

Acceptance of deposits by Eligible Companies (Sec 76)

1. Resolution to be passed

The eligible company is required to seek approval of the members by way of a special resolution and file e-form MGT-14 with MCA within 30 days of passing such resolution. However, where the company is accepting deposits within the borrowing limits under clause (c) of sub-section (1) of section 180, the approval of members by ordinary resolution is sufficient.

2. Eligible Companies

As stated above, Rule 1(e) defines '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 its members 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'. This means that in order to be eligible to invite and accept deposits under this section, such public company should fulfil all the specified criteria namely:

- (a) It should have the prescribed net worth or the prescribed turnover, may not be both; (as per the latest audited balance sheet.)
- (b) It should have passed appropriate special resolution and
- (c) It should have filed the same in e-form MGT 14 with the Registrar.

As provided under sub-section (2) of section 76, all the other provisions of Chapter V shall additionally apply to deposits taken under this section.

3. Credit Rating

The Companies (Acceptance of Deposits) Amendment Rules, 2015 dated 31.03.2015, provide that every eligible company shall obtain, at least once in a year, credit rating for deposits accepted by it in the manner specified in the rules and a copy of the rating shall be sent to the Registrar of Companies along with the return of deposits in Form DPT-3. To facilitate this compliance, the amendment rules also issued revised Form DPT-3 (Return of deposit).

The creditworthiness of the company is required to be assessed by any one of the credit rating agencies. These agencies carry out financial analysis after due research and after taking necessary inputs from the subject entity. They assess the credit worthiness of the company and give appropriate grading also specifying as to what the grading implies.

| Name of the agency | Minimum investment Grade Rating |
|--|---------------------------------|
| The Credit Rating Information Services of India Ltd. | FA- (FA Minus) |
| ICRA Ltd. | MA- (MA Minus) |
| Credit Analysis and Research Ltd. | CARE BBB(FD) |
| Fitch Ratings India Private Ltd | tA-(ind)(FD) |
| Brickwork Ratings India Pvt Ltd (Brickwork) | BWR FBBB |
| SME Rating Agency of India Ltd. | SMERA A |

The rating grades have been omitted from the rules and linked with NBFC Acceptance of public deposits (Reserve Bank) direction, 1990 issued by RBI.

4. Creation of charge for securing the deposits

Every company accepting secured deposits from the public shall within 30 days of such acceptance, create an adequate charge, fully secured, on its assets in favour of the deposit holders as provided under Rule 6. This provision is applicable only for the secured deposits accepted by the company. Adequate coverage implies that the security offered should be adequate enough to cover repayment of the amount borrowed after taking into the account the deposit insurance as referred above. Though issue of secured deposits is the options available to the company, once it advertises for secured deposits it has to comply with the requirements of providing security as detailed above.

5. Nature and value of assets

In this regard, Rule 6(1) provides that for the purposes of providing security, every company referred to sub-section (2) of section 73 of the Act seeking deposits and every eligible company inviting secured deposits shall provide for security by way of a charge on its assets as referred to in Schedule III of the Act excluding intangible assets of the company for the due repayment of the amount of deposit and interest thereon. The amount of such security shall not be less than the amount remaining unsecured by the deposit insurance. This shall be subject to the condition that in the case of deposits which are secured by the charge on the assets referred to in Schedule III of the Act excluding intangible assets, the amount of such deposits and the interest payable thereon shall be at least equal to the market value of such assets as assessed by a registered valuer.

The explanation at the end of the rule clarifies that for the purposes of this sub-rule, the company shall ensure that the total value of the security either by way of deposit insurance or by way of charge or by both on company's assets shall not be less than the amount of deposits accepted and the interest payable thereon. Further, it is clarified that pending notification of sub-section (1) of section 247 of the Act and finalisation of qualifications and experience of valuers, the valuation of securities for this purpose shall be conducted by an independent merchant banker who is registered with the Securities and Exchange Board of India or an independent chartered accountant in practice having a minimum experience of 10 years.

According to Rule 6(2), the security referred above shall not be in the nature of a pledge, and that it shall be created in favour of a trustee for the depositors on the specific movable property of the company, or specific immovable property of the company wherever situated, or any interest therein.

6. Trustees for Depositors

The requirement for appointment of trustees and their duties are discussed in detail in section 73. [Please see Geeta Saar 28th edition]

7. Limits on acceptance of deposits

Due perusal of the provisions gives the limits as follows:

From members –

No eligible company shall accept or renew any deposit from its members, if the amount of such deposits together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds 10% of the aggregate of the paid-up share capital and free reserves of the company [Rule 3(4) (a)]

– No other company shall accept or renew any deposits from its members if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds 25% of the aggregate of the paid-up share capital, securities premium and free reserves of the company. [Rule 3(3)]

By virtue of proviso inserted w.e.f. 29.06.2016 a private company may accept money from members not exceeding 100% of paid-up share capital, securities premium and free reserves.

From public–

No eligible company shall accept or renew any deposit from public, if the amount of such deposit other than the deposit received from members, together with the amount of deposits outstanding on the date of acceptance or renewal exceeds 25% of aggregate of the paid-up share capital, securities premium and free reserves of the company. [Rule 3(4)(b)]

– No Government company eligible to accept deposits under section 76 shall accept or renew any deposit, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds 35% of the paid-up share capital, securities premium and free reserves of the company. [Rule 3(5)]

Vide the Companies (Acceptance of Deposit) Second Amendment Rules, 2015 effective from 15.09.2015, the percentages stated herein above shall be with reference to the aggregate of paid up capital, free reserves and securities premium account.

The limit based on duration of deposits states that deposits having tenure of three to six months shall not exceed 10% of aggregate paid-up capital and free reserves

8. Tenure of Deposits

The Rule 3 (1) specifies that the term of every deposit shall not be less than six months and not more than 36 months from the date of acceptance or renewal. The acceptance or renewal of deposits for duration of three to six months with a view of meeting short term is also permissible.

9. Joint holding and nomination

The deposits may be held in joint names not exceeding three names with or without any clauses namely “Jointly”, “Either or Survivor”, “First Named or Survivor” or “Anyone or Survivor”.

In order to transfer the deposit to appropriate person after the death of the depositor, and to mitigate disputes thereon, the Act has introduced the facility of making nominations for the deposits in the same way as shareholders are permitted to appoint their nominees as per section 72.

10. Interest rate and brokerage

The interest rate and brokerage payable by companies shall not exceed the limits prescribed by RBI for Non-Banking Finance Companies.

Only the person who is authorized in writing, by a company to solicit deposits on its behalf and through whom deposits are actually procured will be entitled to the brokerage and payment of brokerage to any other person for procuring deposits shall be deemed to be in violation of these rules. [Explanation to Rule 3(6)]

11. Register of deposits

Every company accepting deposits is required to maintain Register of Deposits as per rule 14. The entries in the register shall be made within seven days from the event and duly authenticated by the Director or Secretary or other officer authorised in this regard. This Register shall be preserved for a period of eight years from financial year of entry.

12. Repayment and renewal of deposits before maturity period

Premature closure of deposits is permissible. However, the same is permissible only after six months from its acceptance and interest shall be reduced by one percent that is applicable to the period for the deposit was actually held.

Pre-renewal of the deposit is also possible provided that the renewal period should be more than the un-expired period of the existing deposits.

13. Annual Return of Deposits

Annual return of deposits for every financial year, in e-form DPT-3 together with the auditor’s certificate, list of depositors, details of liquid assets etc. shall be filed with the Registrar on or before 30th June every year.

14. Rate of interest for overdue deposits

In case of overdue deposits, a penal interest at the rate of 18% per annum shall be payable for the overdue period as provided in rule 17.

15. Default, Punishment & Compoundability

Where a Company defaults in compliance of these Rules, the company and every officer in default shall be punishable with fine which may extend upto Rs. 5,000 and where the contravention is a continuing one, a fine of Rs. 500 per day shall be levied as provided in rule 21.

A question arises as to what is a continuing offence. In the Ritz Continental Hotels Ltd. vs The State [1980 CriLJ 414], this was examined. It was held that “What is a continuing offence has been clearly laid down in the Supreme Court decision (State of Bihar v. Deokaran). Continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed the distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act, or omission which continues and, therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and this has been clarified by several illustrations one of them is as follows : Section 12 provides that if any officer, being a member of a trade union by false representation obtained possession of any moneys, books etc. of such trade union or having the same in his possession wilfully, withheld or fraudulently misapplied the same, a court of summary jurisdiction would order such person to be imprisoned. The offence of withholding the money referred to in this section was held to be a continuing offence, presumably because every day that the moneys were wilfully withheld an offence within the meaning of Section 12 was committed. The illustration will not apply to the instant case. The deposit accepted from the depositors are directed by the Reserve Bank of India to be returned on the date of maturity and the offence consists in not returning the money on its maturity and it is completed as soon as the company fails to return the deposits on maturity. It becomes a completed offence and is accordingly not a continuing one”.

The offence under this section is compoundable as the offence is punishable only with fine.

16. Interlinking with other provisions

- 16.1. **Prohibition on issue of bonus shares:** As per the clause (c) of sub-section (2) of section 63, bonus shares cannot be issued when any default in payment of interest of principal is made.
- 16.2. **Prohibition on reduction of capital:** As per the proviso of sub-section (1) of section 66, when the company is in arrears in repayment of deposits or payment of interest, reduction of capital cannot be effected. This prohibition operates in case of deposits accepted both before and after the commencement of the Act.
- 16.3. **Prohibition on buy-back:** Clause (c) of sub-section (1) of section 70 prohibits a company from purchasing its own shares or securities when the company is in default of repayment of deposits or interest payable thereon. This prohibition operates in case of deposits accepted both before and after the commencement of the Act. However, when the default is remedied and three years have lapsed since the remedy, buy-back can be effected.
- 16.4. **Transfer to Investor Education and Protection Fund (IEPF):** Pursuant to clause (i) of sub-section (2) of section 125, the deposits which remain unpaid and unclaimed for a period of seven years shall be transferred to IEPF.
- 16.5. **Applicability of internal audit:** In case where the unlisted public company has outstanding deposits of more than Rs. 25 Crores at any point of time during the financial year, the provisions of section 138 regarding internal audit will be applicable next financial year.
- 16.6. **Disqualification of director:** In terms of clause (b) of sub-section (2) of section 164 of the Act, a person who is or has been a director of a company which has failed to repay the deposits accepted by it or pay interest thereon, shall not be eligible to be re-appointed as a director of that company or be appointed in other company for a period of five years from the date on which the said company fails to do so.
- In addition to this the Directors would also vacate office immediately as per clause (a) of sub-section (1) of section 167.
- 16.7. **Managerial Remuneration:** Section II of part II of schedule V dealing with payment of remuneration to the managerial person in case of companies having no or inadequate profits without approval of Central Government. However, any default in repayment of public deposits or interest thereon for a continuous period of 30 days in the financial year preceding the year of appointment of managerial person would restrain the company from payment of remuneration to managerial personnel under the said section. Therefore, approval of Central Government is required for payment of remuneration.

17. Secretarial Checklist

A Company willing to accept or renew deposits has to comply with the following steps:

1. Check the eligibility whether the company meets the net worth/turnover criteria to accept public deposits.
2. Company to obtain Credit Rating from recognised agency, with adequate rating to ensure safety to the depositors.
3. Pass special resolution by following due procedure. File MGT-14 with MCA within 30 days of the date of passing special resolution.
4. Prepare Form DPT-1. Such circular shall include a statement of financial position of the Company, its credit rating, a certificate that the Company has not defaulted in repayment of the deposit and the interest either in this Act or the Companies Act, 1956. This DPT-1 shall be valid till the expiry of 6 months from the date of closure of the financial year in which it was issued.
5. File the - form DPT-1 with Registrar within 30 days of the date of issue.
6. Upload the same in the company's website, if any.
7. Maintain liquid deposit of minimum fifteen percent of the amount maturing during the financial year and the next financial year, in a scheduled bank in a separate bank account. This account shall be called as deposit repayment reserve account. This shall be utilised only for repayment of the maturing deposits.
8. Provide for deposit insurance to secure the repayment of principal and interest for a maximum sum of Rs. 20,000. The insurance premium shall be borne by the company. This provision is proposed to be done away with in the Companies (Amendment) Bill, 2016.
9. In case of Secured deposit, the company shall file the particulars of charge created on its assets.
10. Maintain Register of deposits.
11. In respect of every financial year, the company shall file Annual Return of deposits in Form DPT-3 on or before 30th June.
12. Matured deposits and interest accrued thereon which have remained unclaimed and unpaid for a period of seven years from the date they became due for repayment are to be credited to the Investor Education and Protection Fund.