Checklist on New Provision of Companies Act,2013 (Relevant sections)

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SECTION 73 : Prohibition on Acceptance of Deposits from Public.

Applicability : Every company (Exculding Banking Co. & NBFCs as defined in RBI Act, 1934 or a housing finance company and to other company as the Central Government may, after consultation with the RBI)

		YES/NO	N/A
1	**Check** whether the company is Banking Company or NBFC as defined in RBI Act, 1934 or a housing finance company registered with the National Housing Bank Act 1987 (53 of 1987), and to such other company as the Central Government may, after consultation with the RBI? If **YES**, Section 73 is not applicable on such Companies**.** If **NO,** then Provisions of Section 73 is Applicale on such Company	☐	☐ ☐
2	**Check** whether the company has INVITED, ACCEPTED or RENEWED Deposits from the PUBLIC ? If **YES**, **Then.**	☐	☐ ☐
3	**Check** whether the company deposited minimum **15%** of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account ? → If **NO** , **Then such invitation or Acceptance is VOID.** → If **YES**, **Then**	☐	☐ ☐
4	**Check** whether the company has fullfiled the following conditions or Not ?		
(i)	Whether the company had passed the resolution in General Meeting or not ?	☐	☐ ☐
(ii)	Whether the company accepts deposits from its members on such terms and conditions of agreement , including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members ?	☐	☐ ☐
(iii)	Whether the company obtained a statement showing the financial position of the company ? And same circulate to its members or not ? including therein , the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed.	☐	☐ ☐
(iv)	Whether the Company filled a copy of the circular along with such statement with the Registrar within **30** days before the date of issue of the circular ?	☐	☐ ☐
(v)	Whether the Company provide **insurance** on such deposit in such manner and to such extent as may be prescribed ?	☐	☐ ☐
(vi)	Whether the company has committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits ?	☐	☐ ☐
(vii)	Whether the company provide any security, for the due repayment of the amount of deposit or the interest thereon (including the creation of such charge on the property or assets of the company) ?	☐	☐ ☐
(viii)	Whether the Company used the deposit repayment reserve account for any purpose other than repayment of deposits ? If any, abovementioned conditions are not fulfilled by the company then such Company is in **Default**	☐	☐ ☐
5	**Check whether any money recived by the company falls in any of the following Cases ?**		
(i)	Any amount received from the Central Government or a State Government ?	☐	☐ ☐
(ii)	Any amount received from foreign Governments, foreign or international banks, multilateral financial institutions ?	☐	☐ ☐
(iii)	Any amount received as a loan or facility from any banking company or from the State Bank of India or any of its subsidiary banks or from a banking institution notified by the Central Government ?	☐	☐ ☐
(iv)	Any amount received as a loan or financial assistance from Public Financial Institutions notified by the Central Government ?	☐	☐ ☐

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	(v)	Any amount received against issue of commercial paper or any other instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India ?	☐ ☐ ☐
	(vi)	Any amount received by a company from any other company ?	☐ ☐ ☐
	(vii)	Any amount received and held pursuant to an offer made in accordance with the provisions of the Act owards subscription to any securities, including share application money or advance towards allotment of securities pending allotment **If such Amount is not alloted with in 60 Days from the date of receipt of the application money or advance for such securities . THEN** **Such amount Shall be refunded to the subscribers within 15 days** from the date of completion of above 60 Days . **Otherwise** **such amount shall be treated as a Deposit .**	☐ ☐ ☐
	(viii)	Any amount received from a person who, at the time of the receipt of the amount, was a director of the company ?	☐ ☐ ☐
	(ix)	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 ?	☐ ☐ ☐
	(x)	Any amount raised by the issue of bonds or debentures or any charge on the Assets exculding intangible Assets ?	☐ ☐ ☐
	(xi)	Any non-interest bearing amount received or held in trust ?	☐ ☐ ☐
	(xii)	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 ? If such advance for the supply of goods or provision of services is with in the period of **365 Days**. **THEN OK.** **OTHERWISE it is a Deposit .**	☐ ☐ ☐
		(b) as advance received in connection with consideration for property under an agreement or arrangement ?	☐ ☐ ☐
		(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 ?	☐ ☐ ☐
		If the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received **Shall be refunded within 15 days.** **Otherwise such amount shall be treated as a Deposit .**	
	(xiii)	Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to fulfillment of the following conditions, namely:-	
		(a) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance ?	☐ ☐ ☐
		(b) the loan is provided by the promoters themselves or by their relatives or by both;	☐ ☐ ☐
		(c) the exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter ?	☐ ☐ ☐
	(xiv)	Any amount accepted by a Nidhi company in accordance with the rules made under section 406 of the Companies Act, 2013 ?	☐ ☐ ☐
	(xiiv)	in connection with point no. (Viii) **Amounts received by private companies from their members, directors a or their relatives before 1st. April, 2014 - Clarificatlon regarding appllcability of Companies (Acceptance of Deposits) Rules. 20l4 . ; Dated - 30th March, 2015** Any amount received from their members, directors or their relatives prior to 1st April, 2014 **as such amounts were not be treated as 'deposits' .** **subject to the condition :-** that relevant private company **shall disclose**, in the notes to its financial statement for the financial year commencing on or after 1st April, 2014 the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement. **further** Any renewal or acceptance of fresh deposits on or aiter 1st April, 2014 shall, however, be in accordance with the provisions of Companies Act, 20 13 and rules made thereunder.	

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	6	**Check** whether the company had taken Deposits which is **Repayable on Demand** ? If **NO** Then OK If **YES** Then ..... Check such Deposits is within the period of ← More than 6 Months & Less than 36 Months AND If such deposits is for **Less than 6 months** then the following conditions has been fulfilled or not ? **(a)** such deposits shall not exceed **10%** of the aggregate of the paid up share capital and free reserves of the company. **(b)** such deposits are repayable not earlier than three months from the date of such deposits or renewal thereof .	☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐
	7	Check whether the **company** has ACCEPT or RENEW Deposits from its MEMBERS ? If NO Then OK If YES Then ..... Then amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits does not exceeds **25%** of the aggregate of the paid-up share capital and free reserves of the company ?	☐ ☐ ☐
	8	Check whether the **Eligible company** has ACCEPT or RENEW Deposits from --- **(a)** its MEMBERS ? Then amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds **10%** of the aggregate of the paid-up share capital and free reserves of the company ? **(b)** other than members ? Then amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds **25%** of the aggregate of the paid-up share capital and free reserves of the company ? Defination of Eligible company :- means a public company as referred to in sub-section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and 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 Registrar of Companies before making any invitation to the Public for acceptance of deposits: **NOTE : No company or any eligible company shall invite or accept or renew any deposit in any form, carrying a rate of interest or pay brokerage thereon at a rate exceeding the maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by NBFCs .**	☐ ☐ ☐ ☐ ☐ ☐
	9	Check whether the company or eligible company appointed **trustee for depositors** or not ?	☐ ☐ ☐
	10	Check whether the company maintain **Registers of Deposits** at its registered office or not ?	☐ ☐ ☐
	11	Check whether the company or eligible company has created any **charge** against the assets of the company or not ?	☐ ☐ ☐

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SECTION 74: Repayment of deposits, etc., accepted before commencement of this Act.:

Applicability : Every company (Exculding Banking Co. & NBFCs as defined in RBI Act, 1934 and to other company as the CG may, after consultation with the RBI)

		YES/NO	N/A
1	**Check** whether the Company had taken Deposit or not ? **IF YES THEN :**	☐ ☐	☐
2	**Check** whether the Company has already repaid the amount of Deposits or not? **IF NO THEN :** The Company should have been filed the return in Form DPT-4 to ROC within **3 months** from the commencement of the Act i.e. 30th June 2014	☐ ☐	☐
	Check whether DPT-4 has been filed or not? If no then there is default. The Company should have been repayed the loan to its shareholders within **1 year** from the commencement of the Act. i.e. 31st March, 2015	☐ ☐	☐
	Check whether repayment has been made or not? **Now, After Notification - Dated 30th March, 2015** Any amount received from their members, director or their relatives prior to 1st April, 2014 as such amounts were not be treated as 'deposits' . subject to the proper disclosure in 'Financial Statements' **IF COMPANY FAILS TO COMPLY WITH THE PROVISIONS OF THIS SECTION, THEN PENALTY LEVIABLE AS BELOW :-** **Punishment to the COMPANY :** **FINE** Minimum **1 Crore** Maximum **10 Crore** **Punishment to every officer in default :** **FINE** Minimum **25 Lakh** Maximum **2 Crore** **AND** imprisonment which may extend to 7 years **or BOTH**	☐ ☐	☐

SECTION 53 : Prohibition on issue of Shares at Discount

Applicability : Every Company

		YES/NO	N/A
1	**Check** whether the company issue shares at a **Discount** or not? **IF YES THEN :** Such Shares issued by the Company at a discounted price shall be **VOID** **Exception :** (i) Company can issue **Sweat Equity Shares** at discounted price. **IF ANY DEFAULT ARISE, PENALTY LEVIABLE AS BELOW :-** **Punishment to the COMPANY :** **FINE** Minimum **1 Lakh** Maximum **5 Lakh** **Punishment to every officer in default :** **FINE** Minimum **1 Lakh** Maximum **5 Lakh** **AND** imprisonment which may extend to 6 months **or BOTH**	☐ ☐	☐

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SECTION 88 : Register of Members : Form No. MGT - 1 to be maintained at registered office

Applicability : Every Company

Corresponding Section - 150

		YES/NO	N/A
1	**Check** Whether the company has kept and maintained the following registers or not ?	☐ ☐	☐
	Check which are applicable -- **1. -** Register of members indicating separately for each class of **equity and preference shares** held by each member residing in or outside India **2. -** Register of debenture-holders **(MGT - 2)** **3. -** Register of any other security holders **If YES . Then OK** **If NO. There is Default**		
2	**Check** Whether the company included an index of the names in such registers or not ? **If NO. There is Default**	☐ ☐	☐
3	**Check** Whether the company is keeping and maintaining its register **outside India** or not ? **(MGT- 3)** **If NO . Then OK** **If YES . Then**	☐ ☐	☐
4	**Check** Whether the company is authorised by its articles or not ? **If YES . Then**	☐ ☐	☐
5	**Check** Whether the **Foreign Register** has been maintained by the company or not ? **If YES . Then**	☐ ☐	☐
6	**Check** Whether the company intimated to the **ROC** in **Form NO. MGT. 3** within the 30 Days form the date of opening of any such Foreign Register ? **If YES . Then OK** **If NO. There is Default**	☐ ☐	☐

IF ANY DEFAULT ARISE, PENALTY LEVIABLE AS BELOW :-

Punishment to the COMPANY :

&

Punishment to every officer in default : **FINE** Minimum **50,000**
Maximum **3 Lakh**

Changes in MGT 1

These particulars are to be added in the Registers of members within the 6 months from the date of commencement of Companies Act, 2013 .

1	E mail ID	
2	CIN/Registeration no.	
3	Unique Identification No. if any	
4	Staus	
5	PAN	
6	Nationality	
7	In case Member is a Minor	
	(i)	Name of Guardian
	(ii)	Date of Birth of Minor
8	Details of Membership	
	(i)	Date of Declaration under section 89, if applicable
	(ii)	Name and address of beneficial owner
	(iii)	Date of receipt of nomination, if applicable
	(iv)	Name and address of nominee
	(v)	No. of shares kept in abeyance, if applicable
	(vi)	records of lien on shares, if applicable
9	Name of Transferee	
10	Particular of Dividend mandates, power of attorney & other instructions, if any	
11	Instruction for sending notices etc, if any	

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SECTION 89 : Declaration in respect of beneficial interest in any share. :

Where a person hold Shares in the company as Beneficiary and having beneficial interest . He has to furnish a declaration to the company.

Corresponding Section - 187C

		YES/NO		N/A
1	**Check** Whether the company has their Registered owner or Beneficial owner or Both in any Share? **If Registered owner , Then** ***in Form MGT - 4***	☐	☐	☐
2	**• A registered owner or record holder holds shares directly with the company** **Check** Whether such person made a declaration to the company within 30 days from the date on which his name is entered in the registers in **Form No. MGT - 4** ? **If Beneficial owner , Then** ***in Form MGT - 5***	☐	☐	☐
3	**• A beneficial owner holds shares indirectly, through a bank or broker-dealer. Beneficial owners holding their shares at a broker-dealer** **Check** Whether such person made a declaration to the company within 30 days after acquiring such beneficial interest in the shares of the company in **Form No. MGT - 5** ?	☐	☐	☐
4	**Note :** Where any **change** occurs in the beneficial interest in such shares, the person (registered owner) and the beneficial owner shall, within a period of 30 days from the date of such change, make a declaration to the company in forms MGT 4 & MGT 5 respectively . **If YES . Then OK** **If NO. There is Default** **IF ANY DEFAULT ARISE, PENALTY LEVIABLE AS BELOW :-** **If any person fails, to make a declaration** **FINE** **may extend to Rs. 50,000** **& where the failure is a continuing one -** **further fine which may extend to Rs. 1,000 for every day**			
	Action to be taken by the Company: in Form MGT - 6			
	Check Whether the company file a Return within the 30 days from the date of receipt of such above declaration in **Form NO. MGT - 6** with the Registrar in respect of above declarations or not ? **If YES . Then OK** **If NO. There is Default** **IF ANY DEFAULT ARISE, PENALTY LEVIABLE AS BELOW :-** **Punishment to the COMPANY :** **&** **Punishment to every officer in default :** **FINE** Minimum **Rs. 500** Maximum **Rs. 1000** **& where the failure is a continuing one -** **further fine which may extend to Rs. 1,000 for every day**	☐	☐	☐

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SECTION 91 : Power to close register of members or debentureholders or other security holders

A company may close the register of members or the register of debentureholders or the register of other security holders for any period or periods not exceeding in the aggregate 45 days in each year, but not exceeding thirty days at any one time, subject to giving of previous notice of at least seven days or such lesser period as may be specified by Securities and Exchange Board for listed companies or the companies which intend to get their securities listed,

Corresponding Section - 154

	APPLICABLE TO ALL COMPANIES	YES/NO		N/A
1	**Check** Whether the company has closed its Register of Menbers or the Register of Debentureholders or the register of other security holders during the financial year or not ? **If YES . Then**	☐	☐	☐
2	**Check** Whether the Company give atleast **7 days** prior ***Notice*** to its members or not ? **If YES . Then OK** **If NO. There is Default**	☐	☐	☐
3	**Check** Whether the Company closes its register of members or the register of debentureholders or the register of other security holders for the period of **45 Days** or more in a financial year ? If Registers are closed for a period less than equal to 45 Days **Then OK** If Registers are closed for a period more than 45 Days **Then, There is Default** **Note :** A company may close the register of members or the register of debentureholders or the register of other security holders for any period or periods not exceeding in the aggregate **45 days** in each year, **but not exceeding 30 days at any one time.** **IF ANY DEFAULT ARISE, PENALTY LEVIABLE AS BELOW :-** **Punishment to the COMPANY :** **&** **Punishment to every officer in default :** **FINE** Minimum **Rs. 5,000 for every Day** subject to Maximum **Rs. 1 Lakh**	☐	☐	☐

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