

SITUATION IV: PROCEDURE FOR ACCEPTANCE OF SECURED DEPOSITS BY SPECIFIED PRIVATE COMPANY FROM ITS MEMBERS WITHOUT ANY LIMIT

{Section 73 of the Act read with Exemptions Notification No. 464(E) dated 05.06.2015 and Rule 3(3) read with Rules 6 and 7 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	Sections 2(31), 73, 75, 77, 173, 179 and 403
The Companies (Acceptance of Deposits) Rules, 2014	Rules 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 16A and 21
The Companies (Accounts) Rules, 2014	Rule 8(5)(v)
The Companies (Registration of Charges) Rules, 2014	Rules 3, 6 and 7
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	Return in DPT-3 CHG-1

Significant Relevant Approvals and Requirements

- ❖ Company is a start-up private company for 10 years from the date of incorporation
- ❖ Company fulfils the criteria as per second proviso to Rule 3(3) of the Companies (Acceptance of Deposits) Rules, 2014
- ❖ Company has not committed a default in filing its financial statements under section 137 of the Act or annual return under section 92 of the Act with the Registrar of Companies.
- ❖ Board resolution
- ❖ Ordinary resolution
- ❖ Terms and conditions of acceptance of deposit
- ❖ Valuation report of a registered valuer
- ❖ Consent of deposit trustee and his particulars

- ❖ Deposit Trust deed
- ❖ Documents related to creation of charge on deposits
- ❖ Deposit application form
- ❖ Nomination form
- ❖ Deposit receipt
- ❖ List of depositors
- ❖ Auditor’s certificate for filing return of deposit
- ❖ Disclosure in accounts and borad report

97.1 PROCEDURE WITH CHECK POINTS

S. No.	Procedure
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> • the amount of secured deposits proposed to be accepted by a private limited company from its members shall be exceeding of 100% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company. • the amount of secured deposits proposed to be accepted from members by a private limited company which fulfils following criteria: <ul style="list-style-type: none"> - the company is a start-up company which has not completed 10 (ten) years of its incorporation {<i>Second proviso to Rule 3(3) of the Companies (Acceptance of Deposits) Rules, 2014</i>} or - the company fulfils all of the following conditions, namely: — <ul style="list-style-type: none"> (a) which is not an associate or a subsidiary company of any other company; (b) 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 Rs. 50 (fifty) crores, whichever is less; and (c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73 {<i>Second proviso to Rule 3(3) of the Companies (Acceptance of Deposits) Rules, 2014</i>} • deposit cannot be accepted or renewed which are repayable on demand or upon receiving a notice within a period of less than 6 months or more than 36 months from the date of acceptance or renewal of such deposit {<i>Rule 3(1)(a) of the Companies (Acceptance of Deposits) Rules, 2014</i>} • if company is accepting or renewing deposits to meet out its short-term requirements of funds which are repayable earlier than 6 months, such deposits shall not exceed 10% of the aggregate of paid-up share capital, free reserves and securities premium account and such deposit shall not be repayable earlier than 3 months from the date of acceptance or renewal of such deposits {<i>Proviso to Rule 3(1)(a) of the Companies (Acceptance of Deposits) Rules, 2014</i>}. • where depositors so desire, deposits shall be accepted in joint names not exceeding three, with or without any of the clauses, namely, “Jointly”, “Either or Survivor”, “First named or Survivor”, “Anyone or Survivor” {<i>Rule 3(2) of the Companies (Acceptance of Deposits) Rules, 2014</i>}.

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-11) (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 prescribed a government company and regulations in COA 2012 dated 16.01.2012). • 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.	Forms in electronic 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 <u>Directors</u> Rules, 2014).
5.	The particulars of first directors to be integrated with Form SPICe-1 (INC-11) 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 \(in 2 vols.\)](#)