

PROCEDURE FOR OBTAINING UNSECURED LOAN FROM DIRECTOR OR DIRECTOR'S RELATIVE IN PRIVATE LIMITED COMPANY

88

{Section 179(3)(d) of the Act read with Rule 2(1)(c)(viii) of the
Companies (Acceptance of Deposits) 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 173 and 179(3)(d)
The Companies (Acceptance of Deposit) Rules, 2014	Rule 2(1)(c)(viii) and 16A
Secretarial Standard-1	Clauses 3, 4, 5, 6, 7 and 8
e-Form to be filed	DPT-3

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Declaration by director or relative of director
- ❖ Loan agreement

88.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	Ensure that any amount received by a company from a person who, at the time of the receipt of the amount, is a director of the company or a relative ¹ of the director of the private company and such director of the company or relative of the director of the private company, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the

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
	effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others, otherwise it shall be considered as deposits pursuant to Rule 2(1)(c)(viii) of the Companies (Acceptance of Deposits) Rules, 2014 and provisions related to acceptance of deposits shall be followed by a company.
2.	<p>Check, before calling of board meeting—</p> <ul style="list-style-type: none"> • whether the board has delegated its powers of borrowing, by a resolution passed at a meeting to— <ul style="list-style-type: none"> - any committee of directors - the managing director - the manager - any other principal officer of the company and in case of a branch office, the principal officer of the branch • if the authority has been delegated to a committee of directors, then borrowing powers shall be exercised by the committee of directors at committee meeting within the limits and conditions as specified in the board resolution passed at the time of delegation of powers. • if the authority has been delegated to a managing director, the manager any other principal officer of the company and in case of a branch office, the principal officer of the branch, then borrowing powers shall be exercised by such delegated person within the limits and conditions as specified in the board resolution passed at the time of delegation of powers <i>{First proviso of section 179(3) of the Act}</i>.
3.	<p>Complete formalities regarding calling of board meeting, in the absence of delegation of power of borrowing to any committee or specified person, in the following manner:</p> <ul style="list-style-type: none"> • Prepare notice of board meeting along with draft resolution(s) to be passed in the board meeting. • Send notice of board meeting to all the directors <ul style="list-style-type: none"> - at least 7 days before the date of board meeting or - in such manner as prescribed under section 173(3) of the Companies Act, 2013 and clause 1 of the Secretarial Standard-1.
4.	Draft the loan agreement containing terms and conditions of receiving loan from director or relative of director.
5.	<p>Convene board meeting to pass the following resolutions:</p> <ul style="list-style-type: none"> • to borrow money from Director/Director's Relative pursuant to section 179(3)(d) of the Act. • to consider and decide the terms and conditions of loan agreement. • to approve the draft loan agreement. • to authorise Director/Company Secretary to execute loan agreement. • to authorise Director/Company Secretary to make necessary entries in the book and statutory records of the company.

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 companies provisions a government company not applicable in 2014-15) (Section 164 of the Act). • 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.
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 164 of the Companies Incorporation and Qualification of <u>Directors</u> Rules, 2014).
4.	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 \(in 2 vols.\)](#)