

Inter Corporate Loans & Deposits [Section 372A]

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Scope of the section:

Applies only to Public Co., even if no Share Capital

- 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 have to vote in favour compulsorily
- The resolution has to be passed at BOD meeting and **not by circular resolution**

Legal requirements:

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

Legal requirements: Special Points

- Such special resolution is required prior to making the loan
- Previous authorization by special resolution** shall be required if:
Loans already made *plus* Proposed Ones > Ceiling Limits
- Special resolution can be passed at the AGM or EGM
- A listed public company may get any resolution passed by means of a postal ballot.

Legal requirements: Special Points.....contd.

- 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** shall require previous approval of the Central Government.

Approval of Public Financial Institution:

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

Company making a default in the public deposits:

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

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, i.e.

Rate of Interest $\geq$ PLR

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**

Relaxations:

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:
 1. **Unanimous resolution** is passed at the BOD meeting for giving guarantee; **and**
 2. There exist **exceptional circumstances** which prevent the company from passing a special resolution; **and**
 3. The **BOD resolution is confirmed** by the immediately next AGM or within 12 months in the general meeting of the Company, whichever is earlier

Relaxations:

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 already made and proposed to be made in aggregate does not exceed ($\leq$):
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 inspection and making extracts

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.
