

**PROCEDURE FOR LOAN, INVESTMENT,
GUARANTEE OR INVESTMENT IN THE
SECURITIES OF ANY BODY CORPORATE**

109

**ETC. IF THE LIMIT IS EXCEEDING 60%
OF THE PAID-UP SHARE CAPITAL, FREE
RESERVES AND SECURITIES PREMIUM
AMOUNT OR 100% OF THE FREE RESERVES
AND SECURITY PREMIUM AMOUNT,
WHICHEVER IS MORE**

*{Section 186(3) of the Act read with Rule 11 of the Companies meetings of Board and its Powers)
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 110, 117, 173, 179, 185, 186 and 403
The Companies (Meetings of Board and its Powers) Rules, 2014	Rules 11, 12, 13 and 14
The Companies (Management and Administration) Rules, 2014	Rules 22(16) and 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

- ❖ Company has not defaulted in the repayment of any deposits accepted before or after the commencement of the Companies Act, 2013 or in the payment of interest thereon
- ❖ Approval of the concerned public financial institution if any term loan from any public financial institution is subsisting.

109.1 PROCEDURE WITH CHECK POINTS

S. No.	Particular
1.	<p>Note that—</p> <ul style="list-style-type: none"> • the company¹, unless otherwise prescribed, shall not make investment through more than two layers of investment companies² except in the following circumstances: <ul style="list-style-type: none"> (i) a company acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country; (ii) a subsidiary company having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force {Section 186(1) of the Act} • the company, directly or indirectly, shall— <ul style="list-style-type: none"> (i) give any loan to any person* or other body corporate; (ii) give any guarantee or provide security in connection with a loan to any other body corporate or person; and (iii) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate <p>*person does not include any individual who is in the employment of the company. {Section 186(2) of the Act}.</p> • the provisions of section 186 of the Act except section 186(1) are not applicable on any loan made, any guarantee given or any security provided or any investment made, in the ordinary course of its business by- <ul style="list-style-type: none"> - a banking company, or - an insurance company, or - a housing finance company, or - a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities {Section 186(11)(a) of the Act}.

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- 1** *This provision shall not apply to Specified IFSC Public Company or Specified IFSC Private Company {Notification No. GSR 8(E) for Public Company and GSR 9(E) for private company, both dated 04.01.2017}.*
 - 2** *Investment company means a company whose principal business is the acquisition of shares, debentures or other securities and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income. {Explanation (a) to Section 186 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"> • 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 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 208-2 (Part 2 of the Companies Appointment and Qualification of Directors) Rule, 2014.
4.	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 Appointment and Qualification of <u>Directors</u>) Rule, 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 \(in 2 vols.\)](#)