

**PROCEDURE FOR OBTAINING UNSECURED
LOAN FROM DIRECTOR IN PUBLIC
LIMITED COMPANY IF LOAN FROM
DIRECTOR TOGETHER WITH AMOUNT
ALREADY BORROWED AS LOAN
IS EXCEEDING THE AGGREGATE OF PAID-UP
SHARE CAPITAL, FREE RESERVES AND
SECURITIES PREMIUM OF THE COMPANY**

90

{Section 180(1)(c) 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 73, 117, 173, 179, 180 and 403
The Companies (Acceptance of Deposits) Rules, 2014	Rules 2(1)(c)(viii) and 16A
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 (BM) MGT-14 (GM) DPT-3

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Special resolution
- ❖ Declaration by director
- ❖ Loan agreement

90.1 PROCEDURE WITH CHECK POINTS

S. No.	Particular
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> • 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 and such director of the company from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the 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 the company. • the amount to be borrowed together with amount already borrowed shall be more than the aggregate of paid-up share capital, free reserves and security premium of the company. • the board of directors of a company shall exercise the powers to borrow money, where the money to be borrowed, together with the money already borrowed by the company exceeding aggregate of its paid-up share capital, free reserves and securities premium, apart from temporary loans¹ obtained from the company's bankers in the ordinary course of business, only with the consent of the company by a special resolution {Section 180(1)(c) of the Act}.
2.	<p>Complete formalities regarding calling of board meeting 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.
3.	<p>Draft the loan agreement containing terms and conditions of receiving loan from director.</p>
4.	<p>Prepare notice of general meeting and special resolution which shall be sent to the shareholders and others for passing of special resolution to borrow money in excess of aggregate of paid-up share capital, free reserves and securities premium of the company.</p>
5.	<p>Convene board meeting to pass the following resolution:</p> <ul style="list-style-type: none"> • Borrow money (secured/unsecured) together with the money already borrowed by the company, in excess of aggregate of paid-up share capital, free reserves and securities premium account.

¹ *Temporary loans means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature* {Explanation to section 180(1)(c) 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-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.
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 <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 \(in 2 vols.\)](#)