

SECTION: 186 LOAN & INVESTMENT BY COMPANY

by CS Divesh Goyal on April, 2014

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 Required 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.

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

CONDITIONS: NO COMPANY

- a) Which is Registered under **section 12** of the SEBI Act, 1992 and covered under such class or classes of companies as may be prescribed, shall take inter-corporate loan or deposits 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** accepted before or after the commencement of this Act or in payment of interest thereon, shall give any L, G, S & I till such default is subsisting.
- c) **No loan** shall be given under this section at a **rate of interest lower than** the prevailing yield of one year, three year, five year or ten year Government Security **closest to the tenor of the loan**.

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:**

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 Acquisition
of Security

Made By **Company**
Whose Principle
Business is
Acquisition of Security

Shares Alloted in
Pursuance of
Section 62(1) (a)

By **HOLDING** Company
in WOS

INVESTMENT IN SUBSIDIARY:

A Company **can't** make investment in **more than two layers** of **INVESTMENT COMPANY** Without prejudice to the provisions contained in the Act, unless otherwise prescribed, 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,
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