Dave Nagar & Associates Initiative

APPLICABILITY OF SECTION 185 OF THE NEW COMPANIES ACT, 2013

Loan to Directors

(Loan made, Guarantee Given, Security provided to Related Parties)

(Corresponding Section 295 & 296 of Companies Act 1956)

Section 185 of the Companies Act, 2013 is became applicable w.e.f. 12th September 2013. This section is applicable to all companies. **THIS SECTION TOTALLY PROHIBITS LOANS/GUARANTEE/SECURITY GIVEN/PROVIDED BY COMPANY TO ITS DIRECTORS OR TO OTHER PERSONS IN WHICH DIRECTORS ARE INTERESTED.**

SECTION 185(1):	**185. (1)** Save as otherwise provided in this Act, **NO COMPANY SHALL, DIRECTLY OR INDIRECTLY, ADVANCE ANY LOAN,** including any loan represented by a book debt, to any of its directors **or** to any other person in whom the director is interested or **give any guarantee or provide any security** in connection with any loan taken by him or such other person:
EXCEPTIONS:	a) Loan to a Managing or whole time Director: (i) as a part of the conditions of service extended by the company to all its employees; or (ii) pursuant to any scheme approved by the members by a special resolution; or b) A company which in the ordinary course of its business provides loans

	or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.
TO ANY OTHER PERSON IN WHOM DIRECTOR IS INTERESTED" MEANS:	(a) any director of the lending company, or (b) a company which is its holding company or (c) any partner or relative of any such director; (d) any **firm** in which any such director or relative is a partner; (e) any **private company** of which any such director is a director or member; (f) any **body corporate** at a general meeting of which not less than twenty five per cent. of the total voting power may be exercised or **"controlled"** by any such director, or by two or more such directors, together; or (g) any **body corporate**, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.
PENALTY: SECTION 185(2)	If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, **and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.**

SECTION 186 OF THE COMPANIES ACT 2013

Investment & Loan

(Corresponding Section 372A of the companies Act, 1956)

SECTION 186(1): EXCEPTIONS:	186.(1): Without Prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, make investment through **not more than two layers of investment companies:** 1) 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;** 2) **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.
SECTION 186(2):	**186.(2):**No company shall directly or indirectly — (a) give **any loan** to any person or other **body corporate**; (b) give **any guarantee or provide security** in connection with a loan to any other body corporate or person; and (c) **acquire by way of subscription, purchase or otherwise, the securities** of any other body corporate, **Exceeding sixty per cent of its paid-up share capital, free reserves and securities premium account or one hundred per cent. Of its free reserves and securities premium account, whichever is more.**
SECTION 186(3): Prior Approval In	Where the giving of any loan or guarantee or providing any security or the acquisition under sub-section (*2*) **exceeds the limits** specified

General Meeting By Special Resolution	in that sub-section, prior approval by means of a **special resolution** passed at a **general meeting** shall be necessary.
SECTION 186(4): Disclosure	The company shall **disclose to the members** in the **financial statement** the full Particulars of the loans given, investment made or guarantee given or security provided and the **purpose** for which the loan or guarantee or security is proposed to be utilized by the recipient of the loan or guarantee or security.
SECTION 186(5):	No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors **present at the meeting and the prior approval of the public financial institution** concerned where any term loan is subsisting, is obtained: Provided that **prior approval of a public financial institution shall not be required** where the aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given **does not exceed the limit as specified in sub-section (*2*)**, and there is no default in repayment of loan installments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution
SECTION 186(6): Companies Registered under Sec.12 of the SEBI ACT, 1992	No company, which is registered under **section 12 of the Securities and Exchange Board of India 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 such company shall furnish in its financial statement the details of the loan or deposits.**

SECTION 186(7): Interest rate	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.**
SECTION 186(8): Default In Repayment	No company 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 loan or give any guarantee or provide any security or make an acquisition **till such default is subsisting.**
SECTION 186(9): Maintenance of Register	Every company giving loan or giving a guarantee or providing security or making an acquisition under this section **shall keep a register** which shall contain **such particulars and shall be maintained in such manner as may be prescribed.**
SECTION 186(10): Place of Keeping the Register	The register referred to in sub-section (*9*) shall be kept at the **registered office of** the company and — (*a*) shall be **open to inspection** at such office; and (*b*) **Extracts may be taken** there from by any member, and copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed.
SECTION 186(11): Exception	Nothing contained in this section, except sub-section (*1*), shall apply— (*a*) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities; (*b*) to any acquisition— (*i*) made by a non-banking financial company registered

	under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities: Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities; (*ii*) made by a company whose principal business is the acquisition of securities; (*iii*) of shares allotted in pursuance of clause (*a*) of sub-section (*1*) of Section 62.
SECTION 186(12):	The Central Government may make rules for the purposes of this section.
SECTION 186(13):Penalty	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.**
INVESTMENT COMPANY:	The expression "**investment company**" means a company whose principal business is the acquisition of shares, debentures or other securities;
INFRASTRUCTURE FACILITIES:	the expression "**infrastructure facilities**" means the facilities specified in Schedule VI.

Regards, CS Vinit Nagar, Partner Practicing Company Secretaries, Ahmedabad

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