LOAN TO DIRECTORS UNDER COMPANIES ACT, 2013

Applicable Provisions

- Section 185 of the Companies Act, 2013 (Chapter XII- Meeting of Board and its Powers)
- Rule 10 of Companies (Meeting of Board and its Powers) Rules, 2014

Loan to Directors

Save as otherwise provided in the Act, *no company* shall, directly or indirectly:

1. 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*

2. give any guarantee or provide any security in connection with any loan taken by *him or such other person*

Any Other Person In Whom Director Is Interested

The expression "to any other person in whom director is interested" means:

a) any *director* of;
   - the *lending* company; or
   - its *holding* company

b) any *partner or relative* of any such director

c) any *firm* in which any such director or relative is a partner

d) any *private company* of which any such director is a *director or member*

e) any *body corporate* at a *general meeting* of which *not less than twenty- five percent* of the total voting power may be *exercised or controlled* by:
   - any such director; or
   - two or more such directors, together

f) 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

Non applicability of Section 185

Shall not apply to:

a) the giving of any loan to a *managing or whole-time director:*
   - as a part of the conditions of service extended by the company to all its employees; or
   - pursuant to any scheme approved by the members by a *special resolution*

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

c) any loan made by a holding company to its wholly owned subsidiary company
   or
   any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company

d) any guarantee given or security provided by a holding company in respect of loan made by any *bank or financial institution* to its *subsidiary company*

Provided that the loans made under *clauses (c) and (d)* are utilized by the subsidiary company for its *principal business activities*.

Penalty

If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of this section then:

a) 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,*

b) 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*.

Exemption to Private Company

Not applicable to private companies, if *all the following conditions* are fulfilled:

a). in whose share capital *no other body corporate* has invested any money;

b). if the borrowings of such a company from banks or financial institutions or any body corporate *is less than twice of its paid up share capital or fifty crore rupees, whichever is lower;* and

c). such a company has *no default in repayment* of such borrowings subsisting at the time of *making transactions* under this section.

Exemption to Nidhi Companies

Shall not apply, provided the loan is given to a director or his relative *in their capacity as members* and such transaction is *disclosed in the annual accounts by a note.*

Exemption to Government Companies

Shall not apply to Government company in case such company obtains *approval* of the Ministry or Department of Central Government which is administratively in charge of the company, or , as the case may be, the State Government before making any loan or giving any guarantee or providing any security under the section.