

**PROCEDURE TO GIVE LOAN TO  
MANAGING DIRECTOR OR WHOLE-TIME  
DIRECTOR OR ANY PERSON IN  
WHOM DIRECTOR IS INTERESTED**

**106**

*{Section 185(1) and (3) of the Act}*

**Synopiss**

106.1 Procedure with check points	1821
106.2 Forms to be filed	1827
106.3 List of documents required	1828
106.4 List of information required	1828
<b>Appendix 106.1</b> Sample board resolutions	1829

**Relevant Sections, Rules and Forms at a Glance**

<b>Particulars</b>	<b>Section(s), Rule(s) and Name of e-Form(s)</b>
The Companies Act, 2013	Sections 73, 173, 179, 185, 403 and 462
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)

**Significant Relevant Approvals and Requirements**

- ❖ Board resolution
- ❖ Special resolution
- ❖ Scheme regarding loan to employees of the company
- ❖ Declaration from the person in whom any director is interested that the loan amount shall be utilised for its principal business activities.

**106.1 PROCEDURE WITH CHECK POINTS**

<b>S. No.</b>	<b>Particular</b>
1.	Note that the provisions of section 185 are not applicable- <ul style="list-style-type: none"> <li>• to a private company, provided that- <ul style="list-style-type: none"> <li>- no other body corporate has invested any money.</li> <li>- borrowing of such a company from bank or financial institutions or any body corporate is less than twice of its paid-up share capital or ₹50 crores, whichever is lower, and</li> <li>- such a company has no default in repayment of such borrowing subsisting at the time of making transaction under this transaction <i>(Exemption Notification No. GSR 464(E) dated 05.06.2015).</i></li> </ul> </li> </ul>

S. No.	Particular
	<ul style="list-style-type: none"> <li>• to a Nidhi company, provided the loan is given to a director or his relative in their capacity as members and such transaction is disclosed in the annual accounts by a note. (<i>Exemption Notification No. GSR 463(E) dated 05.06.2015</i>).</li> <li>• to a Government company in case such company obtains approval of the Ministry or Department of the Central Government, which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security under the section. (<i>Exemption Notification No. GSR 465(E) dated 05.06.2015</i>).</li> <li>• Specified IFSC unlisted public company and private company, if any such director is a director or member in which director of the lending company do not have direct or indirect shareholding through themselves or through their relatives and a special resolution is passed to this effect (<i>Notification No. GSR 8(E) and 9(E) both dated 04.01.2017</i>).</li> </ul>
2.	<p>Ensure that—</p> <ul style="list-style-type: none"> <li>• the company, directly or indirectly, shall not advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by, <ul style="list-style-type: none"> <li>(a) any director of company, or any partner or relative<sup>1</sup> of any such director or</li> <li>(b) any director of a company which is its holding company</li> <li>(c) any firm in which any such director or relative is a partner. (<i>Section 185(1) of the Act</i>).</li> </ul> </li> <li>• the restrictions provided under section 185 are exempted in respect of the following loan or guarantee to director, etc.: <ul style="list-style-type: none"> <li>(a) the giving of any loan to a managing or whole-time director— <ul style="list-style-type: none"> <li>(i) as a part of the conditions of service extended by the company to all its employees; or</li> <li>(ii) pursuant to any scheme approved by the members by a special resolution; or</li> </ul> </li> <li>(b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or</li> <li>(c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or</li> </ul> </li> </ul>

**1** Relative means anyone who is related to another, if (i) they are members of a Hindu Undivided Family; (ii) they are husband and wife; or (iii) one person is related to the other, if he or she is related to another in the following manner, namely:- Father including step-father; Mother including step-mother; Son including step-son and Son's Wife; Daughter and Daughter's husband; Brother including the step-brother; and Sister including the step-sister (*Section 2(77) of the Act*).

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"> <li>• 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).</li> <li>• 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).</li> <li>• 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).</li> <li>• 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"> <li>- shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies.</li> <li>- shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public companies.</li> </ul> </li> </ul>
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 17 of the Companies Incorporation and Qualification of <b>Directors</b> Rules, 2014).
4.	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](http://www.bharatlaws.com)

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