



# Acceptance Of Deposits, Recent Amendments in Schedule III and Others...etc

By: CA. Madhukuttan Pillai KB  
Assisted By: Abhishek Arthur (CA.Final)

## Areas of Discussion

- Important sections at a glance
- Meaning of Various Terms
- Introduction to Deposits
- Applicability Of New CARO
- Recent Amendments in CSR
- Recent Amendments in Schedule III

## Important Sections at a Glance

- ▶ 29 Chapters
- ▶ 80 Exhaustive definitions
- ▶ 14 Non exhaustive definitions
- ▶ 95 definitions, one deleted, 94A last: hence 95
- ▶ Sec 2(2)- r,w Sec 133 : AS
- ▶ Sec 2(16):Charge
- ▶ Sec 2(31):Deposit
- ▶ Sec 2(85):Small company

## IMPORTANT TERMS

### 1. Charge

**Section 2(16)** of the Act, defines "**Charge**" as 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."

### 2. Financial statement

According to **Section 2 (40)** of the Act, the term '**Financial statement**' in relation to a company, **includes:-**

- I. **a balance sheet** as at the end of the financial year;
- II. **a profit and loss account**, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- III. **cash flow statement** for the financial year;
- IV. **statement of changes in equity**, if applicable; and
- V. **any explanatory note** annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

**[Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement]**

## Meaning of the term Deposit

According to **Section 2 (31)** of the Act, the term '**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

Sec – 73 Prohibition on acceptance of deposit from Public



Sec – 74 Repayment of Deposit accepted before the commencement of this act



Sec – 75 Damages for the fraud



Sec – 76 Acceptance of Deposit from Public by certain Companies



Sec – 76A Punishment of contravention of 73 or 76



The Companies (Acceptance of Deposits) Rules, 2014

## Analysis Of The Definition Of 'Deposits' Under CA, 13

- Inclusive Definition
- Any receipt of money
- does not include categories of amount prescribed by the RBI

## Deposits – Clause (v) of CARO 2020

Whether the company has accepted any deposits and if yes, have they followed RBI's directives as under:

- The provisions regarding acceptance of deposits under section 73 to 76 of the Companies Act, 2013 have been followed
- If the order is passed by the court or any other tribunal like RBI, CLB, etc
- In case of non-compliance, the nature of the same has to be reported

## “Deposit” Under CA, 1956 Vs CA, 2013

- ✓ For the purposes of this section ‘**deposit**’ means any deposit of money with, and includes any amount borrowed by, a Co. but shall not include such categories of amount as may be prescribed in consultation with RBI. [**Expln to Sec. 58A of CA, 1956**]
- ✓ **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 RBI [**Sec. 2(31) of CA, 2013**]

## Eligible Company

As per Rule 2 (1) (e) the term “eligible company” means a public company

1. Having a **net worth** of minimum **100 crores** or a **turnover** of minimum **500 crores**.
2. Which has obtained the prior consent by means of a special resolution passed in general meeting.
3. The special resolution has been filed with the Registrar of Companies.
4. An ordinary resolution is sufficient if an eligible company is accepting deposits within the limits specified under Section 180 (1) (c).

Section 180 (1) (c).

to borrow money, where the money to be borrowed, together with the money already borrowed by the company will **exceed aggregate of its paid-up share capital, free reserves and securities premium**, apart from temporary loans obtained from the company’s bankers in the ordinary course of business:

**Am I Eligible?**

## Amounts Not Considered As Deposit

Following categories of amounts are not considered as deposit:-

- any amount received **by a company from any other company**
- 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;**

However, the director of the company or relative of the director of the private company, as the case may be, from whom money is received, is required to furnish to the company at the time of giving the money, a **declaration** in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report;

- 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 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 the fulfillment of following conditions:
  - I. the loan is brought because of the stipulation imposed by the lending institutions on the promoters to contribute such finance;
  - II. the loan is provided by the promoters themselves or by their relatives or by both; and
  - III. such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter

- 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;

By way of Explanation it is clarified that:

- “Start-up company” means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956.

- any amount raised by the **issue of bonds or debentures secured by a first charge** or a charge ranking pari passu with the first charge on any assets referred to in Schedule III of the Act excluding intangible assets of the company or bonds or debentures compulsorily convertible into shares of the company within 10 years;

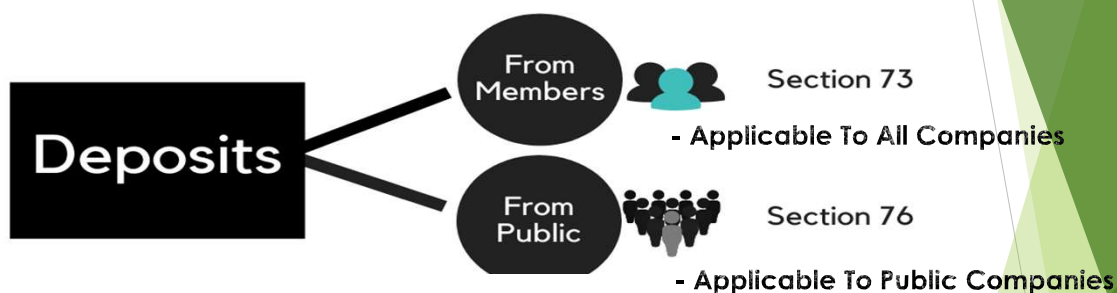
- any amount received and held pursuant to an offer made in accordance with the provisions of the **Act towards subscription to any securities** (including share application money or advance towards allotment of securities, pending allotment), so long as such amount is appropriated only against the amount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

Explanation: It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received **cannot be allotted within 60 days** from the date of receipt of the application money, or advance for such securities and such application money or advance is not **refunded** to the subscribers **within 15 days** from the date of completion of 60 days, such amount shall be treated as a deposit under these rules

Further, it is clarified that **any adjustment of the amount for any other purpose shall not be treated as refund**

- any amount received in the course of, or for the purposes of, the business of the company
  - (a) as an **advance for the supply of goods or provision of services** accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of 365 days from the date of acceptance of such advance;
  - (b) as advance, accounted for in any manner whatsoever, received in connection with **consideration for an immovable 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** except those covered under item (b) above;
  - (e) as an advance towards consideration for providing **future services in the form of a warranty** or maintenance contract as per written agreement or arrangement
  - (f) as an advance for subscription towards publication,
    - **any amount accepted by a Nidhi company** in accordance with the rules made under Section 406 of the Act;

## Acceptance Of Deposits By Companies





## Prohibitive Provisions And Exempted Companies Section 73 Of The Act

According to section 73 (1) of the Act, **no company** can accept or renew deposits from public unless it follows the manner provided under Chapter V of the Act for acceptance or renewal of deposits from public.

### Exempted Companies



## Provisions Regarding Acceptance Of Deposits From Members

- *Passing of a Resolution*
- *Issuance of a Circular containing Statement*
- *Filing of Circular*
- *Deposit Repayment Reserve Account:-*  
The company is required to deposit, **on or before 30<sup>th</sup> of April each year**, at least **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
- *Certification as to No default in Repayment*

- **Obtaining of Credit Rating:**

The 'eligible company' shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a **recognised credit rating agency**. The given rating which ensures adequate safety shall be informed to the public at the time of invitation of deposits from the public. Further, the rating shall be obtained every year during the tenure of deposits.

There are **7** credit rating agencies in India including:-

**CRISIL, ICRA, CARE, India Ratings and Research Pvt Ltd, Acuite Ratings & Research, Brickwork Ratings India Pvt. Ltd. and Infomerics Valuation and Rating Pvt.**

Theses agencies are authorized by SEBI to assess credit ratings

## Exemption To Certain Private Companies

Clauses (a) to (c) and (e) of sub-section (2) of section 73 shall not apply to a private company:

- A. which accepts from its members monies not exceeding one **100%** of PSC+FR +SP or
- B. which is a **start-up**, for five years from the date of its incorporation or
- C. which fulfils **all** of the following conditions, namely:
  - I. which is **not an associate or a subsidiary company** of any other company;
  - II. if 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 **50 Crore**, whichever is **lower**; and
  - III. such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section.

## Maximum Amount Of Deposits From Members

- A company is permitted to accept or renew any deposit from its members including other such deposits outstanding as on the date of acceptance or renewal maximum up to **35%** of the aggregate of its paid-up share capital, free reserves and securities premium account.
- A **Specified IFSC Public company and a private company** may accept from its members monies not exceeding **100%** of aggregate of the paid-up share capital, free reserves and securities premium account. Further, such company shall file the details of monies so accepted with the Registrar in Form DPT-3.

## Maximum Amount of Deposits - An eligible company

### From its Members:

The amount of such deposit together with outstanding deposits from the members as on the date of acceptance or renewal can be maximum **10%** of the **aggregate of its paid-up share capital, free reserves and securities premium account;**

### From Persons other than its Members:

The amount of such deposit together with the amount of outstanding deposits (excluding deposits from members) on the date of acceptance or renewal can be maximum **25%** of the aggregate of its paid-up share capital, free reserves and securities premium account.

## Filing Of Return Of Deposits With The Registrar

- A duly audited return of deposits in DPT-3 (containing particulars as on 31<sup>st</sup> March of every year) shall be filed with the Registrar of Companies along with requisite fee on or before the **30<sup>th</sup> June of that year** (Extended due date 31<sup>st</sup> August 2021)



## Penal Rate of Interest

- In case the company fails to repay deposits (both secured and unsecured) on maturity, after they are claimed, it shall pay penal rate of interest of **18 %** per annum for the overdue period

## Repayment Of Deposits Before Commencement of Companies Act, 2013 - SECTION 74

As per Section 74 (1),

**in case any deposit was accepted by a company before the commencement of this Act and the amount of such deposit or any interest remains unpaid as on 1.4.2014 or becomes due the company shall take the following steps:**

1. file, within a period of 3 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.
2. repay within three years from such commencement or on or before expiry of the period for which the deposits were accepted, whichever is earlier

## Tenure for which Deposits can be Accepted

A company is **not permitted to accept or renew deposits** (whether secured or unsecured) which is repayable on demand or in **less than six months**. Further, the **maximum period** of acceptance of deposit **cannot exceed thirty-six months**.

### Exception to the rule of tenure of six months:

For the purpose of meeting any of its short-term requirements of funds, a company may accept or renew deposits for repayment earlier than six months subject to the condition that:

- such deposits **shall not exceed ten per cent.** of the aggregate of the paid-up share capital, free reserves and securities premium account of the company; and
- such deposits **are repayable only on or after three months** from the date of such deposits or renewal.

## Punishment For Contravention Of Section 73 Or Section 76

- **Punishment for the company:** The company shall, 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 one crore rupees or twice the amount of deposit accepted by the company**, whichever is **lower** but which may extend to ten crore rupees; and
- **Punishment for officer-in-default:** Every officer of the company who is in default shall be punishable with imprisonment which may extend to **seven years and with fine which shall not be less than twenty-five lakh rupees** but which may extend to two crore rupees.

# Recent Amendments Effective From 01st April 2021

## Change In Definition Of Small Company

- ▶ As per the Amendment passed on 1st February 2021; came into effect from 1st April 2021
- ▶ “Small Company” means a company, **other than a public company,—**
  - ▶ Having i.e the **paid-up capital** should **Rs. 2 Crore** or more or the **turnover** as per last statement of profit & loss should **Rs. 20 Crore** or more.
  - ▶ If any of the given limits crossed at any point of time then such a Company shall be out of the preview of a Small Company.



## Amendment In Concept Of One Person Company:

- ▶ The Companies (Incorporation) Second Amendment Rules, 2021 passed on 1st February 2021, made amendment in many provisions of One Person Company like:
  - **NRI** can incorporate One Person Company in India.
  - It is **not mandatory to convert One Person Company** in other type of company irrespective of Turnover.
  - Timeline of “Resident of India” who has stayed in India has been substituted from 180 days to **120 days**;

## Applicability Of New CARO

- ▶ The Companies (Auditor's Report) Order, 2020 (CARO, 2020) which shall be applicable for the **eligible companies** for the financial year commencing on or after 1st April, 2021.
- ▶ There are in **total 21 clauses** in CARO 2021 in comparison to 16 clauses in CARO 2016.
- ▶ As 1 clause related to Managerial Remuneration deleted, 1 clause is merged with other and **7 new clauses are inserted**.
- ▶ Therefore, while preparing the auditor report for the F.Y. 2021-22, Auditors have to use the new CARO.
- ▶ The new clauses added are:

## Clause-8: Unrecorded Income

- ▶ New clause being inserted, in case **any transactions not recorded** in the books of account have been surrendered or disclosed as income during the year in the tax assessments under the Income Tax Act, 1961, if so, whether the previously unrecorded income has been properly recorded in the books of account during the year.



## Clause-14: Internal Audit

- ▶ New clause being inserted, in order to report whether Company has an **internal audit system** commensurate with the size and nature of its business.
- ▶ Further, a disclosure is also required to be made as to whether the **report of Internal Auditor** is being considered by Statutory Auditor.

## Clause-17: Cash Losses

- ▶ New clause being inserted, to **disclose cash losses** incurred by the company in the financial year and in the immediately preceding financial year.

## Clause-18: Resignation of Auditor

- ▶ New clause being inserted, in order to disclose the issues, objections or concerns raised by the outgoing auditors at the time of resignation from his duty as a Statutory auditor of the company during the year.

## Clause-19: Financial Capability of Company

- ▶ New clause being inserted that whether the company is **capable to meet out its liabilities** that existing on the balance sheet date as and when they fall due within one year.
- ▶ Auditor needs to analysis on the **basis of financial ratio**, ageing of financial assets and financial liabilities and Expected realization of those assets and liabilities.

## **Clause-20: CSR Compliances**

- ▶ **New clause being inserted whether the company has transferred the unspent amount of CSR in case of**
  - a) **Outgoing projects to to a special designated bank account.**
  - b) **Other than outgoing projects to a fund specified under schedule VII to the Companies Act within a period of six months of the expiry of the financial year.**

## **Clause-21: Consolidated Financial Statement**

- ▶ **New clause being inserted, to disclose any qualifications or adverse remarks by the auditor in their reports of the companies (subsidiary) should be included in the consolidated financial statements (Parent).**

Sl no.	CARO,2020		
	Clasue no.	Reporting subject	Disclosure in the financial statements in alignment with CARO ,2020
1	3(i)(c)	Property, plant and equipment not held in company's name	Disclosure in the specified format to be made by companies relating to the details of immovable property where title deeds are not held in the name of the company (this disclosure is for ,other than properties where the company is the lessee and the lease agreements are duly executed in favour of the lessee)
		Property, plant and equipment not held in company's name	Disclosure is required whether the fair value of investment property is based on the valuation done by the registered valuer as per the provisions of rule 2 of companies (registered valuers and valuation )rules,2017
		Property, plant and equipment not held in company's name	Disclosure is called for as to whether the revaluation is based on the valuation done by the registered valuer as per the provisions of rule 2 of the companies (registered valuers and valuation) rules,2017

2	3(iii)and 3(iv)	Loans given by company and to director	Disclosure is required to be made by the company in the specified format in case where loans and advances in the nature of loans are repayable on demand /are given without specifying any term /period of repayment to directors ,key managerial personnel and also to the related parties
	3(iv)	Investments ,loans and advances given (number of layers)	Under the provision of clause (87) of section 2 of the companies Act,2013 read with companies (restriction on the number of lawyers) rules ,2017,if the company has not complies with the number of layers of investment prescribed ,then the disclosure is required to be made with the name of the company along with CIN of the company in such downstream companies

3	3(viii)	Unrecorded transactions arising out of tax assesment	Any income of the company which has not been recorded but which arises during the course of income tax assessment or other tax assessments,shall be disclosed unless any scheme exempts this disclosure. Also,any previously unrecorded income or assets have been properly reecorded in the books of account.
4	3(ix)(b)	Repayment of loan-wilful default	Disclosure is required to be made by the company in case the company has been declared as a 'wilful defaulter' by any bank , financial institution or other leader ,providing the details of date of date of declaration along with details of defaults by the company

5	3(ix)(c)	Repayment of loan - utilisation of borrowed funds:	<p>Following disclosures are called for where the funds are given /received by a company which are to be given as loan, investment,security or guarantee to a third company via an intermediary company to the ultimate beneficiary.</p> <p>Disclosure is required to be made by the company and as well by the intermediary company.</p> <p>Disclosure called for is</p> <ul style="list-style-type: none"> <li>- The details of funds exchange,</li> <li>- details of ultimate beneficiaries and compliance with foreign exchange Management Act , 1999 &amp;</li> <li>- prevention of money laundering Act 1992.</li> </ul>
---	----------	--	--

6	3(i)(e)	Property, plant& equipment proceeding against company under benami transactions	Under the benami transaction (prohibition)Act,1988, any proceedings has been initiated /pending against the company needs to disclose the details as under:- -property amount -beneficiary details -whether it is recorded in the books of account or not and -nature of proceedings and company's view on the same
7	3(ix)(c)	Borrowing from banks and financial institutions -usage of funds for particular purpose or other wise	If funds borrowed from banks and financial institution are not used for the specified purpose for which they are raised, disclosure of where the funds have been used is required to be made
8	3(xx)	Corporate social responsibility	Relating to CSR expenditure by the company, in case of shortfall, details of shortfall for current year and cumulative short fall amount are to be disclosed along with the reasoning for short fall

# Recent Amendments in CSR provisions

Before Amendment	After Amendment
<p>The Board of every company shall ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the <b>three immediately preceding financial years</b> in pursuance of its CSR Policy</p>	<p>The Board of every company shall ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding financial years <b>or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its CSR Policy</b></p>

Before Amendment	After Amendment
<p>Provided further that if the company fails to spend such amount, the Board shall, in its report, specifying the reasons for not spending the amount</p>	<p>Provided further that if the company fails to spend such amount, the Board shall, in its report, specify the reasons for not spending the amount <b>unless the unspent amount relates to any ongoing project, shall transfer such unspent amount to a Fund specified in Schedule VII within a period of six months of the expiry of the financial year].</b></p>

## PENALTY

### Penalty to the Company :

Liable to a penalty of **twice** the amount required to the **Fund or the Unspent CSR Account** as the case may be, **or one crore rupees**, whichever is **less**.

### Penalty to the Officers in default :

Every officer shall be liable to a penalty of **10%** of the amount required to be transferred, **or the Unspent Corporate Social Responsibility Account**, as the case may be, **or two lakh rupees**, whichever is **less**.

## Dispensing Of CSR Committee

Where the **amount to be spent** by a company **does not exceed 50 lakh rupees**, the requirement to constitute **CSR Committee shall not be applicable** and the **functions of such Committee** provided under this section shall, in such cases, be **discharged by the Board** of Directors of such company.



## **New Annexure Of CSR With Directors Report**

- ▶ **Companies (Corporate Social Responsibility Policy), Amendment Rules, 2021** came into effect on 22 January 2021 and shall be applicable for the financial year 2020-21.
- ▶ The Company shall annex with its Board Report an annual report on CSR in format of Annexure-I (for f.y. 2020-21) or in Annexure II (w.e.f. fy 2021-22).

## **Amendments in Schedule III of CA, 13**

- ▶ Amend to Schedule III to the Companies was made via notification dated 24 March 2021.
- ▶ MCA by this amendment has added many new disclosures in Notes to accounts of Balance Sheet and P&L like:
  - ▶ Rounding off of figures
  - ▶ Shareholding of Promoters
  - ▶ Trade payable ageing Schedule
  - ▶ Trade receivables ageing schedule
  - ▶ Title deeds of Immovable Property not held in name of the Company
  - ▶ Disclosure on revaluation of Assets

- ▶ Trade receivables ageing schedule
- ▶ Title deeds of Immovable Property not held in name of the Company
- ▶ Disclosure on revaluation of Assets
- ▶ Disclosure on Loans/ Advance to Directors/ KMP/ Related parties
- ▶ Details of Benami Property held
- ▶ Details of Borrowing
- ▶ Wilful Defaulter
- ▶ Relationship with Struck off Companies
- ▶ Registration of charges or satisfaction with Registrar of Companies
- ▶ Compliance with number of layers of companies
- ▶ Disclosure of Ratios
- ▶ Undisclosed Income (Reconciliation of Income Tax and Companies Act)
- ▶ CSR Disclosure

## AMENDMENTS AT A GLANCE

There are three major amendments which has been brought in the amendments as discussed below:-

### Regrouping of certain balance sheet items

Under current liabilities borrowings	The long-term borrowings of current maturities are to be now regrouped under borrowings.
Under Long Term Loans and Advance	Security deposit which is currently shown as loan is to be regrouped as other financial Assets
Other financial liabilities which includes lease liabilities are now required to be regrouped under Lease liabilities	

## First time Introductions made towards Disclosure Requirements in Schedule III

- ✓ Trade payables- ageing analysis introduced
- ✓ Statement of current assets filed with banks and financial institution for borrowing facilities introduced
- ✓ Capital work-in-progress (CWIP) and Intangible assets under development (IAuD) introduced

## Disclosure of Ratios

**Following Are the Ratios which are required to be Reported:-**

1. Current Ratio
2. Debt Equity Ratio,
3. Debt Service Coverage Ratio,
4. Return On Equity Ratio,
5. Inventory Turnover Ratio,
6. Trade Receivables Turnover Ratio,
7. Trade Payables Turnover Ratio,
8. Net Capital Turnover Ratio
9. Net Profit Ratio
10. Return On Capital Employed,
11. Return On Investment

**if there is more than 25% change in any ratio as compared to the preceding year, additional explanation is required to be given**

## Conclusion

- provisions which are now brought out is not only casting responsibility on the part of the directors of the company, but equally on the auditors as well.
- The auditors are required to substantiate the disclosure statements made by the directors in the financial statements, by applying their audit procedures and issue their audit procedures and issue their independent auditors report to the shareholders of the company.
- One can say that Ministry Of Corporate Affairs is bringing out increasing stringency in compliance by way of adding numerous additional disclosures in the financial statements of the company and audit report in order to have much more transparency. No doubt, the board report also would have reflect the changes and bring out more disclosure.

