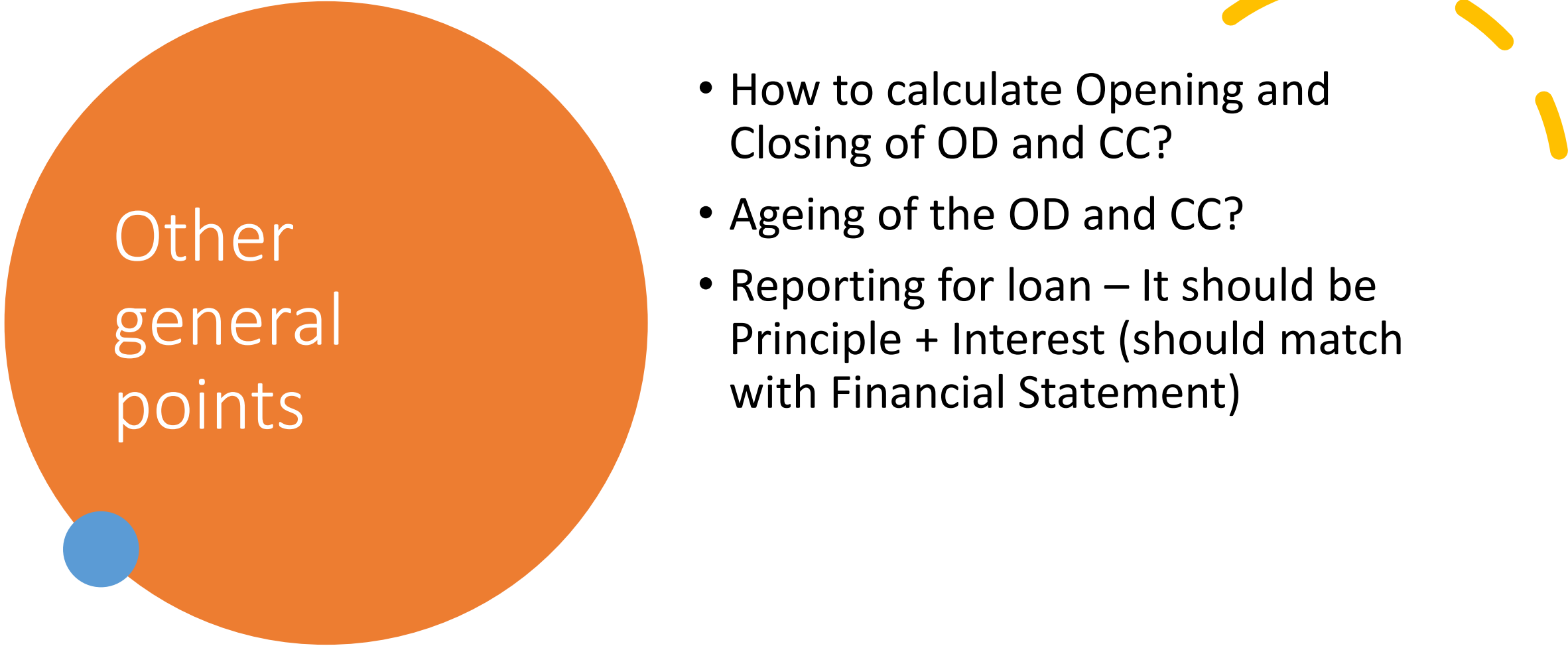
Explanation.- Form DPT-3 shall be used for filing return of deposit or **particulars of transaction not considered as deposit** or both by every company other than Government company.

Rule 16A : Disclosures in the financial statement.

- (1) Every company, other than a private company, shall disclose in its financial statement, by way of notes, about the money received **from the director.**
- (2) Every private company shall disclose in its financial statement, by way of notes, about the money received from **the directors, or relatives of directors.**

Important points

- We can edit the objects of the Company.
- No need to fill Networth etc for exempted Deposit return.
- Now we have pre-filled Zeros in DPT 3.
- Auditors Certification now not required for Exempted Deposits
- DPT 3 is STP form now.
- DPT 3 cannot be revised – Need to be careful with what is filed in June.



Other general points

- How to calculate Opening and Closing of OD and CC?
- Ageing of the OD and CC?
- Reporting for loan – It should be Principle + Interest (should match with Financial Statement)

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QUESTIONS?

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Charges



Chapter VI - Overview

Registration of Charges

77 Duty to Register Charges, etc

78 Application for Registration of Charge

79 Section 77 to Apply in Certain Matters

80 Date of Notice of Charge

81 Register of Charges to be kept by Registrar

82 Company to Report Satisfaction of Charge

83 Power of Registrar to Make Entries of Satisfaction

84 Intimation of Appointment of Receiver or Manager

85 Company's Register of Charges

86 Punishment for Contravention

87 Rectification by Central Government in Register of Charges

The Companies (Registration of Charges) Rules, 2014

Charge

- Section 2(16) – Charge means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.
- A charge may be ‘fixed’ or ‘floating’.
- The nature of a floating Charge is that the asset on which the charge is created is not an identified asset at the time of creation of the charge. However, the nature of the asset will be specified while creating the charge.



Pledge vs Hypothecation vs Mortgage

- A pledge is a bailment that conveys possessory title to property owned by a debtor to a creditor to secure repayment for some debt or obligation – Eg: Pledge of Shares
- Hypothecation is a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property. Eg: Car Loan
- Mortgage is transfer of an interest in specific immovable property for the purpose of securing payment of money advanced by way of loan. Eg: Mortgage on Property



Registration of Charges

- Duty of every company
- A charge within or outside India
- On its property or assets or any of its undertakings, whether tangible or otherwise
- situated in or outside India
- to register the particulars of the charge signed by the company and the charge-holder.
- Within 30 days of creation of Charge

Registration of Charge – (CHG 1)



To be filed within 30 days.



ROC may grant additional 30 days on payment of additional fees.



Further 60 days can be granted by ROC on payment of advalorem fees.

Fees

- For Indian Companies – Rs. 200 to Rs. 600
- For Foreign Companies – Rs. 6,000

Additional Fees:

Period of Delay	For Small Company and OPC	For Other Companies
Up to 30 days	Three times normal fee	Six times normal fee
More than 30 days and up to 90 days	In addition to a) and b), an ad valorem fee of 0.025 % of the Charge amount	In addition to a) and b), an ad valorem fee of 0.05% of Charge amount,
	Maximum of Rs. 1,00,000/-	Maximum Rs. 5,00,000/-

Registration of Charge

- Any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered
- Unless Charge is registered **and** certificate of registration of charge is given by ROC – it shall not be considered by Liquidator or any other creditor



Registration of Charge by Charge Holder

- Where a company fails to register the charge within 30 days the person in whose favor the charge is created may apply to ROC for registration of the charge along with the instrument created for the charge
- ROC may within a period of **14 days** after giving notice to the company, unless the company itself registers the charge or shows sufficient cause why such charge should not be registered, allow such registration on payment of applicable fees
- The Charge holder shall be entitled to recover from the company the amount of any fees or additional fees paid.

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----- Forwarded message -----

From: manas. [redacted]@mca.gov.in>

To: " [redacted] " [redacted] bai@yahoo.com>

Sent: Monday, 10 June, 2019, 5:03:13 pm IST

Subject: F.CHG-1

A) As this form is filed by the Financial Institution /ARC and the said form is not signed by the co. Hence it needs to give notice under section 78 of the Co.'s Act, 2013 to the co., Accordingly as to whether the co. has any objection to register the said form/charge CHG-1 vide SRN [redacted] which is filed on 29/05/2019 for creation/modification of charge of Rs. 17,592,100.00 Created on /modified on 27/04/2019. In this regard it is requested to get registered this charge at your level or so sufficient cause. Why such charge should not be registered please submit your reply within fourteen days from the date hereof otherwise it will be presumed that you have nothing to say and charge will be registered.

B) Also gives the declaration whether the said company is Under Liquidation or any Liquidation proceeding is pending or any Insolvency/Bankruptcy proceeding is pending against the company. If the said information is not provided, the form will get rejected.

C) As per Ministry's Office Memorandum No.3/280/2018-CL-II(SR) dt.11/04/2018 in this regard, the matter is examined & it is directed that if the defaulting company (which has taken the original loan from Banks/ Financial Institutions) is objecting to the registration of modification of charge in favour of ARC, the ROC in the first instance issue 14 days' notice u/s. 78 of the Act to the company and shall insist that any objection on registration of modification of charge shall be accepted only on receipt of prohibitory order of competent court/Tribunal.

Regards,

Dy.Registrar of Companies,

Maharashtra, Mumbai.

Date: June 13, 2019
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To
Registrar of Companies
Mumbai

Re: F. CHG-1

Dear Madam,

We are in receipt of your email dated June 10, 2019 regarding submission of our consent/objection for registration of charge for an amount of Rs. 17,592,100.00 created on 27/04/2019 for which form CHG-1 is filed vide SRN on 29/05/2019 by the Financial Institution /ARC.

In this reference we want to submit our replies as under:

1. **Yes Bank Limited** (CIN: 148722) (hereinafter referred to as **'The Company'**) has no objection, if the Registrar of Companies, Mumbai takes on record and approves the form CHG-1 filed vide SRN on 29/05/2019 by Yes Bank Limited-the Financial Institution/ARC for registration of charge for an amount of Rs. 17,592,100.00.
2. The form CHG-1 is filed by the Yes Bank Limited- the Financial Institution /ARC based on the mutual understanding between the company and Yes Bank Limited and as per the policies of the Yes Bank Limited. Thus, the Company has no objection if the form CHG-1 filed vide SRN on 29/05/2019 is approved by the Registrar of Companies, Mumbai.
3. We hereby give declaration that the Company is neither under Liquidation nor any liquidation proceedings or any Insolvency/Bankruptcy proceeding is pending against the company.

We request your office to kindly approve the form CHG-1 filed

Notice to third party(ies)

Where any charge on any property or assets of a company or any of its undertakings is registered under section 77, 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)



Register of Charges - By Company

- **Form CHG 7** - Every company shall keep the Register of Charge at its Registered Office. It shall contain:
 - particulars of all the charges registered on any of the property, assets or undertaking of the company; and
 - the particulars of any property acquired subject to a charge; and
 - particulars of any modification of a charge and satisfaction of charge.
- Entries in the register shall be authenticated by a director or the secretary or such person as authorized by the company.
- The register of charges shall be preserved permanently.
- Instrument creating a charge or modification thereon shall be preserved for a period of eight years

Form No. CHG-7
Register of charges
[Formant in section 83-sub-rule (1) of rule 10 of the Companies (Registration of Charges) Rules, 2014]

S No	Charge ID	Date of creation of charge or date of acquisition of property subject to charge	Date of registration of creation of charge	Short description of the property charged
(1)	(2)	(3)	(4)	(5)
Period and amount secured by the charge	Names and addresses of the charge holder	Particulars of the terms and conditions of the charge	Description of the instrument creating the charge	
(6)	(7)	(8)	(9)	
Date of modification of charge	Date of registration of modification of charge	Description of the instrument modifying the charge	Particulars of modification	
(10)	(11)	(12)	(13)	
Date of satisfaction	Date of registration of satisfaction	Facts and date of cessation of debt, if any	Reasons for delay in filing for registration of creation, modification or satisfaction of the charge, if any	
(14)	(15)	(16)	(17)	

CHG – 7 Format

Register of Charges - By Registrar

- The Registrar shall, in respect of every company, keep a register containing particulars of the charges registered under this Chapter in such form and in such manner as may be prescribed.
- The particulars of charges maintained on the Ministry of Corporate Affairs portal (www.mca.gov.in/MCA21) shall be deemed to be the register of charges for the purposes of section 81 of the Act.

Inspection

- The register of charges and the instrument of charges **kept by the company** shall be open for inspection-
 - (a) by any member or creditor of the company without fees;
 - (b) by any other person on payment of fee.
- The Register kept **by the Registrar** shall be available for inspection by any person on payment of such fees as provided from time to time.

Satisfaction of Charges

- A Company shall intimate to Registrar regarding satisfaction of Charges within a period of 30 days from the date of such payment or satisfaction.
- Registrar may allow such intimation of payment or satisfaction to be made within a period of 300 days on payment of such additional fees as may be prescribed.
- In case if CHG 4 is not signed by Charge Holder, the Registrar shall send notice to Charge Holder within 14 days.

IPs & Liquidators Right to sign forms

The Form No.CHG-1, CHG-4, CHG-8 and CHG-9 shall be signed by Insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation, as the case may be and filed with the Registrar.

w.e.f. August 29, 2022

Penalties for contravention

For Company	Every Officer in Default
Penalty of Rs. 5,00,000/-	Penalty of Rs. 50,000/-
	Any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information – Liable under Section 447

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Questions?

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