Inter-Corporate Loans and Investments

Section 372A has been introduced and made operational w.e.f 31.10.98

Section 372A shall apply to a public company even though it does not have any share capital.

Scope of Section 372A

1. Making loans to any body corporate
2. Acquiring the securities of any other body corporate.
3. Giving any guarantees or providing any securities to –
   (i) A person who gives loan to any body corporate; or
   (ii) A body corporate which gives a loan to any other person.

Requirement for making loan, Investment, guarantees or securities

Approval of the Board	Approval by Special Resolution	Approval of Public Financial Institution
1. Approval in all cases required irrespective of quantum of loan, investment & Guarantees. 2. Prior approval to be taken from board 3. Resolution Passed at a Board meeting only. 4. Power to make intercorporate loans and investment cannot be delegated by apublic company 5. Unanimous approval is required of all director present in board meeting 6. No specific notice is required to the directors.	1) Ceiling Limit: (Higher of following) i) 60% of aggregate of paid-up share capital (equity+ preference) and free reserves. ii) 100% of free reserves of the company. 2) Where limit is not exceeded – no special resolution is required. 3) Special resolution – prior to loan and investment 4) Manner of Passing Special resolution a) Passed in the general meeting (AGM or EGM) b) Postal Ballet if : i) the company is listed company and ii) Proposed business relates to making any intercorporate loans, investments, guarantees, or securities. 5) Disclosure requirement in notice of Special Resolution a) Specific limits b) Purpose of making loans c) Specific source of funding	1. The company shall obtain the prior approval of the Public Financial Institution from which it has taken a term loan. (Even if no such condition is specified in loan agreement conditions). 2. No default in respect of public deposit repayment - As such where company fail to repay the public deposits or interest thereon, on the due date it may take loan after the default has been made good. 3. Minimum Interest shall not be less than the prevailing bank rate. (Bank rate mean the rate at which RBI lends money to the commercial bank)

	d) Particulars of other body corporate in which in which investment is proposed to be made.	

Relaxations in Conditions:

1. The board may give guarantee in excess of the ceiling limit without passing a special resolution if:
   (a) A unanimous resolution is passed in board meeting for giving guarantee.
   (b) There exist exceptional circumstances which prevent the company from passing special resolutions.
   (c) Resolution passed of the board is confirmed within 12 months
      (i) In the general meeting of the company; or
      (ii) In the annual general meeting

   Held immediately after passing of the Board's resolution *whichever is earlier.*

2. No prior approval of Public Financial Institution is required if following is satisfied:
   (a) There is default in repayment of loans instalment or interest
   (b) The aggregate of Loan, investments, guarantee, or security with proposed loans, investment, guarantees & securities does not exceed 60% of the aggregate of paid up share capital and free reserves.

Non – Applicability of Section 372A

1. Section 372A does apply if a company subscribe to right shares. Also investment made in right share by a company shall continue to be excluded in future at the time of calculating inter-corporate loans, investments, guarantees & securities already made.
2. To following companies
   (i) Banking Companies
   (ii) Insurance Companies
   (iii) Housing Finance Companies
   (iv) A company established with the object of financing industrial enterprises or providing infrastructure facilities
   (v) A company whose principal business is acquisition of shares, stock, debentures or other securities
   (vi) Private Companies
3. If :
   (a) Loans is made by a holding company to its wholly owned subsidiary; or.
   (b) Guarantees or securities are given by a holding company in respect of a loan made to its wholly owned subsidiary; or
   (c) Investment made by a holding company in its wholly owned subsidiary.