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The Summary Approval Procedure to Allow
Loans/Credit Transactions/Guarantees of
10% or More of the Net Assets of the
Company to be Given to Directors
Quick Guide

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Summary Approval Procedure to Allow Loans/Credit
Transactions/Guarantees of 10% or More of the Net Assets of the
Company to be Given to Directors

SAP Quick Guide

Part 4

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Legislation

Sections Covered by Legislation

Section 202 of CA 2014 (Summary Approval Procedure)

Section 203 of CA 2014 (Declaration to be made in cases where there are transactions with directors)

Other Relevant Sections

Section 239 of CA 2014 (Prohibition of loans etc. to directors and connected persons)

Section 240 of CA 2014 (arrangements of certain value)

Section 241 of CA 2014 (reduction in amount of company's relevant assets)

Section 242 CA 2014 (Ability of the Summary Approval procedure to permit loans)

Section 246 of CA 2014 (arrangement in which Section 239 is voidable at instance of the Company)

Section 181 (notice of general meetings)

Section 193 (unanimous written resolution)

Section 194 (majority written resolution) of CA 2014

Section 220 (connected persons)

Legislation

Summary Approval Procedure

202(1) In this Act "Summary Approval Procedure" means the procedure whereby the following conditions are satisfied:

(a) authority for the carrying on of the restricted activity has been conferred by—

(i) other than in the case of a merger, a special resolution of the company; or

(ii) in the case of a merger, a resolution of each of the merging companies which every member of the company entitled to vote at a general meeting of it has voted in favour of (a "unanimous resolution");

being a special resolution or unanimous resolution passed not more than, subject to subsections (2) and (3), 12 months prior to the commencement of the carrying on by the company, or as the case may be, by each of the merging companies of the activity; and

(b) either—

(i) the company or, as the case may be, each of the merging companies has

forwarded with each notice of the meeting at which the special resolution or other foregoing resolution is to be considered, or

(ii) if the written means for passing the resolution is used, the company or, as the case may be, each of the merging companies has appended to the proposed text of the resolution,

a copy of a declaration which complies with subsection (6) and the other relevant provisions of this Chapter as regards its contents or the documents to be attached to it.

(2) In computing the period of 12 months referred to in subsection (1)(a) there shall be disregarded, where an application is made in accordance with section 211 to cancel the special resolution, the period beginning on the date of the making of that application and ending on—

(a) the date of confirmation of the special resolution by the court on that application; or

(b) if such an application so made is withdrawn, the date of that withdrawal.

(3) If the restricted activity is that referred to in paragraph (d) of the definition of that expression in section 200(1), the reference in subsection (1)(a) to 12 months shall be read as a reference to—

(a) subject to paragraph (b), 60 days; or

(b) if—

(i) one or more members who hold, or together hold, more than 90 per cent in nominal value of each class of issued shares of the company and entitled to vote at general meetings of the company have voted in favour of the special resolution referred to in subsection (1)(a), or

(ii) that resolution has been passed by the means provided under section 193, 30 days,

but subsection (2) applies as regards computing that period of 60 or 30 days as it applies as regards computing the period of 12 months referred to in subsection (2).

(4) Subsection (1) is, in the case of a merger, without prejudice to the procedures set out in Chapter 3 of Part 9 that must be followed before the resolution referred to in paragraph (a)(ii) of that subsection may be passed.

(5) In the case of a merger, on the delivery, in accordance with section 206, to the Registrar of each declaration referred to in that section, the Registrar shall register the dissolution of the transferor company or companies concerned.

(6) The declaration referred to in subsection (1)(b) is a declaration in writing that is made at a meeting of the directors held—

(a) not earlier than 30 days before the date of the meeting referred to in subsection (1)(b), or

(b) if the written means for passing the resolution is used, not earlier than 30 days before the date of the signing of the resolution by the last member to sign,

and that is made by the directors or, in the case of a company having more than 2 directors, by a majority of the directors.

- (7) The terms of the resolution referred to in subsection (1)(a)(ii) (which deals with a case of a merger) shall be that the common draft terms of merger are approved.

Declaration to be made in the case of financial assistance for acquisition of shares or transaction with directors

203(1) Where the restricted activity is a transaction or arrangement that would otherwise be prohibited by section 82(2) or 239, the declaration shall state—

- (a) the circumstances in which the transaction or arrangement is to be entered into;
 - (b) the nature of the transaction or arrangement;
 - (c) the person or persons to or for whom the transaction or arrangement is to be made;
 - (d) the purpose for which the company is entering into the transaction or arrangement;
 - (e) the nature of the benefit which will accrue to the company directly or indirectly from entering into the transaction or arrangement; and
 - (f) that the declarants have made a full inquiry into the affairs of the company and that, having done so, they have formed the opinion that the company, having entered into the transaction or arrangement (the “relevant act”), will be able to pay or discharge its debts and other liabilities in full as they fall due during the period of 12 months after the date of the relevant act.
- (2) For the purposes of a declaration under this section, in determining whether or not a company will be able to pay or discharge its debts and other liabilities in full, the declarants shall not be required to assume (in circumstances where the following are relevant) either that the company will be called upon to pay moneys on foot of a guarantee given or, as the case may be, that security given will be realised.
- (3) A copy of the declaration under this section shall be delivered to the Registrar not later than 21 days after the date on which the carrying on of the restricted activity concerned is commenced.
- (4) On application to it by any interested party, the court may, in any case where there has been a failure to comply with subsection (3), declare that the carrying on of the restricted activity concerned shall be valid for all purposes if the court is satisfied that it would be just and equitable to do so.

Prohibition of loans, etc., to directors and connected persons

239. (1) Except as provided by section 240 and sections 242 to 245, a company shall not—

- (a) make a loan or a quasi-loan to a director of the company or of its holding company or to a person connected with such a director,
- (b) enter into a credit transaction as creditor for such a director or a person so connected,
- (c) enter into a guarantee or provide any security in connection with a loan, quasi-loan or

credit transaction made by any other person for such a director or a person so connected.

- (2) *A company shall not arrange for the assignment to it or the assumption by it of any rights, obligations or liabilities under a transaction which, if it had been entered into by the company, would have contravened subsection (1), but, for the purposes of this Part, the transaction shall be treated as having been entered into on the date of the arrangement.*
- (3) *A company shall not take part in any arrangement under which—*
 - (a) *another person enters into a transaction which, if it had been entered into by the company, would have contravened subsection (1) or (2), and*
 - (b) *that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or its holding company or a subsidiary of the company or its holding company.*

Arrangements of certain value

240. (1) *Section 239 does not prohibit a company from entering into an arrangement with a director or a person connected with a director (whether, in either case, a director of the company or of its holding company) if—*

- (a) *the value of the arrangement, or*
- (b) *in a case where there are other arrangements entered into by the company with any director of the company, or any person connected with a director, the value of the arrangement and the total amount outstanding under those other arrangements, is, or, as the case may be, is together, less than 10 per cent of the company's relevant assets.*

(2) *For the purposes of this section—*

- (a) *a company enters an arrangement with a person if it—*
 - (i) *makes a loan or quasi-loan to or enters into a credit transaction as creditor for that person, or*
 - (ii) *enters into a guarantee or provides any security in connection with a loan, quasi-loan or credit transaction made for that person by any other person,*
- (b) *the amount of a company's relevant assets shall be determined in accordance with section 238(2); and*
- (c) *there shall not be reckoned any arrangement entered into in accordance with the Summary Approval Procedure.*

Reduction in amount of company's relevant assets

241. (1) *This section applies to a company in respect of which the total amount outstanding under any arrangements referred to in section 240 comes to exceed 10 per cent of the company's relevant assets for any reason but in particular because the value of those assets has fallen.*

(2) *The reference in subsection (1) to arrangements referred to in section 240 does not include a reference to any arrangement or arrangements entered into in accordance with the Summary Approval Procedure.*

(3) *Where the directors of a company to which this section applies become aware, or ought*

reasonably to become aware, that there exists the situation referred to in subsection (1), it shall be the duty of the company, its directors and any persons for whom the arrangements referred to in that subsection were made, to do the thing referred to in subsection (4) within the period specified in subsection (5).

- (4) The thing mentioned in subsection (3) is to amend the terms of the arrangements concerned so that the total amount outstanding under the arrangements again falls within the percentage limit referred to in subsection (1).
- (5) The period mentioned in subsection (3) is 2 months after the date that the directors become aware or ought reasonably to have become aware that the situation concerned referred to in subsection (1) exists.
- (6) Where the terms of the arrangements referred to in subsection (4) are not amended within the period specified in subsection (5), the arrangements shall be voidable at the instance of the company; but the same restrictions apply to this right of the company to avoid as are contained in paragraphs (a) and (b) of section 246 on the right to avoid under that section.

Availability of Summary Approval Procedure to permit loans, etc.

242. Section 239 does not prohibit a company from—

- (a) making a loan or quasi-loan,
- (b) entering into a credit transaction, or
- (c) entering into a guarantee or providing any security,

of the kind described in subsection (1) of that section if the Summary Approval Procedure is followed in respect of the doing of the thing referred to in paragraph (a), (b) or (c), as the case may be.

Transaction or arrangement in breach of section 239 voidable at instance of company

247. If a company enters into a transaction or arrangement in contravention of section 239 the transaction or arrangement shall be voidable at the instance of the company unless—

- (a) restitution of any money or any other asset which is the subject matter of the arrangement or transaction is no longer possible, or the company has been indemnified in pursuance of section 232 for the loss or damage suffered by it, or
- (b) any rights acquired bona fide for value and without actual notice of the contravention by any person other than the person for whom the transaction or arrangement was made would be affected by its avoidance.

(c)

Notice of general meetings

181. (1) Save where the constitution of the company makes provision for the giving of greater notice, a meeting of a company, other than an adjourned meeting, shall be called—

- (a) in the case of the annual general meeting or an extraordinary general meeting for the passing of a special resolution, by not less than 21 days' notice;

- (b) *in the case of any other extraordinary general meeting, by not less than 7 days' notice.*
- (2) *A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in subsection (1), be deemed to have been duly called if it is so agreed by—*
- (a) *all the members entitled to attend and vote at the meeting; and*
 - (b) *unless no statutory auditors of the company stand appointed in consequence of the company availing itself of the audit exemption under section 360 or 365 (and, where relevant, section 399 has been complied with in that regard), the statutory auditors of the company.*
- (3) *Where notice of a meeting is given by posting it by ordinary prepaid post to the registered address of a member, then, for the purposes of any issue as to whether the correct period of notice for that meeting has been given, the giving of the notice shall be deemed to have been effected on the expiration of 24 hours following posting.*
- (4) *In determining whether the correct period of notice has been given by a notice of a meeting, neither the day on which the notice is served nor the day of the meeting for which it is given shall be counted.*
- (5) *The notice of a meeting shall specify—*
- (a) *the place, the date and the time of the meeting;*
 - (b) *the general nature of the business to be transacted at the meeting;*
 - (c) *in the case of a proposed special resolution, the text or substance of that proposed special resolution; and*
 - (d) *with reasonable prominence a statement that—*
 - (i) *a member entitled to attend and vote is entitled to appoint a proxy using the form set out in section 184 or, where that is allowed, one or more proxies, to attend, speak and vote instead of him or her;*
 - (ii) *a proxy need not be a member; and*
 - (iii) *the time by which the proxy must be received at the company's registered office or some other place within the State as is specified in the statement for that purpose.*
- (6) *Save to the extent that the company's constitution provides otherwise, the accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at the meeting.*

Unanimous written resolutions

- 193.** (1) *Notwithstanding any provision to the contrary in this Act—*
- (a) *a resolution in writing signed by all the members of a company for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly appointed representatives) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held; and*

- (b) if described as a special resolution shall be deemed to be a special resolution within the meaning of this Act.*
- (2) For the avoidance of doubt, the reference in subsection (1) to a provision to the contrary includes a reference to a provision that stipulates that the company in general meeting, or the members of the company in general meeting, must have passed the resolution concerned.*
- (3) A resolution passed in accordance with subsection (1) may consist of several documents in like form each signed by one or more members.*
- (4) A resolution passed in accordance with subsection (1) shall be deemed to have been passed at a meeting held on the date on which it was signed by the last member to sign, and, where the resolution states a date as being the date of his or her signature thereof by any member, the statement shall be prima facie evidence that it was signed by him or her on that date.*
- (5) If a resolution passed in accordance with subsection (1) is not contemporaneously signed, the company shall notify the members, within 21 days after the date of delivery to it of the documents referred to in subsection (6), of the fact that the resolution has been passed.*
- (6) The signatories of a resolution passed in accordance with subsection (1) shall, within 14 days after the date of its passing, procure delivery to the company of the documents constituting the written resolution; without prejudice to the use of the other means of delivery generally permitted by this Act, such delivery may be effected by electronic mail or the use of a facsimile machine.*
- (7) The company shall retain those documents as if they constituted the minutes of the proceedings of a general meeting of the company; without prejudice to the requirement (by virtue of section 199(1)) that the terms of the resolution concerned be entered in books kept for the purpose, the requirement under this subsection that the foregoing documents be retained shall be read as requiring those documents to be kept with the foregoing books.*
- (8) It is immaterial, as regards the resolution's validity, whether subsection (5), (6) or (7) is complied with.*
- (9) If a company fails to comply with subsection (5), the company and any officer of it who is in default shall be guilty of a category 4 offence.*
- (10) If a signatory fails to take all reasonable steps to procure the delivery to the company, in accordance with subsection (6), of the documents referred to in that subsection, the signatory shall be guilty of a category 4 offence.*
- (11) This section does not apply to—*
- (a) a resolution to remove a director;*
 - (b) a resolution to effect the removal of a statutory auditor from office, or so as not to continue him or her in office, as mentioned in section 382(2), 383(2)(b) or 394.*
- (12) Nothing in this section affects any rule of law as to—*
- (a) things done otherwise than by passing a resolution;*
 - (b) circumstances in which a resolution is or is not treated as having been passed; or*

- (c) *cases in which a person is precluded from alleging that a resolution has not been duly passed.*

Majority written resolutions

194. (1) *Notwithstanding any provision to the contrary in this Act, a resolution in writing—*

(a) that is—

- (i) described as being an ordinary resolution, and*
 - (ii) signed by the requisite majority of members of the company concerned,*
- and*

(b) in respect of which the condition specified in subsection (7) is satisfied,

shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held.

(2) *For the avoidance of doubt, the reference in subsection (1) to a provision to the contrary includes a reference to a provision that stipulates that the company in general meeting, or the members of the company in general meeting, must have passed the resolution concerned.*

(3) *In subsection (1) “requisite majority of members” means a member or members who alone or together, at the time of the signing of the resolution concerned, represent more than 50 per cent of the total voting rights of all the members who, at that time, would have the right to attend and vote at a general meeting of the company (or being bodies corporate by their duly appointed representatives).*

(4) *Notwithstanding any provision to the contrary in this Act, a resolution in writing—*

(a) that is—

- (i) described as being a special resolution, and*
- (ii) signed by the requisite majority of members,*

and

(b) in respect of which the condition specified in subsection (7) is satisfied,

shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the company duly convened and held.

(5) *For the avoidance of doubt, the reference in subsection (4) to a provision to the contrary includes a reference to a provision that stipulates that the company in general meeting, or the members of the company in general meeting, must have passed the resolution concerned.*

(6) *In subsection (4) “requisite majority of members” means a member or members who alone or together, at the time of the signing of the resolution concerned, represent at least 75 per cent of the total voting rights of all the members who, at that time, would have the right to attend and vote at a general meeting of the company (or being bodies corporate by their*

duly appointed representatives).

- (7) *The condition referred to in subsections (1)(b) and (4)(b) is that all members of the company concerned entitled to attend and vote on the resolution referred to in subsection (1) or (4), as the case may be, have been circulated, by the directors or the other person proposing it, with the proposed text of the resolution and an explanation of its main purpose.*
- (8) *A resolution passed in accordance with subsection (1) or (4) may consist of several documents in like form each signed by one or more members.*
- (9) *Without prejudice to section 195(5), a resolution passed—*
- (a) in accordance with subsection (1), shall be deemed to have been passed, subject to subsection (10), at a meeting held 7 days after the date on which it was signed by the last member to sign, or*
 - (b) in accordance with subsection (4), shall be deemed to have been passed, subject to subsection (10), at a meeting held 21 days after the date on which it was signed by the last member to sign,*
- and where the resolution states a date as being the date of his or her signature thereof by any member the statement shall be prima facie evidence that it was signed by him or her on that date.*
- (10) *Without prejudice to section 195(5), if—*
- (a) a date earlier than that referred to in subsection (9)(a) or (b) (not being earlier than the date on which the resolution was signed by the last member to sign) is specified in the resolution referred to in subsection (1) or (4) as the date on which it shall have been deemed to have been passed,*
 - (b) all members of the company concerned entitled to attend and vote on that resolution state, in a written waiver signed by each of them, that the application of subsection (9) is waived, and*
 - (c) there accompanies the delivery to the company under subsection (3) of section 195 of the documents referred to in that subsection that written waiver (which may be so delivered to the company by any of the means referred to in that subsection),*
- then the resolution shall be deemed to have been passed on the date specified in it.*
- (11) *A written waiver under subsection (10) may consist of several documents in like form each signed by one or more members.*

Connected persons

220. (1) For the purposes of this Part (and without prejudice to subsection (3)), a person is connected with a director of a company if, but only if, the person (not being himself or herself a director of the company) is—
- (a) that director's spouse, civil partner, parent, brother, sister or child;
 - (b) a person acting in his or her capacity as the trustee of any trust, the principal beneficiaries of which are that director, the spouse (or civil partner) or any children of that director or any body corporate which that director controls; or
 - (c) in partnership with that director.
- (2) In subsection (1)(a) and (b) "child", in relation to a director, shall be deemed to include a child of the director's civil partner who is ordinarily resident with the director and the civil partner.
- (3) A body corporate shall also be, for the purposes of this Part, connected with a director of a company if it is controlled by that director or by another body corporate that is controlled by that director.
- (4) For the avoidance of doubt, subsection (3) is without prejudice to the application of section 18(c) of the Interpretation Act 2005 ("person" to include body corporate, etc.) to subsection (1)(b).
- (5) For the purposes of this section, a director of a company controls a body corporate if, but only if, he or she is, alone or together with any other director or directors of the company or any person connected with the director or such other director or directors—
- (a) interested in one-half or more of the equity share capital of that body; or
 - (b) entitled to exercise or control the exercise of one-half or more of the voting power at any general meeting of that body.
- (6) In subsection (5)—
- (a) "equity share capital" has the same meaning as it has in section 7; and
 - (b) references to voting power exercised by a director shall be read as including references to voting power exercised by another body corporate which that director controls.
- (7) For the purpose of subsections (5)(b) and (6)(b) "voting power" does not include any power to vote which arises only in specified circumstances.

It shall be presumed, for the purposes of this Part, until the contrary is shown, that the sole member of a single-member company is a person connected with a director of that company

OmniPro Commentary

| Requirements | Transaction/arrangement |
|---|--|
| | Financial assistance or transaction with directors (S203) |
| Circumstances in which the transaction is to be entered into. | Yes |
| Nature of the transaction or arrangement | Yes |
| Person(s) to or for whom the transaction or arrangement is to be made | Yes |
| Purpose of transaction or arrangement | Yes |
| Nature of benefit to the company directly or indirectly | Yes |
| Declarants to the state that they have made full enquiry into the affairs of the company and have formed an opinion that the company can pay its debts as they fall due for the following 12-month period | Yes |

Application and opportunities

Where the SAP procedure is utilised and all the requirements of Section 203 of CA 2014 have been followed it provides the ability for companies to loan money/provide guarantees/enter into credit transactions to/for the benefit of directors or their connected parties of amounts representing 10% or more of the net/relevant assets of the company which was strictly prohibited under the old Companies Act. It is important to remember that even where a SAP procedure has been performed to validate a loan to the director or their connected parties and a market rate of interest is not charged, tax on the deemed benefit in kind will need to be paid over to the revenue as part of the companies PAYE/P30 obligations. In addition the company is required to pay over income tax of 20/80ths on the amount loaned to the revenue which is repayable to the company if repayment is made by the director within a set time period. Note this same point is also relevant where the loan is less than 10% of the net assets.

Section 203 is similar to Section 60 of the Companies Act 1990 (whitewash procedure) so in effect there is nothing hugely new here other than additional items required to be included in the declaration. This section is very beneficial where funding is required to purchase shares in the company itself. For example this section could be utilised where a retiring shareholder seeks to sell his/her shares, and these shares are to be purchased by another company from that shareholder with the end result being that the acquirer of the shares becomes the parent of the company in which the shares are being sold. In this example if the company whose shares are being sold provides funds to the acquiring company to allow that company to purchase its shares then it is said to be providing financial assistance to allow for the purchase of its own shares.

Where a company has entered into a restricted activity, it provides an ability to undo the transaction (e.g. the giving of a directors' loan) by the director repaying the monies advanced and then entering into a SAP. In this case the company will have been in breach of the Companies Act which should be reported. However, it can be made clear in the letter to the ODCE that the company was in breach, however since then and following the company being informed of the error, the money was repaid and a valid SAP procedure was performed to validate the loan. In this way the penalties may not be as severe.

Pitfalls

Not performing the SAP procedure until after the restricted activity has commenced in which case the SAP is deemed to be invalid. This exposes the directors and company to penalties as they are deemed to be guilty of a category 3 offence.

Not filing the directors' declaration with the CRO within 21 days of the restricted activity occurring/commencing and as a result the SAP is considered invalid and the transaction is deemed to be in breach of company law. This exposes the directors and company to penalties as they are deemed to be guilty of a category 3 offence.

Where a SAP procedure under Section 203 is carried out, to permit a loan to a director for an amount of 10% or more of the net assets (as otherwise restricted by Section 239 CA 2014), incorrectly assuming that no tax issues arise. Even where a SAP procedure has been performed to validate a loan to the director and a market rate of interest is not charged, tax on the deemed benefit in kind will need to be paid over to the revenue as part of the companies PAYE/P30 obligations. In addition the company is required to pay over income tax of 20/80ths on the amount loaned to the revenue which is repayable to the company if repayment is made by the director within a set time period.

Not meeting all the requirements of the summary approval procedure as outline in the relevant sections thereby resulting in the restricted activity being deemed to be in breach of company law.

Incorrectly applying the summary approval procedures under Section 205 in relation to the variation of capital (in a three way share for undertaking swap) but not recognising that the company had no distributable reserves to effect the transfer itself.

Making a declaration where there was not reasonable grounds for doing so.

Step Plan / Action Help Sheet

Name of procedure: Summary approval procedure to allow loans/credit transactions/guarantees of 10% or more of the net assets of the company to be given to directors

Sectional references: Section 239 of CA 2014 (Prohibition of loans etc. to directors and connected persons); Section 240 of CA 2014 (arrangements of certain value); Section 241 of CA 2014 (reduction in amount of company's relevant assets); Section 242 CA 2014 (Ability of the Summary Approval procedure to permit loans); Section 246 of CA 2014 (arrangement in which Section 239 is voidable at instance of the Company); Section 202 of CA 2014 (Summary Approval Procedure) & Section 203 of CA 2014 (Declaration to be made in cases where there are transactions with directors); Section 181 (notice of general meetings); Section 193 (unanimous written resolution) & Section 194 (majority written resolution) of CA 2014; Section 220 (connected persons)

Date:

Steps:

| Step | Commentary | Legislative Reference | Done |
|------|---|--|------|
| 1a | Assess whether the transaction comes within the remit of Section 239 and 203 of CA 2014 – loans/guarantees/credit transactions given to/for the benefit of the directors. To assess if it does see step 1(b) | S91 CA 2014 | |
| 1b | <p>If the transaction goes ahead, will the company have provided loans to its directors or connected parties*, or will the company have provided guarantees on behalf of directors; or will the company have entered into credit transactions on behalf of directors which when taken in total with all other transaction result in the loans etc. representing 10% or more of the net asset of the company as per the latest set of financial statements approved at the AGM (which is usually the prior year financial statements, if there is no previous financial statements prepared as it is a new company it should be no more than 10% of the called up share capital).</p> <p>If the answer to this question is yes, then in order to ensure the loan etc. is legal the summary approval procedure must be carried out under Section 203 & 242. If the SAP is not performed and the transaction is effected the company is in breach of company law and this is reportable by the auditor to the ODCE. Note in the financial statements disclosure is required of the % the loan is to the total net assets of the company.</p> <p>If the answer to these questions is no, then there is no need to go through the summary approval process as Section 241 of CA 2014 allows loans/guarantees etc. to be entered into for the benefit of the directors where the total value of all the arrangements are less than 10% of the net assets of the company as per the last set of financial statements presented and approved at the last general meeting.</p> | S220, S238(2), S239, 240, 241, 203 CA 2014 | |

| | | | |
|----|--|--------------|-----|
| | <p>*connected parties are as defined in Section 220 of CA 2014 and include the:</p> <ul style="list-style-type: none"> - directors spouse, civil partner, parent, brother, sister or child; - a person acting as trustee, the principal beneficiaries of which are the directors, their spouse or any children of the director or a company controlled by the directors; - a person in partnership with the director - a company that is controlled by the director or directors of the company who is giving the loan or it is controlled by a connected part of the director i.e. interested in 50% or more of the share capital of the company or the ability to exercise the voting rights of the company at any general meeting - where there is a single member company it will be assumed that the director is connected to that person. | | |
| 1c | <p>Has no loan/guarantee etc. been entered into for the benefit of the director & connected parties during the year however:</p> <ul style="list-style-type: none"> - the loan etc to the directors is in 10% or more of the net asset of the prior period financial statements (and a SAP has not been performed in the past to legitimise this) and at the time the loan was initially provided it did not breach the 10% test; and the reason why it now exceeds 10% is due to the net assets of the company decreasing; <p>then this is not a reportable offence and is not seen as a breach of S239 so therefore no Summary approval procedure is required.</p> <p>If the above scenario applies see step below</p> <p>Note if the 10% rule is breached and it relates to a loan previously approved under the SAP procedure then there is no breach.</p> | S241 2014 | CA |
| 1d | <p>If the issue above arises, S241 requires that where the directors of the company or the party concerned become aware of the issue (i.e. the loan being 10% or more of the net assets) then the terms of the arrangement must be rearranged (i.e. the loan repaid, or guarantee cancelled/reduced such that the 10% rule is not breached etc.) to ensure that the balance is less than 10% of the net assets within 2 months from when the directors become aware.</p> <p>If this is not done the transaction is voidable at the instance of the company. Note however it is not reportable to the ODCE.</p> | S241 2014 | CA |
| 2a | <p>Assess whether there are tax implications as a result of the proposed SAP to allow the loan/guarantee to be provided or even where a SAP is not required as it does not breach the 10% rule:</p> <ul style="list-style-type: none"> - If the loan is provided to directors and their associates interest free or at less than market rates , then ensure the company applies PAYE on the deemed benefit in kind given to the director | S438 1997 | TCA |

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| | <p>by the company (i.e. an interest free loan or a favourable interest loan). The deemed interest rate to use is that dictated by revenue and can change from year to year and depends on whether the loan was given for home loan purchases/improvements or for purposes other than for purchasing/improving a home (note this is applicable regardless of whether the loan is in excess of 10% of the net assets or not).</p> <p>- Ensure that income tax is paid over to the revenue by the company at an amount equal to 20/80ths of the value of the loan at the year end date. This is refundable if the loan is repaid within a set period of time. (note this is applicable regardless of whether the loan is in excess of 10% of the net assets).</p> <p>- There are no VAT or stamp duty implications;</p> <p>- If the company subsequently decides to write the amount owed off, the director will be subject to income tax on the amount written off in the tax year it is written off and a credit given for the income tax paid over by the company when the loan was first given.</p> <p>Note the only exception to the application of BIK and income tax on such loans as detailed above is where a loan is provided to a director or employee and:</p> <ul style="list-style-type: none"> - that loan along with all other loans to that person is not in excess of €19,050; and - the person does not own a material interest in the company (i.e. does not own more than 5% of the company); and - the borrower works full time in the company. | | |
| NOTE STEP 2b(i) to 2c IS ONLY APPLICABLE WHERE A SAP IS NOT REQUIRED TO BE PERFORMED | | | |
| 2b(i) | <p>Where it has been determined that a SAP is not required, under CA 2014, a formal loan agreement should be entered into with the directors otherwise there is an assumed interest rate.</p> <p>As a result draft a loan agreement in relation to the loan and arrange for it to be signed by all parties (see example of such a loan agreement in the linked documents section below).</p> | | |
| 2b(ii) | Draft the contents of the proposed loan agreement (see example of such a loan agreement below). | | |
| 2b(iii) | Hold a board meeting to approve the provision of the loan. The minutes of the board meeting should detail: | Section 201, 202 & 204 of CA 2014 | |
| 2b(iii)1 | the name of the company and the company number | | |
| 2b(iii)2 | the date, location and time of the meeting and the members present at the meeting | | |
| 2b(iii)3 | details of who was appointed chairman of the meeting | | |

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| 2b(iii)4 | that the directors have disclosed their interest in the decisions been taken under Section 231 of CA 2014; Note that notwithstanding the disclosures, was pursuant to the companies Constitution, entitled to vote and be counted in the quorum in relation to any matter in which he/she has an interest. It should also state whether a quorum was present if there is a minimum requirement stated in the constitution. | S231, 228 & 229 of CA 2014 | |
| 2b(iii)5 | Ensure and state the fact that at least one director is a resident in the European Economic Area as required by Section 137 CA 2014 and that no director present holds more than 25 directorships for the purposes of and in accordance with Sections 228 and 229 CA 2014. | S137 CA 2014 | |
| 2b(iii)6 | Ensure that it records (and ensure it is a fact) the fact that no director is restricted from acting as a directors as detailed in Section 819, 839, 840 841, 842 and 828 of CA 2014. | Section 819, 839, 840 841, 842 and 828 of CA 2014. | |
| 2b(iii)7 | Include a paragraph for the details of the loan. Minute the fact that the reason for the meeting was to approve a loan which was less than 10% of net assets be advanced to the director. | S240 CA 2014 | |
| 2b(iii)8 | Detail the fact that the draft loan agreement was submitted to the directors for review. | | |
| 2b(iii)9 | Minute that it was resolved that the loan be given stating the amount advanced, the fact that interest is or is not payable and that it was a loan of less than 10% of the company's relevant assets. Also resolve that the company seal be affixed to the loan agreement subject to the terms within the loan agreement | S240 CA 2014 | |
| 2b(iii)10 | Declare the meeting closed | | |
| 2b(iii)11 | Have the chairperson sign and date the board minute and insert it into the minute book of the company. | | |
| 2c | Ensure the disclosure required by Section 307 and 308 are made in the financial statements. See separate directors loan checklist in relation to same. | S307 & 308 CA 2014 | |
| Note only where it is determined that a Summary approval procedure is required from the work performed in steps 1 and 2, should you continue onto to step 3 etc. If there is no breach no further work is required. | | | |
| 3 | Arrange to hold a board meeting no longer than 12 months from the carrying out of act of the company providing the loan. At this meeting: | S202(1) CA 2014 | |
| 3a | - approve the provision of the loan to the director and the summary approval procedure | S202(1), S239 CA 2014 | |

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| 3b | - the majority of directors or all of the directors agree to recommend to the members to allow the company to provide the loan to the director and a special resolution be passed to permit this activity. | S201 & S202(1) CA 2014 | |
| 3c | <p>At this meeting or a meeting held not earlier than 30 days before the approval of the members by special resolution (where an initial meeting discussed in step 2 has been held after this 30 day period), the directors should make a declaration in writing declaring that having made full enquiry, the company will be able to pay its debts as they fall due for the 12 months period following the date the restricted activity was carried out (Section 201 & 202 CA 2014). See step 4 for further items to be included in the directors' declaration.</p> <p>The special resolution can be in writing under Section 193 (unanimous resolution)/ Section 194 (majority resolution) or passed at an extraordinary general meeting.</p> <p>Where the resolution is passed in writing then the directors' declaration must be attached to the written resolution.</p> | S202(6) CA 2014 | |
| 4 | Draft the contents of the proposed loan agreement (see example of such a loan agreement in the linked documents section below) | | |
| 5 | The minutes of the board meeting in step 2 should detail: | Section 201, 202 & 204 of CA 2014 | |
| 5a | the name of the company and the company number | | |
| 5b | the date, location and time of the meeting and the members present at the meeting | | |
| 5c | details of who was appointed chairman of the meeting | | |
| 5d | that the directors have disclosed their interest in the decisions been taken under Section 231 of CA 2014; Note that notwithstanding the disclosures, was pursuant to the companies Constitution, entitled to vote and be counted in the quorum in relation to any matter in which he/she has an interest. It should also state whether a quorum was present if there is a minimum requirement stated in the constitution. | S231, 228 & 229 of CA 2014 | |
| 5e | Ensure and state the fact that at least one director is a resident in the European Economic Area as required by Section 137 CA 2014 and that no director present holds more than 25 directorships for the purposes of and in accordance with Sections 228 and 229 CA 2014. | S137 CA 2014 | |
| 5f | Ensure that it records (and ensure it is a fact) the fact that no director is restricted from acting as a directors as detailed in Section 819, 839, 840 841, 842 and 828 of CA 2014. | Section 819, 839, 840 841, | |

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| | | 842 and 828 of CA 2014. | |
| 5g | <p>Include a paragraph for 'Background' providing details of the proposed loan to be given to the director (include the name and address of the director who is due to receive the loan, the amount to be loaned) giving details of the reasons why it is proposed and how it is in the best interests of the company to provide it.</p> <p>Disclose the fact that a summary approval procedure is required to be implemented in order to legitimise the transaction.</p> | S239, S203 CA 2014 | |
| 5h | <p>Include a paragraph for 'Purpose of meeting' providing exact details for the reason why the meeting was held e.g. to consider and if thought fit to approve the provision of the loan to the director on the basis that it was in the interests of the company (and this loan came within the provisions of S239 CA 2014) and provide a directors declaration as required by Section 202 & 203 of CA 2014 in order to allow the loan to be provided and to recommend to the shareholders to pass a special resolution to effect the transaction.</p> | S202 & 203 CA 2014 | |
| 5i | <p>Detail the fact that the draft loan agreement was submitted to the directors for review.</p> | | |
| 5j | <p>Provide details of the requirements of the summary approval procedure (requirement for a special resolution) with reference to Section 239 and what is to be included in the directors declaration under Section 203 in the minutes (Note the directors declaration is filed by way of Form SAP-203). That being:</p> <p>1) The majority of directors must make a declaration stating:</p> <ul style="list-style-type: none"> - the circumstances in which the transaction or arrangement is to be entered into; - the nature of the transaction or arrangement; - the person or persons to or for whom the transaction or arrangement is to be made; - the purpose for which the company is entering into the transaction or arrangement; - the nature of the benefit which will accrue to the company directly or indirectly from entering into the transaction or arrangement as outlined above; and - that the declarants have made full inquiry into the affairs of the Company and that, having done so, they have formed the opinion that the Company, having carried out the transaction whereby such assistance is to be given, will be able to pay its debts in full as they become due | S239, S203(1) & 208 CA 2014 | |

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| | <p>during the period of 12 months after the date of the relevant act;</p> <p>2) that a special resolution is required to be passed by the shareholders approving the reduction in capital.</p> | | |
| 5k | Detail the fact that the directors were advised of the serious nature of the Section 239 declaration and the penalties that the directors were liable for if the directors make the declaration without unreasonable grounds for doing so (i.e. they may be liable for all liabilities that arise within the 12 month period). | S210 CA 2014 | |
| 5l | <p>Detail the fact that the directors took account of the financial position and liabilities of the company (including prospective and contingent) and have assessed the financial position of the company. There is no requirement to assume either that the company will be called upon to pay moneys on foot of a guarantee or that security will be realised where these items are applicable.</p> <p>Include the fact that the directors were presented with the balance sheet before the transaction takes place.</p> | S204(1) CA 2014 | |
| 5m | Agree that the directors recommend to the shareholder that the directors be given authority to sign the loan agreement on the company's behalf | | |
| 5n | <p>Detail the transaction itself (i.e. the provision of a loan to a director which unless the SAP is carried out it would be unlawful, the amount of the loan and the proposed terms of the loan and the reason why it is in the best interest of the company to provide the loan), the parties to the transaction (i.e. name the director or its connected parties the loan/guarantee/credit commitment is provided to).</p> <p>Detail the fact that such a transaction is not permitted under Section 239 unless Section 203 of CA 2014, SAP approval procedure is applied.</p> | | |
| 5o | Draft up the directors declaration to be signed by all or a majority of directors which addresses (note the directors declaration can be included on the Form SAP-203 which is the form filed with the CRO): | S203(1) CA 2014 | |
| | - the circumstances in which the transaction or arrangement is to be entered into; | | |
| | - the nature of the transaction or arrangement; | | |
| | - the person or persons to or for whom the transaction or arrangement is to be made; | | |
| | - the purpose for which the company is entering into the transaction or arrangement; | | |
| | - the nature of the benefit which will accrue to the company directly or indirectly from entering into the transaction or arrangement as outlined above; and | | |
| | - that the declarants have made full inquiry into the affairs of the Company and that, having done so, they have formed the opinion that the Company, having carried out the transaction whereby such assistance is to be given, | | |

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| | will be able to pay its debts in full as they become due during the period of 12 months after the date of the relevant act | | |
| | - the circumstances in which the transaction or arrangement is to be entered into; | | |
| 5p | Detail the acknowledgement of the directors of the obligations imposed under Section 203 and they acknowledge that the draft declaration was true and correct. | S203 2014 | CA |
| 5q | Detail the fact that the directors' declaration was produced to the directors for their review and after consideration it was signed by all or a majority of directors on the basis that all the conditions required by Section 203 as detailed above had been met, they were happy to proceed to deem the Section 203 Declaration executed. Detail the fact that the Form SAP-203 was signed by all directors making the declaration. | S203(1) 2014 | CA |
| 5r | Detail the wording of the special resolution to allow the provision of loan to the directors or their connected parties which will be provided to the shareholders for approval. This wording should state that the giving of the loan referred to in the directors' declaration for the purposes of S239 CA 2014 was approved and the fact that the directors are authorised to sign the loan agreement on the company's behalf | S202 2014 | CA |
| 5s | Recommend that the directors' declaration/Form SAP-203 and the special resolution when passed be filed with the CRO within 21 days of reducing the share capital. | S203 2014 | CA |
| 5t | Detail the fact that it was resolved that an extraordinary general meeting be held to allow the shareholders to vote on the special resolution and that the required notice be given to all members together with a copy of the signed directors' declaration which includes the independent persons report. THIS STEP IS ONLY PERFORMED WHERE A WRITTEN RESOLUTION IS NOT BEING PASSED I.E. WHERE A MEETING IS HELD. | S92 2014 | CA |
| 5u | Declare the meeting closed | | |
| 5v | Have the chairperson sign and date the board minute and insert it into the minute book of the company. | | |
| 6 | Draft the written special resolution based on the resolutions detailed in the board meeting above and reference the fact that the directors' resolution is attached to the written resolution itself and have this resolution signed by all members entitled to vote where a unanimous resolution has been passed in accordance with Section 193(1) CA 2014. Ensure the company name and number is included at the top of this resolution and the narrative at the top specifically states that they are special resolutions and pursuant to S193(1) of CA 2014 for all purposes be as valid and effective as if a general meeting had been convened. Where a written majority resolution has been passed ensure this resolution is signed by the required majority of members and it refers to S194 with wording similar to the aforementioned. | S193 2014 S194 2014 | CA CA |

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| | Ensure where a majority written resolution is to be passed that the required notice mentioned in step 6a below is dealt with. | | |
| 6a | <p>Where a written resolution is not utilised there is no need for the resolution to be signed. In addition it should not refer to Section 193/194 in any way and the wording in relation to it being valid and effective as if a general meeting had been convened because effectively an extraordinary meeting has to be convened for a resolution that is not written.</p> <p>Ensure all members entitled to attend and vote at the meeting/on the written resolution have been informed of the meeting within the required notice period (this is also applicable for a majority written resolution). The required notice period of not less than 21 clear days' notice should be given unless a consent to short notice is obtained from all its members and auditor where applicable in which case a shorter period can be given as dictated by Section 181 of CA 2014.</p> <p>This notice should include: the date, time, location of the meeting, give details of the special resolutions to be considered for approval, the fact that a proxy can be utilised which does not have to be a member and the date by which the member must notify the company of a proxy being used. A consent to short notice should be signed by all members including the auditor (if applicable) where less than the statutory notice is provided which is a signed confirmation from all parties that they consent to the short notice. A copy of the directors' declaration should be attached to the notice of the meeting.</p> | S181 CA 2014 | |
| | | S181(5) 183 CA 2014 | |
| 7 | <p>Where an extraordinary meeting is held (as opposed to a written resolution), draft the minutes of the extraordinary general meeting with the usual requirements (as per steps 5(a)-5(c)) and detail the approval of the special resolution to approve the provision of the loan with the wording as per step 5r. Where consent to short notice was given note this in the minutes to the meeting.</p> <p>Ensure the minutes are signed by the chairperson.</p> | S202 CA 2014 | |
| 8 | <p>Hold a board meeting to advise that the shareholders had passed the resolutions at the extraordinary general meeting held earlier in the day and to instruct the secretary to file the Form G1 together with the directors' declaration within 21 days to the CRO.</p> <p>Document in the board minutes the aforementioned facts in addition to the standard confirmations detailed in step 5(a) to 5(f) above.</p> | Section 201(3) & 203 of CA 2014 | |

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| | Note THIS IS ONLY REQUIRED WHERE AN EXTRAORDINARY GENERAL MEETING HAD BEEN HELD | | |
| 9 | Ensure a copy of the declaration/Form SAP-203 is delivered to the CRO not later than 21 days after the date on which the restricted activity commenced. If it is not submitted within this period it will invalidate the summary approval process | Section 201(3) of CA 2014 | |
| 10 | File the Form G1 with the CRO ensuring that the directors' declaration is attached to the G1 (ideally within 15 days of passing the special resolution). | S191 CA 2014 | |
| 10a | in the effective date on the G1, date this the date the special resolution was dated. Include the company number and Company name on page one of Form G1 | | |
| 10b | In the resolution details section of the Form G1, type the resolutions passed into the resolution text area on the form G1 which is an exact replicate of the resolution prepared at step 5 or 6 above or alternatively attach a copy of the resolution prepared and state 'see resolution attached'. Also attach the directors declaration (which includes the independent persons report) | | |
| 10c | In the resolution passed section of the Form G1, insert 'In writing' if done by a written resolution as opposed to by a formal meeting. If by meeting select the general meeting option. | | |
| 10d | In the writing type section of the Form G1, insert 'Pursuant to section 193(1) (unanimous written resolution) if it is done by written resolution under S193 CA 2014. If it is done by written majority resolution (S194 CA2014) insert 'PURSUANT TO Section 194' If it is passed by meeting then insert 'extraordinary general meeting'. | | |
| 10e | In the section 'particulars of persons verifying the contents of the form', under revenue online section include 'No' where it is being filed on core | | |
| 10f | Complete the information of the person/director that will sign the signature page at 'particulars of persons verifying the contents of the form' of the Form G1 on CORE or if done by hard copy in the certification section of the form | | |
| 10g | Include details of the agent presenting/filing the From G1 in the detail of presenter section of the Form G1 | | |
| 10k | File the Form G1 on CORE or send to the CRO together with the directors' declaration where a hard copy is filed out | | |
| 10l | Arrange for a director to sign the electronic G1 signature page once filed on core (where core is used) and send this to the CRO with the directors' declaration. | | |
| 11 | Ensure the disclosure required by Section 307 and 308 are made in the financial statements. See separate directors loan checklist in relation to same. | S307 & 308 CA 2014 | |
| <p>In my professional opinion in my capacity as the professional advisor, the summary approval procedure and related company secretarial documentation comply with the Company Law requirements.</p> <p>Signed: _____ Date: _____</p> | | | |

