

**SITUATION VII: PROCEDURE FOR
ACCEPTANCE OF UNSECURED DEPOSITS
BY ELIGIBLE COMPANY FROM ITS
MEMBERS UPTO 10% OF AGGREGATE OF
PAID-UP SHARE CAPITAL, FREE RESERVES
AND SECURITIES PREMIUM ACCOUNT AND
FROM PUBLIC UPTO 25% OF THE PAID-UP
SHARE CAPITAL, FREE RESERVES AND
SECURITIES PREMIUM ACCOUNT**

*{Section 73 read with section 76 of the Act and read with Rule 3 and 4 of the Companies
(Acceptance of Deposits) Rules, 2014}*

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Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 2(31), 73, 75, 76, 117, 173, 179 and 403
The Companies (Acceptance of Deposits) Rules, 2014	Rules 2, 3, 4, 10, 11, 12, 13, 14, 16, 16A, 19 and 21
The Companies (Accounts) Rules, 2014	Rule 8(5)(v)
The Companies (Management and Administration) Rules, 2014	Rule 24
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8 and 12
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
Secretarial Standard-2 of ICSI	Clauses 1, 3, 4, 5, 6, 7 and 17
e-Forms to be filed	MGT-14 (Board resolution) MGT-14 (Members resolution) DPT-1 through GNL-2 DPT-3

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Ordinary or Special resolution
- ❖ Terms and conditions of acceptance of deposit
- ❖ Company has not committed any default in the repayment of deposits or payment of interest thereon and where a default has occurred, the company had made the default good and a period of 5 years had lapsed
- ❖ Company shall issue a circular in the form of advertisement to all its members and public in Form DPT-1 and shall be published in newspapers
- ❖ Company shall obtain at the time of inviting deposits and every year during the tenure of deposits a credit rating from a recognised credit rating agency
- ❖ Certificate from the statutory auditors stating that company has not committed a default in the repayment of deposit or interest thereon OR that the company has committed a default in the repayment of deposit or interest thereon but the default has been made good and a period of 5 years has been elapsed since the date of making default good.
- ❖ Opening an account with the scheduled bank in the name and style of 'Deposit Repayment Reserve Account'
- ❖ Declarations from the directors
- ❖ Circular in the form of advertisement inviting public and members for deposits
- ❖ Deposit application form
- ❖ Nomination form
- ❖ Deposit receipt
- ❖ List of depositors
- ❖ Auditor's certificate for filing return of deposit
- ❖ Disclosure in accounts and board report

100.1 PROCEDURE WITH CHECK POINTS

S. No.	Procedure
1.	<p>Ensure that—</p> <ul style="list-style-type: none">• the company is an eligible public company and 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 and that an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of section 180, may accept deposits by means of an ordinary resolution {Rule 2(e) of the Companies (Acceptance of Deposits) Rules, 2014}• the company is having a net worth of not less than ₹100 crores or a turnover of not less than ₹500 Crores.

S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> • Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe-1 (INC-32) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014). • Not a total number of directors, at least one director has stayed in India for a total period of not less than 182 days during the financial year. Provided that in case of newly incorporated company, residential status shall be determined proportionately. However, it is not required in case the director is appointed by the Central Government or State Government (Section 152 of the Act). • A person, who is intended to be appointed, shall not be eligible for appointment, if he/she has any disqualification for appointment under section 164 of the Act (Section 164 of the Act read with company provisions of government company and regulations in COA 2012 about COA 2012). • A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act) <ul style="list-style-type: none"> - shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies. - shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public companies.
2.	In case of one person company, an individual being sole member is deemed to be the first director of the company, if the articles of association has not mentioned the names of first directors (Section 152 of the Act).
3.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form 208-2 (Part 2 of the Companies Incorporation and Qualification of Directors Rules, 2014).
4.	Form as mentioned in writing, on or before appointment, from the appointed director as Form 208-2 regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a Director (Section 164 of the Act read with rule 17 of the Companies Incorporation and Qualification of Directors Rules, 2014).
5.	The particulars of first directors to be integrated with Form SPICe-1 (INC-32) at the time of incorporation of company.

For the detailed procedure, please refer Company Law Procedures & Compliances by Dr. Sanjeev Gupta, 2nd edn, 2021. You can buy from your bookseller or online at www.bharatlaws.com

[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)