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## INTER – COMPANY LOANS & INVESTMENT (Sect. 372A)

**Sec: 372A Inter- Co. Loans & Advances (Only Pub. Co.)**

**A. <u>Scope of Sec. 372A</u>**

(1) **Any Co. Directly or indirectly in any form-**
(a) Can't give **loan** to any other Body Corporate
**(c)** Can't acquire **security** of any other BC by way of **S**ubscription, **P**urchase or **O**therwise
(b) Can't give any **guarantee** or can't provide any security to –
1. A person who gives a loan to any Body Corporate; Or
2. A Body corporate which gives loan to any other person.

If **Total Amt. (New + Old) of** loan or guarantee or security is **Higher** of:-
**a.** 60% of Paid Up Capital & Free Reserve **Or**
b. 100 % of free Reserve **WHICHEVER IS HIGHER**

**1st Prov.:** if amt. exceed above limit – then can't give unless "**Previously Authorized** by **Special Resolution**" in GM (Res. should specify **amt.) Note:** If amt. not exceeds: No **SR** is required.

**B. Relaxations in condition:** No special resolution for guarantee

**2nd Prov.:** However, **BOD may give (only) "*Guarantee*"**, w/o passing special resolution, **if following 3 conditions satisfies:**

(a) Resolution should be **passed** in **BOD meeting**.
(b) Due to **Exceptional circumstances guarantee has been provided.**
(c) Resolution of the BOD is confirmed within **12 months** in a **GM or AGM** (**whichever is earlier**), held immediately after passing of the BOD resolution.

**C. Requirement of notice of special resolution:**

**3rd Prov.:** The notice of special resolution **must** state clearly the following particulars:
- The **specific limits**
- **Particulars of other BC** in which investment is proposed to be made or loan/guarantee/security is proposed to be given.
- **Purpose** of making loan/investment/guarantee/security.
- **Specific sources of funding** & other relevant details.

**D. <u>Requirements for making Loan/investment/guarantee/security:</u>**

(2) **Approval of BOD**: following points may be noted in this regard:
- **Approval in All Cases:** BOD approval reqd. in **all cases**, irrespe. of quantum of Lo./ Invest./ Guar/Sec.
- **Prior Approval:** Prior approval of BOD is obtained, prior to making above.
- **Passed only at BOD meeting:** BOD approval shall be obtained by passing a resolution **only at BOD meeting** [not by circulation u/s289].
- **Unanimous approval**: all Dir. **present at BOD meeting** must vote in favor of resolution.
- **NO specific notice**: Spec. notice require only/s 316& 386- here no requ. of giving spec. notice to DIR.
- **Approval of PFI**: If Co. has taken term loan from PFI then prior appr. **from PFI also** shall be obtained.

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**Note:** In addition to above procedure of SS (2), previous auth. by SR is required at GM– **if cross ceiling limit.** Whether loan etc. within limit or above limit – prov. of SS. (2) will apply. But if Co. cross the limit – **1st prov. of SS(1) also apply**

**E. <u>No approval of PFI require:</u>**

**Proviso:** No need of Prior approval of PFI, if following 2 conditions are satisfied:

I. If amt. of Loan/Investment/Guarantee or security is not more than **60% of Paid up share capital & free reserve. <u>&</u>**

II. There is no default in repayment of loan install. or interest payment as per **T&C** of PFI.

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**F. Minimum Interest Rate:**

(3) No loan shall be made to any BC **at the rate of interest, which is lower than the prevailing 'Bank Rate'** (standard rate made public under section **S. 49 of the Reserve Bank of India Act, 1934)**

**G. No default in respect of public deposits is subsisting (only 58A NOT 58AA):**

(4) If a co. defaults u/s 58A [relating to public deposit], **then** Co. can't make any loan/investment/guarantee/ security till the time till **such default is subsisting.**

**Note:** Restriction not applies where Co. defaults in compliance with Sec. 58AA [relating to small depositors].

**H. Maintain Record:**

(5) Every co. shall keep a **register** for Loan/security/or guarantee provided to any **BC**
Following particulars will be **namely:**
(a) Name of Body corporate
(b) "**Amount, purpose & terms**" of loan/investment/G&S.
(c) **Date** on which Loan/investment/G&S is made/provided.

- Above facts should be **recorded** within **7 days** from the date when loan/investment/G&S is given.

(6) Above register shall be kept at registered office of Co. & shall be open for inspection for any member & members may take its copy after paying the fees & provisions of **S 163** shall apply accordingly.

**I. Non applicability of S. 372A**

(8) **Nothing contain in S. 372A apply on following co.:**

(i) **1**. Banking Co. **2.** Insurance Co. **3. H**ousing finance Co. in the ordinary course of Business.
**4**. **A** Co. who is established to provide 'finance' or 'infra-structural facility to **Industrial enterprises.**
(ii) A Co. whose **principal business** is the **acq. of Shares, Stock, Debentures or Other** securities.
(iii) A **Private** Co.
(vi) Investment made in shares allotted according to **Sec. 81(1)(a) [i.e. Right Shares]**
(v) A Co. gives L/G/S to its **"Wholly owned Subsidiary" (100%)** or invest in its security.

**J. Penalty for contravention of Sec. 372A:**

9) **If default of provision of this Sec. [other than (5)]:**
Co. & every defaulted officer **shall** punishable with imprisonment upto **2 yrs**. **OR** Fine up to Rs. **50,000.**

**Prov.:** If Loan is paid in **Full - No** imprisonment **or When partly paid**-imprison. shall **proportio**. be **reduced**.

**Prov.:** All Persons who are knowingly parties to any such contravention shall be liable, jointly & severally.

(10) **If default made in complying of SS (5) :**

- Co. & Every defaulted officer shall be punishable with fine up to Rs.5,000 **& Further fine** up to Rs. 500 per day – **till default continues**.

**Explanation:**

**(a)** **Loan:** includes debenture **&** Deposit by one co. in other co. not being a banking company.

**(b)** **Free reserve**: means which are free for **distribution as dividend** as per **latest audited balance sheet** of co. + share premium received on security [but **not include share money application**]

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**Notes:**

**(1)** **Sec 372A can be classified in 2 categories of investment:**
**(a) Within the prescribed Ceiling: in** this case we have to follow following procedure:
Pass resolution at BOD meeting with consent of **All Dir present** at meeting. & Obtain prior appr. of PFI .

(b) **Beyond the Prescribed ceiling: Procedure:**
Pass resolution at BOD meeting [same as above] + Obtain **prior approval** by way of S. R. at GM.

(2) We can say sub sec. 2/3/4/5/6 applicable on both above (a) & (b)
(3) Preferences share capital should be **included** in paid up share capital
(4) CRR & Sinking Fund Reserve **not to be included** in "Free Reserve" as not free to dist. As divided.
(5) Free Reserve = P&L +GR + Dividend Eq. Reserve+……………etc.
(6) In the case of Listed Co. >If limit of SS 1 is crossed then **Postal Ballot** is necessary.