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# SECTION: 186 LOAN & INVESTMENT BY COMPANY

*by* ACS Divesh Goyal


## *APPLICABILITY:*

- *This is applicable for **Private Company and Public Company.***

***APPROVAL:*** *No Company Shall Directly or Indirectly without Board Resolution-*

Give any **LOAN** to

Give any **GURANTEE** & provide **SECURITY** to

**Acquire** by way of Subscription, Purchase & otherwise, the **Securities** to

Any **Person** or **Body Corporate**

***Board Approval***: *Company can give loan or guarantee or providing any security or the acquisition* ***by Passing of Unanimous Board Resolution*** *at the meeting of Board of Directors, when limit does not exceed:*

- *60% of Paid up share capital + Free Reserve + Security Premium Account*

  *OR*

- *100% of Free Reserve + Security Premium Account*

  *Whichever is more.*

***General Meeting Approval***: *Where any Loan & Guarantee or providing any security or the acquisition* ***exceeds the limit mention above*** *then prior approval of Shareholder by passing of* ***Special Resolution*** *requires.*


***Public Financial Institution Approval***: *Prior Approval of* ***Concerned*** *Public Financial Institution is Require if term loans subsisting is (Aggregate of L, I, G & S already made along with L, I, G & S proposed to be made) exceed the limit mention above.*

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***Provided that***, *No approval of PFI is required if there is no <u>default made by company on repayment</u> of loan installment or payment of interest there on as per T&C of such loan to the Public Financial Institution.*

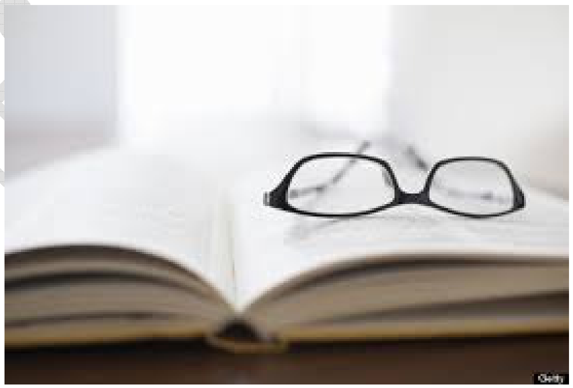
## *<u>CONDITIONS</u>: NO COMPANY*

a) *Which is Registered under **<u>section 12</u>** of the SEBI Act, 1992 and covered under such class or classes of companies as may be prescribed, shall take <u>inter-corporate loan or deposits</u> **exceeding the prescribed limit** and furnish in financial statement the details of the loan and deposits.*

b) *which is in **default in the repayment of any deposits** <u>accepted before or after the commencement of this Act or in payment of interest thereon,</u> shall give any L, G, S & I <u>till such default is subsisting.</u>*

**c)** ***<u>No loan</u>** shall be given under this section at a **<u>rate of interest lower than</u>** the prevailing yield of one year, three year, five year or ten year Government Security **<u>closest to the tenor of the loan.</u>***

**Note:** *The Company shall **disclose to** the member in the **financial statement** the full particular of **L, G, S & I made** and purpose for which **L, I, G & S Proposed to be utilized**.*



## REGISTER OF LOAN, GURANTEE, SECURITY AND ACQUISITON:

- *Every company giving loan or giving guarantee or providing security or making an acquisition of securities shall, from the date of its incorporation, maintain a register in **Form MBP 2.***
- ***Enter** therein **separately**, the particulars of L, G, S & I made as aforesaid.*
- *Entries in the register shall be made **chronologically** in respect of each such transaction.*
- *Entries in the register shall be made **within seven days** of making L, G, S & I.*
- *Register shall be kept at the **Registered Office** of the company.*
- *Register can be maintained either manually or in electronic mode.*
- *The **Extracts** from the register may be furnished to any member of the company on payment of such fee as may be prescribed in the Articles of the company which **shall not exceed 10 rupees for each page.***

- ***Punishment for violation:** If a company contravenes the provisions of this section,*

- ***The Company*** *shall be punishable with* ***fine*** *which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees AND*

- ***Every officer*** *of the company who is in default shall be punishable with* ***imprisonment*** *for a term which may extend to two years and with* ***fine*** *which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.*

***EXEMPTION:*** *The Provision of This Section* ***Not Apply***:

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## Loan, Gurantee & Security provide by

- **Banking Company**
  in ordinary course of business
- **Insurance Company**
  in ordinary course of business
- **Housing Finance Company** in ordinary course of business
- Comapny Engage inf Business of FINANCING OF COMPANIES "**NBFC**"
- Company engage in Business of PROVIDING INFRASTRUCTURE FACILITY
- Providing By HOLDING company to Its WOS
- Providing By HOLDING company to Joint Venture Company

## To Any Acquisition

- Made By **NBFC** Whose Principle Business is Acquision of Security
- Made By **Company** Whose Principle Business is Acquision of Security
- Shares Alloted in Pursuance of Section 62(1) (a)
- By HOLDING Company in WOS

## INVESTMENT IN SUBSIDIARY:

A Comapny **can't** make investment in **more than two layers** of **INVESTMENT COMPANY** Without prejudice to the provisions contained in the Act, unless otherwise prescrbed, Below mention **two Exceptions** of this:

A company from acquiring any other company **Incorporated** in a country **Outside India,** if such other company has investment subsidiaries beyond two layers **as per the laws of such country;**

A **subsidiary** company from having any investment subsidiary for the **purposes of meeting the requirements** under any law or under any rule or regulation framed **under any law for the time being in force**

*Thanx & Regards,*
*GOYAL DIVESH & ASSOCIATES*
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