

PROCEDURE FOR RELATED PARTY TRANSACTION PERMISSIBLE THROUGH BOARD RESOLUTION

92

*{Section 188(1) of the Act read with Rule 15 of the Companies
(Meetings of Board and its Powers) Rules, 2014}*

Synopsis

92.1	Procedure with check points	1623
92.2	Forms to be Filed	1628
92.3	List of Information/Document Required for Form AOC-2/MBP-4	1628
Appendix 92.1	Transactions involving approval to enter into contract or arrangement with related party either through board resolution or ordinary resolution	1629
Appendix 92.2	Following items are covered in the related party transaction as per AS 18	1630
Appendix 92.3	Format of Form No. AOC -2	1630
Appendix 92.4	Sample Board Resolutions	1631

Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 2(76), 173, 174, 184, 188 and 189
The Companies (Specification of Definitions Details) Rules, 2014	Rules 3 and 4
The Companies (Meetings of Board and its Powers) Rules, 2014	Rules 6A, 15 and 16
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
e-Forms to be filed	-
Forms to be filed as an attachment with respective forms	AOC-2 with Board Report.

Significant Relevant Approvals and Requirements

- ❖ Audit committee resolution
- ❖ Board resolution

92.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	The provisions of section 188 related to transactions with related party are applicable to every company registered under the Companies Act, 2013 or any previous company law.

S. No.	Particulars
2.	<p>Ensure that—</p> <ul style="list-style-type: none"> • the company shall enter into any contract or arrangement with the following parties— <ul style="list-style-type: none"> - a director or his relative¹; - a key managerial personnel or his relative; - a firm, in which a director, manager or his relative is a partner; - a private company in which a director or manager or his relative is a member or director; - a public company in which a director or manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital; - any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager, other than advice, directions or instructions given in a professional capacity; - any person on whose advice, directions or instructions a director or manager is accustomed to act, other than advice, directions or instructions given in a professional capacity - ²any body corporate which is- <ul style="list-style-type: none"> (a) a holding, subsidiary or an associate company of such company; (b) a subsidiary of a holding company to which it is also a subsidiary; or (c) an investing company or the venturer of the company;" - a director other than independent director or key managerial personnel of the holding company or his relative with reference to a company <i>{Section 2(77) of the Act read with Rule 3 of the Companies (Specification of Definitions Details) Rules, 2014}</i>. • as per Form MBP-1 or Register of Contract (Part B), the proposed transaction falls under the related party transaction and, these transactions are those transactions with related party(ies) where only board resolution is required. • the company shall enter into any of the following contract or arrangements, other than transactions in its ordinary course of business and transactions which are on arm's length basis³, with a related party with respect to—

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}.*

2 *Shall not apply for private company and specified unlisted public company {Notification No GSR 464(E) dated 05.06.2015 and Notification No. GSR 8(E) dated 04.01.2017 respectively}.*

3 *"arm's length transaction" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest {Explanation of Section 188(1) 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 company.
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 Incorporation 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 17 of the Companies Incorporation 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 \(in 2 vols.\)](#)