

DEPOSITS AND BUDS
LOANS AND INVESTMENTS
AMENDMENT IN SEBI (PIT) REGULATIONS

Coverage

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- Deposits and BUDS [Companies Act, 2013 (CA, 2013) and The banning of Unregulated Deposit Scheme (BUDS) Ordinance, 2019]
- Loans and Investments [Section 185 & 186 of the CA, 2013]
- Amendment in SEBI - Prohibition of Insider Trading (PIT) Regulations

**BANNING OF UNREGULATED
DEPOSIT SCHEME [BUDS]
ORDINANCE 2019**

Effective 21 February 2019

Background

- Scams such Sharda Scam
- Committee was Constituted, It observed –
 1. Need for **comprehensive law** to ban **unregulated deposits**
 2. Need for better coordination between State and Central
 3. Need for Local regulator [yet to be effective]
 4. Need for Central Data base [yet to be effective]
- BUDS Ordinance became effective 21 February 2019

Applicability

- **BUDS is applicable to all types of persons taking Deposit:-**
 1. Individuals
 2. HUFs
 3. Private Trust (Registered or unregistered)
 4. Public Trust (Registered or unregistered)
 5. **Company**
 6. Society
 7. Partnership firm (Registered or unregistered)
 8. Proprietary concern
 9. **LLP**
 10. Association of Persons

What is BANNED under this ordinance? –

ANS: Unregulated Deposit

What is Unregulated Deposit?

Unregulated Deposit (Sec -2 (17) of BUDS)

- Scheme or arrangement under which **deposits** are accepted or solicited by **any deposit taker** **by way of business** and
- Which is **not regulated deposit** scheme (As per First Schedule)

If not Complied with law – treated as unregulated deposit

Meaning of By way of Business

- *There are two views –*
 1. *If deposit taking itself is business ??OR*
 2. *Deposit taking is **for** the business*

Meaning of By way of Business

- As per Oxford dictionary ‘by way of’ means **‘as a form of something, for something, as a means of something.**
- **By way of business means –**
- **As a form of business**
- **For business**
- **As a means of business**

What is regulated Deposit?

Regulated Deposit – First Schedule of BUDS

- **SEBI Regulated Schemes – CIF, AIFs, MFs PMs, SEBI - Share Based Employee Benefit, other scheme registered with SEBI**
- **RBI Regulated Schemes – Deposit Schemes of NBFCs registered with RBI**
- **Ministry of Corporate Affairs – Deposits under the CA, 2013, Nidhi Companies**
- **IRDA – Contract of Insurance**
- **State Govt or Union territory Govt – scheme**
- **National Housing Bank Scheme**
- **Pension Fund Regulatory and Development Authority**
- **Employees Provident Fund Organization**
- **Central Registrar Multi-state Co- operative Societies - Scheme for acceptance of deposit from voting members**

Deposit accepted or permitted under provisions of Chapter V of Companies Act 2013 is considered as 'Regulated Deposit'

If money received in violation of Deposit Rules? = Unregulated !!!!




What is Prohibited under this ordinance?

Prohibited






- ❑ **Regulated Deposit Scheme – (Sec- 4)**
 - ❑ Fraudulent default in repayment
 - ❑ Fraudulent default in rendering any specified service
- Excluding Companies
- ❑ **Unregulated Deposit Scheme**
 - ❑ The Unregulated Deposit Scheme in all forms Sec.3
 - ❑ **Promotion or issue of any advertisement Sec.3**
 - ❑ making **false deceptive or misleading** statements to induce another person to participate in unregulated deposit scheme [Sec-5]
 - ❑ A prize chit or money circulation scheme banned under prize Chits and Money circulation scheme (Banning) Act, 1978

Definition of Deposit

Provisions of RBI Act - Deposits

- Non Banking Institutions receiving deposits – Public Deposit (Chapter IIIB) 
- Prohibition on Solicitation of deposit by unauthorised person on behalf of NBFC (S. 45NA) 
- Prohibition on Acceptance of deposit by unincorporated Entities (S. 45S) 

Definition of Deposit

Companies Other than NBFCs	NBFCs	Unincorporated Entities	BUDS (Any person)
Inclusive Definition	Inclusive Definition	Inclusive Definition	Exclusive Definition For companies and NBFC
Applicable to Co.'s Regd. Under Co.'s Act	Applicable to NBFCs accepting public deposits	Applicable to Firm, Individual, unincorporated association of Individual	Applicable to all persons  Microsoft Word Document
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Exclusions- Deposit

Exclusion

RBI = Partnership Firm/ AOP/ Prop Concern

BUD=LLP/ Society + all non inc. entities



Points	Company other than NBFC	NBFC	Deposit as per RBI Act	BUDS
Amount received as loan from bank/banking Company	Yes	Yes	Yes	Yes
Amount received from PFIs/regional FIs	Yes	Yes	Yes	Yes
Amount received from Govt./guaranteed by Govt.	Yes	Yes	No	Yes
Amount received from foreign Govt./foreign or international banks/foreign bodies corp./foreign citizen / foreign authorities etc. subject to FEMA	Yes	Yes	No	Yes
Amounts received by way of contribution towards:- <ul style="list-style-type: none"> • Capital by Partners of Partnership Firm • Contribution by Partners of LLP 	NA	NA	Yes	Yes

Exclusion

RBI = Partnership Firm/ AOP/ Prop Concern

RBI = Partnership Firm/ AOP/ Trust/ Prop Concern

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Points	Company other than NBFC	NBFC	Deposit as per RBI Act	BUDS
Amount received by Individuals from his relatives	NA	NA	YES	Yes
Amount received by a partnership firm from relatives	NA	NA	Yes	Yes
Amount received by a Limited Liability Partnership(LLP) from relatives of Partners	NA	NA	Yes	No
Amount received by ARC regd.,With RBI under Sec. 3 of SARFAESI Act, 2000	No	No	No	Yes
Any amount collected for such purpose and within such ceilings prescribed by State Govt. or Union territory Govt.	No	No	No	Yes

Exclusion

RBI = Partnership Firm/ AOP/ Prop Concern

RBI = Partnership Firm/ AOP/ Trust/ Prop Concern

MMJC

Points	Company other than NBFC	NBFC	Deposit as per RBI Act	BUDS
Amount received in the course of , or for the purpose of business and bearing a genuine connection to business (advances against orders for goods, properties or services etc.)	Yes	Yes	Yes	Yes
Advance for the supply of goods or provision of services (*appropriated within a period of 365 days from the date of acceptance of such advance)	Yes*	Yes	Yes	Yes 365 cond. not applicable
Advance received in connection with consideration for an immovable property under agreement and adjusted against such property	Yes	Yes	Yes	Yes

Exclusion

RBI = Partnership Firm/ AOP/ Prop Concern

RBI = Partnership Firm/ AOP/ Trust/ Prop Concern

MMJC

Points	Company other than NBFC	NBFC	Deposit as per RBI Act	BUDS
Security deposit/Dealership deposit for performance of the contract for contract for supply of goods or provisions of services	Yes	Yes	Yes	Yes
as advance under long term projects for supply of capital goods	Yes	Yes	Yes	Yes
As advance towards consideration for providing future services in the form of warranty or arrangement	Yes	Yes	Yes	yes
Advance received and as allowed by any sectoral regulator/directions of SG/CG	Yes	Yes	Yes	Yes
Advance for subscription towards publication	Yes	Yes	Yes	Yes

Exclusion

RBI = Partnership Firm/ AOP/ Prop Concern

RBI = Partnership Firm/ AOP/ Trust/ Prop Concern

MMJC

Points	Company other than NBFC	NBFC	Deposit as per RBI Act	BUDS
Amount accepted by Nidhi Company u/s 406 of Co's Act, 2013	Yes	No	No	Yes
Amount received by way of subscription in respect of chit fund	Yes	Yes	Yes	Yes
Amount of Rs. 25 lakh or more received by start up company by way of convertible note	Yes	No	No	No
Periodic payment made by members of self help group	No	No	No	Yes
Amount received by Company from any other Company	Yes	Yes	No	No

Exclusion

RBI = Partnership Firm/ AOP/ Prop Concern

RBI = Partnership Firm/ AOP/ Trust/ Prop Concern

MMJC

Points	Company other than NBFC	NBFC	Deposit as per RBI Act, 1934	BUDS
Share application money	Yes	Yes	No	No
Amount received from Director/relatives of Director	Yes	Yes	No	No
Amount raised by way of CCDs/Sec. debentures	Yes	Yes	No	No
Amount raised by way of NCDs listed on SE	Yes	Yes	No	No

Exclusion

RBI = Partnership Firm/ AOP/ Prop Concern

RBI = Partnership Firm/ AOP/ Trust/ Prop Concern

MMJC

Points	Company other than NBFC	NBFC	Deposit as per RBI Act, 1934	BUDS
Amount received from the employee of the company in nature of security deposit under contract of employment	Yes	No	No	No
Non interest bearing amount received and held in trust	Yes	No	No	No
Loan from Promoters *	Yes	yes	No	No
Issuance of Commercial Paper*	Yes	Yes	No	No
Issuance of Infra. Bonds*	Yes	Yes	No	No

*



Exclusion

RBI = Partnership Firm/ AOP/ Prop Concern

RBI = Partnership Firm/ AOP/ Trust/ Prop Concern

MMJC

Points	Company other than NBFC	NBFC	Deposit as per RBI Act, 1934	BUDS
Amount received from AIF	Yes	No	No	No
Amount received from Domestic Venture Capital Fund	Yes	No	No	No
Amount received from InvIT	Yes	No	No	No
Amount received from REIT	Yes	No	No	No
Amount recd. From MF	Yes	Yes	No	No

Limits on Acceptance of - Regulated Deposits

Acceptance of Deposit - Limits

NBFC	Any other person
(An investment and credit company or a factor) - not exceeding one and one-half times of its Net Owned Fund	Banned*

* Which are unregulated

Reg. 3(xi) - net owned fund” means net owned fund as defined under section 45-IA of the RBI Act including the paid up preference shares which are compulsorily convertible into equity;



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**Deposit – if the Company is Private
(Limits, Terms & Conditions)**

Deposit – if the Company is Private Company

Particulars	Private Company	IFSC Private Company	Start-up Company (Private Company)
Deposit from members	Not exceeding 100% of paid up capital + free reserves + Sec. Premium (rule 3(3))	Not exceeding 100% of paid up capital + free reserves + Sec. Premium (rule 3(3))	Maximum limit shall not apply for 5 years from the date of its incorporation (Proviso to rule 3(3))
Deposits from Director or Relative of Director	No Limit subject to Declaration in writing amount is not being given out of own funds (Rule 2(1)(c)(viii))	No Limit subject to Declaration in writing amount is not being given out of own funds 2(1)(c)(viii))	No Limit subject to Declaration in writing amount is not being given out of own funds 2(1)(c)(viii))
Deposit from public	Prohibited	Prohibited	Prohibited



start-up company” means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry;

Can a private company take deposit from members exceeding 100% of PSC + FR+SP?

- Not an associate/ Subsidiary Co.
 - Borrowings from Bank/FIs or any body corporate less than twice of its paid up share capital or 50 crore rupees whichever is less
 - No default is subsisting in repayment of borrowing
- (2nd Proviso to rule (3))



Deposit – if the Company is Public (Limits, Terms & Conditions)

Deposit – if the Company is Public Company

Particulars	Public Company (Other than eligible Company)	Public Company (eligible Company)*	IFSC Public Company
Deposit from members	Not exceeding 35% of aggregate of paid up share capital + Free reserve + Securities premium Account (Rule 3(3))	Not exceeding 10% of the aggregate of paid up capital + free reserves + Securities Premium Account (Rule 3(4)(a))	Not exceeding 100% of paid up capital + free reserves + Sec. Premium Account (Rule 3(3))
Deposit from Director	No Limit subject to Declaration in writing amount is not being given out of own funds (Rule 2(1)(c)(viii))	No Limit subject to Declaration in writing amount is not being given out of own funds (Rule 2(1)(c)(viii))	No Limit subject to Declaration in writing amount is not being given out of own funds (Rule 2(1)(c)(viii))



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* Eligible Companies – Networth 100 Cr or Turnover 500 Cr **AND** Spl resolution in GM and filed with ROC

Deposit – if the Company is Public Company

Particulars	Public Company (Other than eligible Company)	Public Company (eligible Company)	IFSC Public Company
Deposit From public	Prohibited (Rule 4(b))	Not exceeding 25% of aggregate of paid up share capital + Free reserve + Securities premium Account (Rule 3(4)(b))	Prohibited (Rule 3(4)(b))
Credit Rating	NA (Rule 3(8))	Obtain at least Once in a year Copy of rating shall be sent to ROC alongwith Form DPT-3 (Rule 3(8))	NA (Rule 3(8))
Deposit repayment reserve	Sum of 20% of the amount of deposits maturing in next F.Y.- Deposit in Scheduled bank – Separate account – on or before 30 th April every year (Rule 13 of Chapter V)		



Reporting requirement – As per BUDS

Information – Deposit Taker

- Deposit taker (accepting or soliciting deposits) – Intimate about its business – in prescribed Form and manner (not yet prescribed) - authority (Sec. 10(1))
- **Company accepting depositing is also required to intimate [Details to be prescribed]** [Explanation to Section 10]
- **Failure to intimate** - Fine – may extend to 5 lakh rupees (Sec. 26)
- Central Government - designate an authority – to create, maintain and operate an **online data base for information on deposit takers** operating in India [Section 9(1)]

Reporting requirement – As per Companies Act, 2013

One Time Return

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- **Onetime Return** for disclosure of details of money or loan received by a company after 1 April, 2014 but outstanding as on 31 March, 2019 but not considered deposit [**Only TOTAL Amount asked**] – Due date 29 June, 2019 (Rule 16A)

One Time Return

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(1) If the Company has received money after 1 April, 2014 but its not outstanding as on 31 March, 2019 whether the one time return is still required to be filed?

[MCA is accepting ZERO return]

(2) Whether one time DPT 3 requires Auditor Certificate?

Yearly Return

- Return of Deposit (DPT-3) – 30 June every year
- Particulars of transactions by a company not considered as deposit (DPT-3) - 30 June every year

What details are to be entered in Yearly Return :-

- Amounts which are not Deposits & received at any time (even prior to 1.4.14) & outstanding as on 31.3.19

OR

- Amounts which are not Deposits & received after 1.4.18 & outstanding as on 31.3.19


OR

- Amounts received during 2018-19 for Transactions which are not Deposits – irrespective of whether they are outstanding as on 31.3.19 or not

Details of Net Worth

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- Net Worth as per the latest audited balance sheet preceding the date of the return –
[2018? Or 2019?]
- It excludes the intangible assets



Consequences - Companies Act, 2013

Penal Provisions – Company other than NBFC

Regulated Deposit (Sec. 76A)

Company – not less than Rs.1 Crore or twice the amount of deposit accepted by the company, whichever is lower which may extend to Rs. 10 Crore and payment of deposit alongwith interest thereon **AND**

Every officer of the company who is in default – **Imprisonment** which may extend to **seven years and fine** not less than Rs – 25 Lac but may extend to Rs. 2 Crore



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Unregulated Deposit (Sec. 21)

Deposit Taker who

Solicit Deposit – imprisonment 1-5 year; and Fine Minimum 2 lakhs – upto 10 lakhs

Accept Deposit - imprisonment 2-7 year; and Fine Minimum 3 lakhs – upto 10 lakhs

Fraudulently default in repayment/ rendering specified service -

imprisonment 3-10 year; and Fine Minimum 5lakhs – upto twice the amt if aggregate funds collected in the unregulated deposit scheme (Sec. 3 of BUDS)

Consequences of default in repayment or non –payment of interest [Co Act]

- The Company is not allowed to buyback
(Sec- 70 Prohibition for Buy-Back in Certain Circumstances)
- No issue of Differential Rights
(Rule 4 (1)(e) of Chapter 4 the Companies (Share Capital and Debentures) Rules)
- No Compensation for loss of office to MD/WTD
[Rule 17(3) of Chapter 12 the Companies (Meetings of Board and its Powers) Rules]
- Restriction on inter corporate Loan, guarantee, security
(Sec. 186 - Loan and Investment by Company)

Other Consequences (Sec. 12 to 18)

[BUDS]

Designated Court can pass following order:

- Possession of asset of deposit taker
- full/proportionate payment to the depositors
- Dispose off or alienate the property or money attached

* For this section - Deposit taker includes directors, promoters, managers or members of said establishment or any other person whose property or assets have been attached under this ordinance

Offences by deposit taker – Other than Individual (BUDS)- Sec. 25

Following shall be liable to be proceeded against and punished:

- Deposit taker; and
- Every person in charge of and was responsible to deposit taker for conduct of business;
- Offence committed with the consent or connivance; or
- Offence is attributable to any neglect on the part of any director, manager, secretary, promoter, partner, employee or other officer of deposit taker

Penal Provisions – RBI Act, 1934

[Sec. 58B(5A)]

If any person contravenes any provision of section 45S, he shall be punishable with

imprisonment for a term which may **extend to two years, or** with **fine** which may **extend to twice the amount of deposit received** by such person in contravention of that section, **or** two thousand rupees, whichever is more, or with both:

Provided that **in the absence of special and adequate reasons to the contrary to be mentioned in the judgement** of the court, **the imprisonment** shall not be less than **one year and the fine** shall not be less than **one thousand rupees.**

Miscellaneous

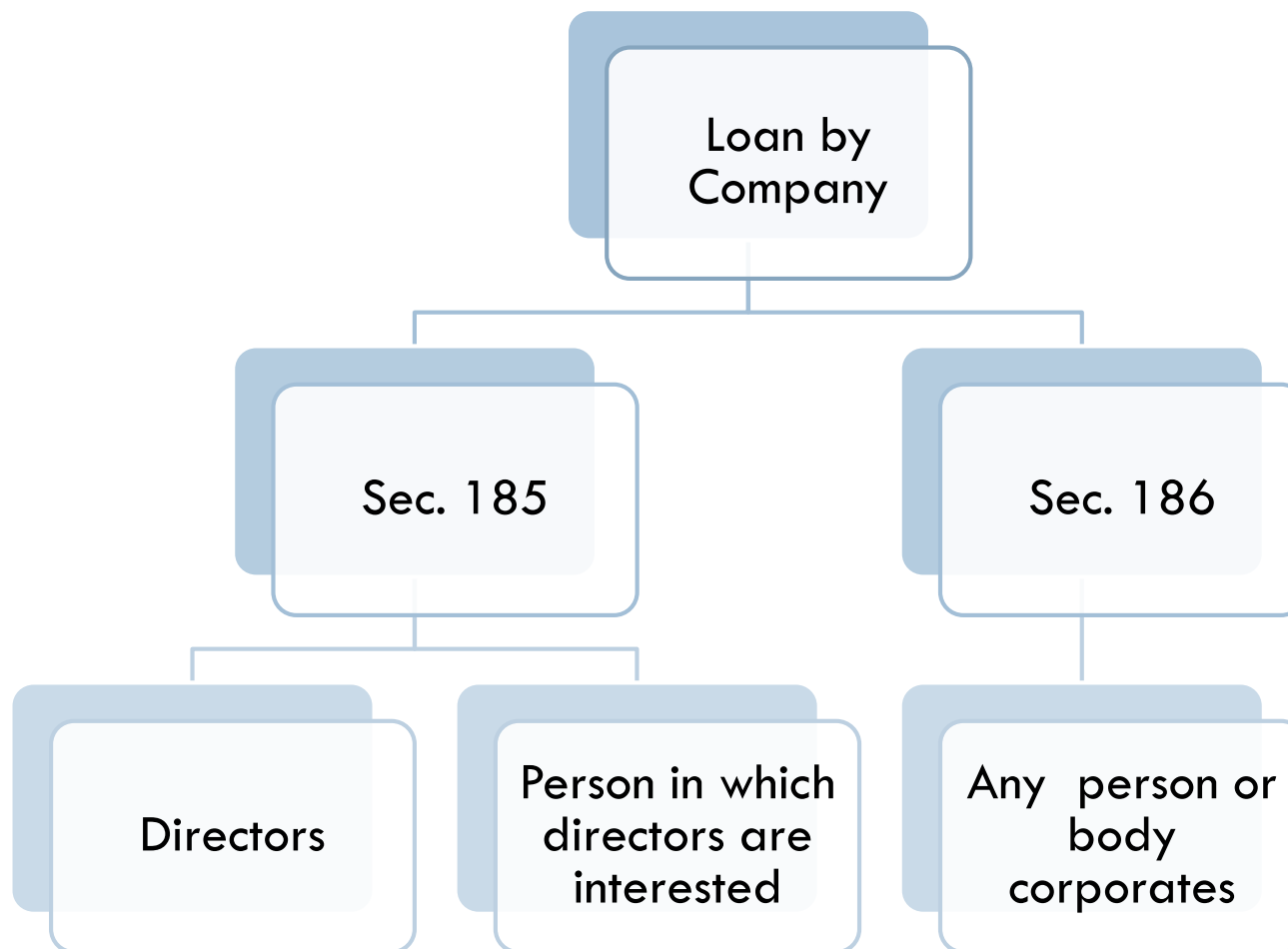
Publication of advertisement of unregulated Deposit Scheme (Sec. 33)

- Newspaper/other publication – contains statement, information or advertisement – Promoting, soliciting deposits – inducing any person to become member of any Unregulated Deposit Scheme –
- Appropriate Govt. – may direct such newspaper/ publication – Publish full and fair retraction – free of cost – in same manner and in same position as may be prescribed

Summary

- Companies Need to file DPT 3
- Yrly Rtn requires all o/s [even prior 1/4/14]
- Auditors Certificate in DPT 3?
- If money received in violation of Deposit Rules = Unregulated Deposit under BUDS?
- Deposit taking companies to file DPT 3 & Return under BUDS
- Meaning of Deposit = Cos Act Definition

Loans and Investments



Section 185 - Loan to Directors & Person in which directors are interested

Section 185: Loan to Directors

Whether the Company can advance loan, or provide guarantee or security to:

Sr. No	Particulars	Old Provision	New Provision
(a)	Director of the Company	No	No
(b)	Director of holding Company	No	No
(c)	Partner of the Director of the Company or Holding Company	No	No
(d)	Relative of the Director of the Company or Holding Company	No	No
(e)	Firm in which such Director is a partner	No	No

Loan to Directors

Whether the Company can advance loan, or provide guarantee or security to:

Sr. No	Particulars	Old Provision	New Provision
(f)	Firm in which Relative of such Director is a partner	No	No
(g)	Private company in which Director is a director	No	Yes*
(h)	Private company in which Director is a member	No	Yes*

Loan to Directors

Whether the Company can advance loan, or provide guarantee or security to:

Sr. No	Particulars	Old Provision	New Provision
(i)	Body Corporate at a general meeting of which not less than 25% of the total voting power may be exercised or controlled by any director, or by two or more directors, together	No	Yes*
(ii)	Body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors	No	Yes*

Loan to Directors

* Terms & Conditions

- ▣ Pass special resolution
- ▣ Explanatory statement to contain detailed disclosures
- ▣ Loan, guarantee, security **to be utilised for principal business**

Loan to Directors (Penalty)

Particulars	Old Provision	New Provision	Remark
Company	Yes	Yes	Rs. 5,00,000 to Rs. 25,00,000
Director or other person to whom loan, guarantee or security advanced	Yes	Yes	Imprisonment extending to 6 months and/or fine of Rs. 5,00,000
Officer of the Company in default	No	Yes	Imprisonment extending to 6 months or fine of Rs. 5,00,000 to Rs. 25,00,000

**Whether LLP will be treated as Body
Corporate or Firm for the purpose of
Sec. 185?**

Definition of Body Corporate u/s Companies Act, 2013

- Sec 2. (11) "body corporate" or "corporation" **includes** a company incorporated outside India, but does not include—
 - (i) a co-operative society registered under any law relating to co-operative societies; and
 - (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;

What is Body Corporate?

- Body Corporate means an artificial “person” created by law; a corporation. Corporation means a body corporate **legally authorised to act as a single individual**; an individual person **created by royal charter, prescription or legislative act**, and having the capacity of **perpetual succession**. - Oxford Dictionary
- *Corporations are one species of legal persons invented by the law and invested with a variety of attributes so as to achieve certain purposes sanctioned by the law. For those purposes, a corporation or company has a legal existence all its own [Som Prakash Rekhi vs Union Of India & Anr]*

Section 3 of LLP Act, 2008

- **Limited liability partnership to be body corporate.—**
 - ▣ *A limited liability partnership is a body corporate* formed and incorporated under this Act and is a legal entity separate from that of its partners.
 - ▣ A limited liability partnership shall have perpetual succession.
 - ▣ Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

Definition of Body Corporate u/s LLP Act u/s 2(1)(d)

- "body corporate" means a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) and includes—
 - a limited liability partnership registered under this Act;
 - a limited liability partnership incorporated outside India; and
 - a company incorporated outside India, but does not include—

- ...

Definition of Firm u/s income tax Act

- 2 (23)
 - (i) "firm" shall have the meaning assigned to it in the Indian Partnership Act, 1932 (9 of 1932), and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008 (6 of 2009);
 - (ii) "partner" shall have the meaning assigned to it in the Indian Partnership Act, 1932 (9 of 1932), and shall include,—
 - (a) any person who, being a minor, has been admitted to the benefits of partnership; and
 - (b) a partner of a limited liability partnership as defined in the Limited Liability Partnership Act, 2008 (6 of 2009);
 - (iii) "partnership" shall have the meaning assigned to it in the Indian Partnership Act, 1932 (9 of 1932), and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008 (6 of 2009);

LLP – Treated as firm – CA 2013

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- Sec -139 - **Appointment of Auditors**
 - Explanation to sub section -4 —For the purposes of this Chapter, the word “***firm***” shall include a **limited liability partnership** incorporated under the Limited Liability Partnership Act, 2008.
- SBO Rules 2018
 - 2(e) “**partnership entity**” means a partnership firm registered under the Indian Partnership Act, 1932 or a **limited liability partnership** registered under the Limited Liability Partnership Act, 2008;
 - 2 (h) significant beneficial owner - Explanation III - For the purpose of this clause, an individual shall be considered to hold a right or entitlement indirectly in the reporting company..
 - (i) where the member of the reporting ***company is a body corporate .. other than a limited liability partnership***, and the individual,-

Negative Language is ordinarily of Mandatory Character

- *Use of negative words shows a clear intention that the provision enacted is mandatory*
- *Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative..*
- *Negative language is worded to emphasis the insistence of compliance with the provisions of the Act*
 - *State of Bihar v Maharajadhiraja Sir Kameshwar Singh of Darbhanga (1952)*

Section 185 (1) No company shall, directly or indirectly, advance any loan, including any loan...

Exemptions

Exemptions (Sec. 185(3))

- a company in the ordinary course of its business provides loans for the due repayment of any loan and interest is charged at a prescribed rate
- Loan made by holding company to its WOS for its principal business activity
- Guarantee given by holding company to bank/FI in respect of loan to its subsidiary company for its principal business activity
- giving of any loan to a MD/WTD
 - ▣ as a part of the conditions of service extended by the company to all its employees; or
 - ▣ pursuant to any scheme approved by the members by a special resolution; or

Private Companies Exemption?

Whether the private companies can still avail benefit of Private Companies exemption (5 June, 2015)?

Sec-185 shall not apply to private company:

- a) in whose share capital no other body corporate has invested any money
- b) 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 fifty crore rupees, whichever is lower and
- c) such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this section



Section 186

Loan and Investment by Company

Loan /Investment by Company

Whether the interest is to be charged on loan given to employees?

Sec. 186(2) No company shall directly or indirectly

(a) give any **loan** to any **person** or other body corporate;

(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and

(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

Explanation.—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company

Limits- for making investment

- Upto 60 % of paid up capital + free reserves + securities premium **or** 100 % of free reserves + securities premium (with Board resolution u/s 179)
- Prior approval by way of special resolution if exceeds abovementioned limits (Sec. 186(3))
- Loan given to employees will be excluded while calculating aforesaid limit (Sec. 186(2))

Exception – Sec. 186(3)

Not required to pass special Resolution, if

- Loan/guarantee/security given by company to
 - ▣ its WOS
 - ▣ Its joint Venture
 - ▣ Acquisition by way of subscription, purchase or otherwise of, the securities of its WOS

Other Conditions –

- **Rate of interest** - Loan to be at rate of interest not lower than the prevailing yield of one year, three year, five year or ten year G - secs closest to the tenor of the loan (Sec. 186(7))
- Full Disclosure in financial statements (sec. 186(4))
- Maintenance of Register at the regd. Office of the company – MBP-2 (sec. 186(9))

Exemptions

Particulars	Loans	Investment	Guarantee	Security
Banking	✓	✓	✓	✓
Insurance	✓	✓	✓	✓
Housing Finance Companies	✓	✓	✓	✓
Companies engaged in Financing business	✓	✓	✓	✓
Investment Companies	-	✓	-	-
Rights Issue of Shares by Company/Body Corporate	-	✓	-	-
NBFC	✓	✓	-	-

Penal Provisions – Sec. 186(13)

Company

Fine – From 25000 upto 5 lakh

Officer in default

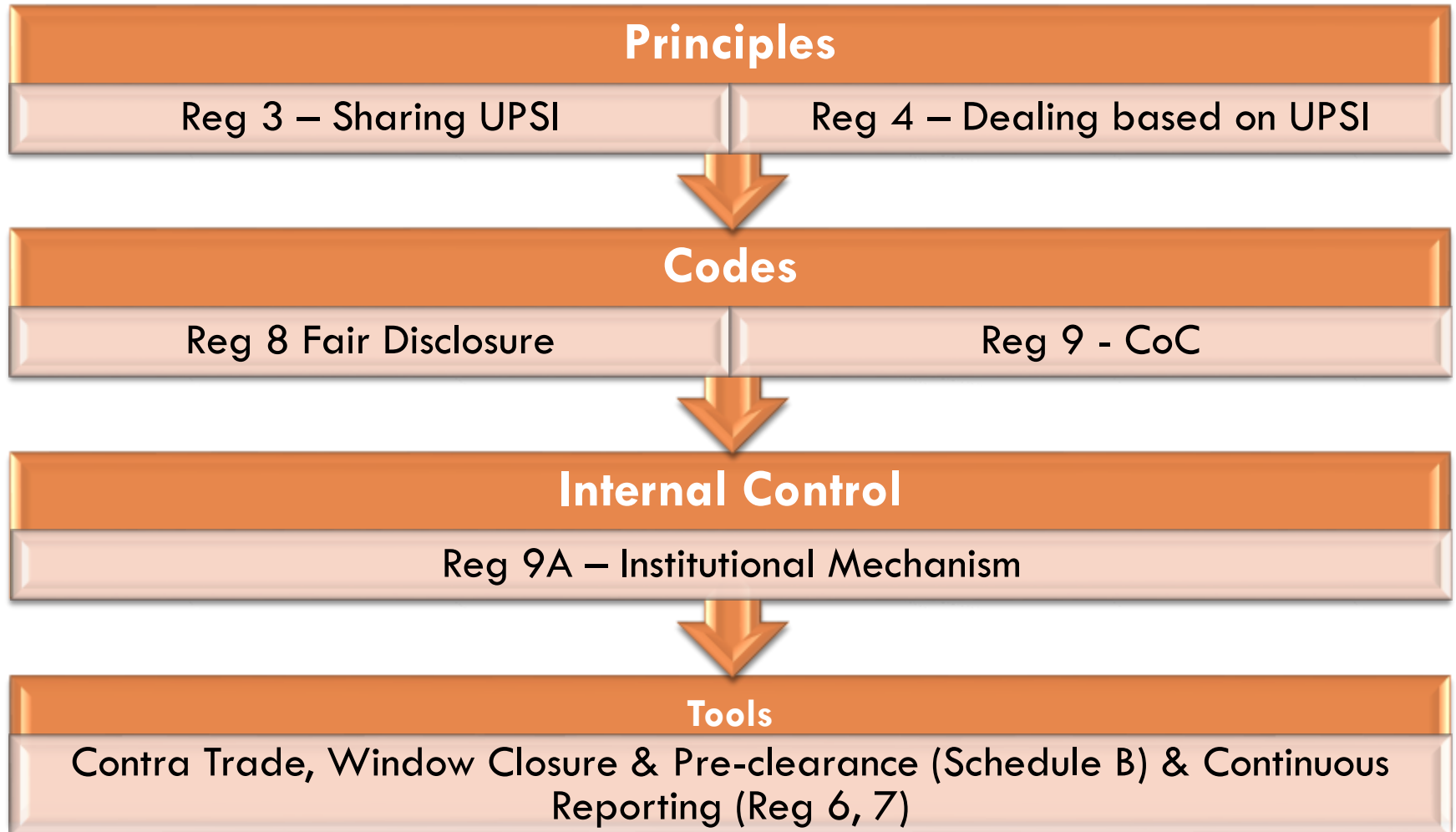
Imprisonment – Upto 2 years; **and**

Fine – From 25,000 upto 1 lakh

Amendment in SEBI - Prohibition of Insider Trading (PIT) Regulations

PIT Regulations – Eagleview

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Key Amendments

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UPSI Identification

- Identification of UPSI

UPSI Sharing

- Legitimate Purpose
- Confidentiality 3 (3) Vs (2B)
- Digital Database

Monitoring Trades

- Connected Person out of purview
- Promoter Group
- Policy for enquiry of Leak

Changes in Definitions

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- Definition of “promoter group” – same meaning as ICDR SEBI Regulations[Reg 2(1)(ha)] – **Reg 7- Initial and Continual Disclosure**
- Definition of “proposed to be listed” [Reg 2(1)(hb)]
- From list of certain events which will be ordinarily considered as UPSI, “material events” as per SEBI LODR Regulations, has been deleted [Reg 2(1)(n)]



Definition of
Promoter Group



Reg 2(1)(ha), 2
1)(hb), 2(1)(n)_PII

Changes in Definitions

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- Communication of UPSI for legitimate purposes was allowed.
- Now Board needs to form a policy for determination of “legitimate purposes” and make it a part of Code of Fair Disclosure and Conduct under Reg 8 [Reg 3(2A)]
- Any person receiving UPSI for legitimate purpose – shall be considered as Insider [Reg 3(2B)]



Reg 3(2A),
)_PIT Regulations, :

Maintenance of Database

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- Maintenance of structured digital database – for recording names of persons with whom UPSI is shared
[Reg 3(5)]
- PAN of such persons to be recorded in database
- Time stamping
- Audit Trails
- Non Tampering of Database



**Reg 3 (5)_PII
Regulations, 2015**

Inter-se Transactions between Insiders

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- New disclosure requirement – Off-market Inter-se transfer of shares among Insiders – when in possession of UPSI – conscious and informed decision [Reg 4(1)]
- Disclosure by Insiders to Company within 2 working days
- Disclosure by Company to stock exchange within 2 trading days from receipt of disclosure / becoming aware
- Such transfer is not allowed if any of the transacting Insiders has received the UPSI in the course of any proposed transaction, when sharing of UPSI was in the best interest of the Company.



Situations when Insiders can trade

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- When an insider trades, while in possession of UPSI, he may prove his innocence by demonstrating his circumstances, including ones in Proviso to Reg 4(1).
- **New circumstances** added in this list as detailed below:- [Reg 4(1)(ii),(iii),(iv)]:-
- Block Deal window mechanism between persons holding UPSI [provided UPSI was not obtained in the course of any proposed transaction, when sharing of UPSI was in the best interest of the Company]
- Pursuant to statutory or regulatory obligation
- Exercise of stock options where exercise price was pre-determined.



Reg 4(1)_PIT
Regulations, 2015

Trading Plan

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- **Following will be exempted in case of Trading Plan**
[Reg 5(3)]
- Pre-clearance of trade requirement
- Trading Window norms
- Contra Trade restrictions



Reg 5 (3)_PIT
Regulations, 2015

Exclusion of “Employees” from applicability

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Now ambiguity on applicability of these Regulations to all employees is cleared by following amendments:-

- Now Continuous Disclosure Requirement for trades in excess of value of Rs. 10 lakhs is applicable only for Promoter, member of promoter group, Designated Persons, Directors. Employees are excluded [Reg 7(2)(a)]
- Code of Conduct for Regulating, Monitoring & Reporting of Trading [Reg 9(1) – Schedule B] – now applicable for Designated Persons – Now employees are excluded.



Reg 7 (2) (a)_PIT
Regulations, 2015



Reg 9(1) and
Schedule B_PIT Regulat

Designated Persons

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Board of Directors to specify designated persons including [Reg 9(4)]:-

- Employees of listed Co, material unlisted subsidiaries on the basis of functional role / access to UPSI
- All promoters
- CEO and employees upto two levels below CEO of listed cos and material subsidiaries, irrespective of functional role / ability to have access to UPSI
- Any support staff such as IT staff or secretarial staff who have access to UPSI



Internal Controls

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CEO/MD to set up Internal controls including:- [Reg 9A]

- All employees having UPSI shall be Designated persons
- All UPSI shall be identified and confidentiality maintained
- Adequate restrictions on communication or procurement of UPSI
- List of employees or persons with whom UPSI is shared to be maintained
- Confidentiality agreements to be entered/ notice to be given to all such employees or persons
- Review of effectiveness of such internal controls



Internal Controls, Review & Reporting

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- Board of Directors to ensure that CEO / MD sets up Internal Controls [Reg 9A(3)]
- Audit Committee to verify **at least once in a year** – internal controls are adequate and operating effectively [Reg 9A(4)]
- Compliance Officer to report to the Chairman of Audit Committee or to Board– **not less than once a year** [Schedule B – point 1]



Reg 9A (3) & (4)
| Schedule B Point :

One-time Compliance Requirements

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- Designated persons to disclose on **one-time basis** [Schedule B—pt 14]:
 - (i) **names of educational institutions** from where they graduated and
 - (ii) **Past employers**



Schedule B Point
PIT Regulations, 20

Annual Compliance Requirements

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- Designated persons to disclose **on annual basis and as and when there is change - PAN of following** [Schedule B-pt 14]:-

- (i) names of relatives,
- (ii) **persons** with whom they share **material financial relationship** [where one person is recipient of any kind of payment such as by way of loan or gift during immediately preceding twelve months equivalent to at least **25% of such payer's annual income**, excluding relationships where payment is based on arm's length transactions,
- (iii) phone /mobile / cell numbers used by them



Additional Policies to be framed

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- To approve written policies and procedures for enquiry in case of leak of UPSI / suspected **leak of UPSI** [Reg 9A(5)]
- To have whistle blower policy for employees to inform about leak of UPSI, and to make employees aware about it [Reg 9A(6)]
- To have process for how and when people are brought inside on sensitive transactions & they are made aware about their liability [Schedule B – point 15]



Reg 9A(5), 9A(6)
| Schedule B Point :

**Actionable under PIT – which was
required prior to 1st April 2019**

Actionable which was required prior to 1 April 2019

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	Actionable	Responsibility
1	Identification of UPSI across all Departments [existing + in future what type of information can be UPSI]	MD + Board of Directors (BOD)
2	Identification of List of Designated persons + Collation of one time and periodic/ annual Data	Compliance Officer + Board of Directors
3	Making policy for determination of "Legitimate purposes"	Board of Directors
4	Insisting for Confidentiality Agreement / giving notice	MD + Board of Directors
5	Implementation of Digital Database	Compliance Officer + Board of Directors
6	Tracking Trades of Designated Persons + Relatives	Compliance Officer + Audit Committee + Board of Directors
7	Policy / Process for Inquiry in case of Leak of UPSI	Compliance Officer + Board of Directors
8	Whistle Blower Policy	Compliance Officer + Board of Directors

How SEBI monitors PIT violations?

Data already collected by SEBI

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- SEBI Circular dated 28th May 2018
- Through Depositories, SEBI had collected from all listed companies, the details and PAN of following persons / employees who held shares :-
 - (a) Directors & CEO
 - (b) Persons two levels below CEO
- Listed companies had to select any one Depository as Designated Depository for providing data
- **In case of any changes, Companies need to intimate details to Designated Depository within 2 working days**

How SEBI Tracks PIT violations

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- SEBI has surveillance mechanism for all **trades done** in a Company just prior to any **Corporate Action**
- Stock Exchanges has surveillance mechanism whenever they observe any **volatility in shares** of a Company
- Stock Exchanges re-conciliates **changes in Quarterly Shareholding Pattern** filed by Companies vis-à-vis disclosures received & reports to SEBI in case of miss-outs
- In case of suspicion, SEBI even matches the trade done by suspected parties vis-à-vis overall market trade on a particular day to establish connected trades
- SEBI monitors **even off-market** trades

Recent SEBI Actions for PIT violations

Number of Cases dealt by SEBI during January to April 2019

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Manner	Number of Cases adjudicated / settled during last 3-4 months	Period of cases dealt
Adjudication – where guilt is admitted	22 cases	2015 cases
Settlement Scheme – where guilt is neither admitted nor denied Settlement fees calculated as per a defined formula Minimum settlement fees – Rs. 3 lakhs per person	10 cases	2018 new cases & cases of 2012 to 2017 with regard to disclosures

Trends of Penalties levied by SEBI

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- ❑ Sharing of UPSI - Rs. 10 lakhs
- ❑ Procurement of UPSI – Rs. 10 lakh
- ❑ Violation of Code of Conduct - Rs. 5 lakh **per clause**
- ❑ Disgorgement of Profits
- ❑ 12% interest p.a. from date of transaction till date of adjudication / settlement
- ❑ Trading during Trading window closure period – Rs. 2 lakh
- ❑ Contra Trade – Rs. 1 lakh

Certain Global Practices

Certain Global Practices

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- Identification of Special Designated Persons who can share UPSI - **Cognizant Technologies Corporation Inc.**
- Restriction on access of server, records AND social websites and apps (during working hours) - **Howard University**
- Observe 'Silence period' during Window closure - **Nihan Unisys Inc.**
- Self declarations (Quarterly, Window closure, sharing UPSI, etc.) - **Berkshire Hathway**

THANK YOU

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