

**SITUATION V: PROCEDURE FOR
ACCEPTANCE OF UNSECURED DEPOSITS
BY NON-ELIGIBLE PUBLIC COMPANY
FROM ITS MEMBERS UPTO 35% OF THE
AGGREGATE OF PAID-UP SHARE CAPITAL,
FREE RESERVES AND SECURITIES
PREMIUM ACCOUNT**

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

Synopsis

98.1	Procedure	1701
98.2	Forms to be filed	1708
98.3	List of documents required	1710
98.4	List of information required	1711
Appendix 98.1	Format for circular inviting deposits	1713
Appendix 98.2	Sample board resolutions	1715
Appendix 98.3	Sample shareholders resolution	1716

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, 180 and 403
The Companies (Acceptance of Deposits) Rules, 2014	Rules 2, 3, 4, 10, 11, 12, 13, 14, 16, 16A 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 (Special 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 to all its members in Form DPT-1 and may be publish it in newspapers
- ❖ Company shall obtain at the time of inviting 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 inviting 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 borad report

98.1 PROCEDURE WITH CHECK POINTS

S. No.	Procedure
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> • the amount of unsecured deposit proposed to be accepted by a public company (company other than the eligible company) from its members shall be up to 35% of the aggregate of paid-up share capital, free reserve and securities premium account of the company. • 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 {Rule 3(1)(a) of the Companies (Acceptance of Deposits) Rules, 2014} • 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>}.

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+ (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 DIR-2 (Part 7 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 DIR-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 17 of the Companies Incorporation and Qualification of Directors Rules, 2014).
5.	The particulars of first directors to be integrated with Form SPICe+ (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 \(in 2 vols.\)](#)