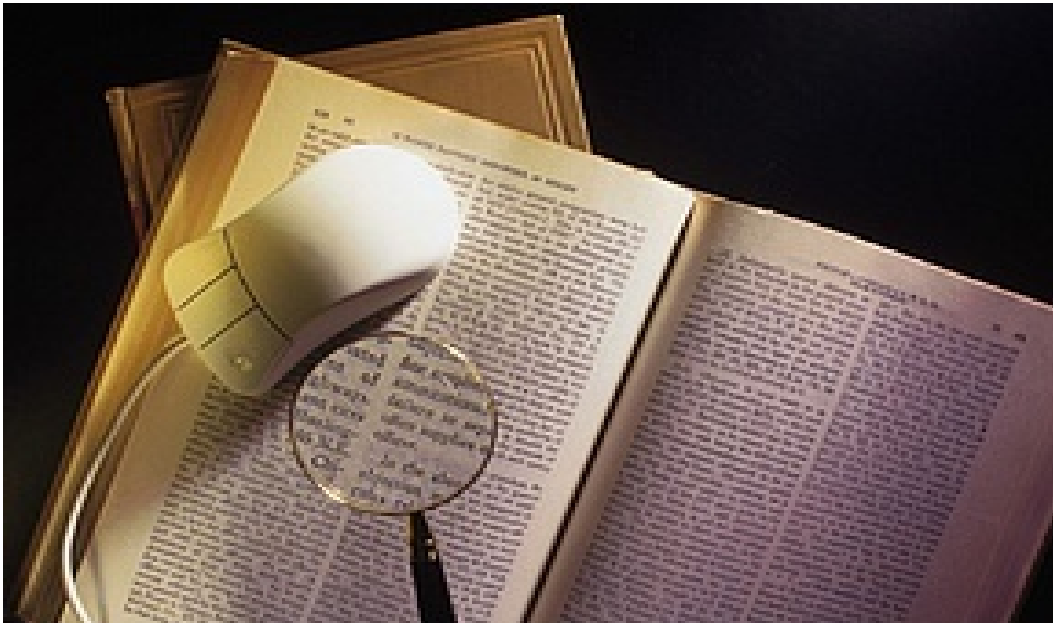




Corporate Research

Presents



Research Paper on the Indian Companies Act, 1956
- Inter-Corporate Loans and Deposits

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Inter Corporate Loans and Deposits:
Section 372A:

Premise:

To keep a check on the diversion of the funds of the shareholders, moneylenders and investors, restrictions have been imposed on the company making loans and investments in any other company.

Scope of the section:

- Giving Loans to any body corporate
- Acquiring the securities of another company by way of subscription, purchase or otherwise
- Giving security or guarantee to a person who gives a loan to any body corporate

Legal requirements:

A. Board of Directors' approval:

- Prior BoD approval is required compulsorily while transacting any of the above transactions
- All the directors present has to vote in favor compulsorily
- The resolution has to be passed at BoD meeting and not at by circular resolution

B. Approval by a special resolution:

- Special resolution is required only if the amount exceeds the ceiling limits prescribed:

Ceiling Limits:

If the amount of money involved is **higher of the following**, pass a special resolution:

- 60% (paid-up equity share capital + paid-up preference capital + free reserves) or
- 100% of the free reserves of the company
- Such special resolution is required prior to making the loan
- Previous authorization by special resolution shall be required if the aggregate of loans already made and the proposed ones exceed the aforesaid limits
- Special resolution can be passed at the annual general meeting or extra-ordinary general meeting
- A listed public company may get any resolution passed by means of a postal ballot.
- Notice of the general meeting must clearly state: the specific limits, sources of funding, purpose of loans, specific securities in which the investment is proposed
- Send three copies of the notice of general meeting to the stock exchange and a copy of the proceedings of the meeting after the meeting is convened.
- In addition to the above, loans/investments made to any body corporate which attracts section 295(1)(d)/(e) shall require previous approval of the Central Government.



Approval of Public Financial Institution:

- Prior approval of the Public Financial Institution is required from which the company has taken a term loan and the same is subsisting.
- Even if the loan agreement does not specify, co. has to take such permission.

C. Company making a default in the public deposits

- A company which has defaulted in section 58A cannot make a loan, investment, security or guarantee until such default is subsisting.

D. Rate of Interest

- The rate of interest chargeable shall not be less than the prevailing Primary Lending Rate ('PLR') as specified in section 49 of the RBI Act, 1934.

Relaxations:

A. Non-applicability of section 372A:

- Following companies:
 - A private company, not being a subsidiary of a public company
 - A banking company
 - An insurance company
 - A housing finance company
 - Infrastructure Companies
 - A company whose principal business is acquisition of shares, stock, debentures etc.
- Investment made in shares allotted as right shares pursuant to section 81(1)(a)
- The transactions of Leasing and hire-purchase is outside the scope of section 372A
- Loan, Investment, Guarantee / security provided to a wholly owned subsidiary

B. No Special Resolution for guarantee:

On the satisfaction of the following 3 conditions, the BoD may give guarantee without being previously authorized by a special resolution, if:

- Unanimous resolution is passed at the BoD meeting for giving guarantee
- There exist exceptional circumstances which prevent the company from passing a special resolution
- The BoD resolution is confirmed by the immediately next AGM or within 12 months, in the general meeting of the company

C. No approval of financial institution:

On the satisfaction of the following 2 conditions:

- There is no default in making the repayment of loan installments or interest to Public Financial Institution
- The loans and investments made and proposed to be made in aggregate does not exceed: 60% (*Paid up share capital + Free Reserves*)



Procedural Matters:

Maintenance of register of Deposits:

A register has to be maintained containing the following particulars:

- Name of the other body corporate
- Amount, terms, purpose of loan, investment or guarantee
- Date of making the loan, investment, guarantee

Entries in such register should be made in 7 days of making the loan or investment.

The register should be kept at the registered office of the company and is available for inception and making extracts as under section 163 of the Act.

Penalties:

For contravention of maintenance of register:

The company and every officer in default shall be punishable with fine of Rs. 5,000 plus Rs. 500 every day till the default continues.

For contravention of any other provisions:

Imprisonment up to 2 years or fine up to Rs. 50,000. However, if the loan is repaid in full, no imprisonment shall be imposed.