

PROCEDURE FOR DISCLOSURE OF INTEREST BY DIRECTOR

28

{Section 184 of the Companies Act, 2013}

Synopsis

28.1	Procedure with check points	547
28.2	Forms to be filed	549
28.3	List of documents required	549
Appendix 28.1	Format of Form MBP-1: Notice of interest by director	550
Appendix 28.2	Sample board resolution	551

Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Section 184
The Companies (Meetings of Board and its Powers) Rules, 2014	Rules 9, 15 and 16
e-forms to be filed	-----
Forms to be taken from person	MBP-1

Significant Relevant Approvals and Requirements

- ❖ Disclosure of interest
- ❖ Board resolution

28.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Check that</p> <ul style="list-style-type: none"> • every director of the company has disclosed, pursuant to section 184(1) of the Act, by giving a notice in writing in Form MBP 1, his/her interest, in any company, bodies corporate, firms, or other association of individuals which shall include the shareholding.— <ul style="list-style-type: none"> - at the first meeting of the board in which he /she participates as a director and thereafter at the first meeting of the board in every financial year, or - whenever there is a change in the disclosures already made, then at the first meeting held after such change.
2.	<p>Ensure that-</p> <ul style="list-style-type: none"> • on the basis of MBP 1 submitted by every director of the company that every director of a company, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into-

S. No.	Particulars
	<p>(a) with a body corporate in which such director or such director in association with any other director—</p> <ul style="list-style-type: none"> - holds more than 2 (two) per cent shareholding of that body corporate, or - is a promoter, manager, Chief Executive Officer of that body corporate; or <p>(b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be,</p> <p>has disclosed the nature of his/her concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting. {Section 184(2) of the Act}. read with exemption notification no. GSR 464(E) and 466(E) both dated 05.06.2015}.</p> <ul style="list-style-type: none"> • it is informed to every director that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he/she shall, if he/she becomes concerned or interested after the contract or arrangement is entered into, disclose his/her concern or interest forthwith when he/she becomes concerned or interested or at the first meeting of the Board held after he/she becomes so concerned or interested. {Proviso to section 184(2) of the Act}. • the interested director who has disclosed his/her interest shall not participate in the meeting, however, in case of private limited company which is not having committed a default in filing of its financial statements and annual return, such interested director can participate in such meeting after disclosure of his interest {Section 184(2) of the Act}. read with exemption notification no. GSR 464(E) and 466(E) both dated 05.06.2015}.
3.	Check that the note of disclosure of concern or interest of the directors in the board meeting have been taken or record.
4.	Keep all notices at the registered office and reserve such notices for a period of 8 (eight) years from the end of the financial year to which it relates and keep them in the custody of the company secretary of the company or any other person authorised by the board to keep such notices in his/her custody.
5.	Note that a contract or arrangement entered into by the company without disclosure or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company {Section 184(3) of the Act}.
6.	<p>Ensure that every company shall keep registers in MBP-4 giving separately the particulars of all contracts or arrangements falling under section 184 (2) of the Act in following manner:</p> <ul style="list-style-type: none"> • containing company(ies)/bodies corporate/firms/other association of individuals, in which any director has any concern or interest <p>Provided that the particulars of the company or companies or bodies corporate in which a director himself together with any other director holds two percent. or less of the paid-up share capital would not be</p>

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-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 208-2 (Part 2 of the Companies Appointment and Qualification of Directors) Rule, 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 Appointment and Qualification of <u>Directors</u>) Rule, 2014.
5.	The particulars of first directors to be integrated with Form SPICe-1 (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 \(in 2 vols.\)](#)