

103

PROCEDURE FOR FILING RETURN IN RESPECT OF TRANSACTIONS NOT CONSIDERED AS DEPOSIT

{Rule 16A(3) of the Companies (Acceptance of Deposits) Rules, 2014}

Synopsis

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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	-----
The Companies (Acceptance of Deposits) Rules, 2014	Rule 16 A
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
e-Forms to be filed	DPT-3

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Details of money received which does not fall under definition of Deposits

103.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	Ensure that the Company other than the Government Company has received money under any of the following heads:— (a) Any amount received from— (i) the Central Government; or (ii) a State Government; or any amount received from any other source whose repayment is guaranteed by the Central Government or State Government; or (iii) any amount received from a local authority; or (iv) any amount received from statutory authority constituted under an Act of Parliament or a State Legislature. (b) Any amount received from— (i) Foreign Governments; or

S. No.	Particulars
	<ul style="list-style-type: none"> (ii) Foreign or international banks; (iii) Multilateral financial institutions; (iv) Foreign Governments owned development financial institutions; (v) Foreign export credit agencies; (vi) Foreign collaborators; (vii) Foreign body corporates; (viii) Foreign citizens; (ix) Foreign authorities or; (x) Persons residents outside India subject to the provisions of Foreign Exchange Management Act, 1999 (42 of 1999). <p>(c) Any amount received as—</p> <ul style="list-style-type: none"> (i) A loan or facility from any banking company; or (ii) From the State Bank of India or any of its subsidiary banks; or (iii) From a banking institution notified by the Central Government under section 51 of the Banking Regulation Act, 1949 (10 of 1949); or (iv) A corresponding new bank as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980); or (v) From a cooperative bank as defined in clause (b-ii) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934). <p>(d) Any amount received as loan or financial assistance from –</p> <ul style="list-style-type: none"> (i) Public Financial Institutions notified by the Central Government; or (ii) Any regional financial institutions; or (iii) Insurance companies; or (iv) Scheduled Banks as defined in the Reserve Bank of India Act, 1934 (2 of 1934). <p>(e) 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.</p> <p>(f) Any amount received by the company from any other company.</p> <p>(g) 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 securities applied for.</p> <p>(h) Any amount received from a person who, at the time of the receipt of the amount, was a director of the company or the relative of the director of a private company.</p> <p>(i) (A) 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</p> <p>(B) bonds or debentures compulsorily convertible into shares of the company within ten years.</p>

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 companies provisions a 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.
1.	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).
2.	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).
3.	Form created in writing, on or before appointment, from the appointed director as Form 208-3 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 164 of the Companies Incorporation and Qualification of Directors Rules, 2014).
4.	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 \(in 2 vols.\)](#)