



COMPANIES ACT, 2013

The Road Ahead

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SECTION-185

Loan To Directors

April'14

YOUR LOGO
HERE

No loans by the company

- A company
- Can not give loan
- Can not give security
- Can not give guarantee
- Of course subject to terms and conditions

LOAN TO DIRECTORS 185/ 295

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 (EXPLAINED LATER ON..) in whom the director is interested**
 - or give any guarantee, or
 - provide any security in connection with any loan taken by him (director) or such other person (**any other person in whom the director is interested**)

LOAN RELAXATIONS (S.185)

- **Provided that nothing contained in this sub-section shall apply to—**
 - a) the giving of any loan to a managing or whole-time director (but when)—
 - (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 (**banking company, NBFC**) or gives guarantees or securities for the due repayment of any loan and in respect of such loans and
 - b(i) an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.**
- (Though interested director has been defined in S.2(49), BUT that is only in relevance to **S.184. That is why, “to any other person in whom director is interested”** has been defined in this section separately.)

“to any other person in whom the director is interested”

- **A company can not give loan (guarantee/ security agt loan) to —**
 - a) Any director (of the lending company) or his relative or his partner , or
 - b) A company which is its(lending) holding company(Borrowing) (does it mean can be given to subsidiary company)or
 - c) any firm (Borrowing)in which any such director or relative is a partner; or
 - d) any private company (Borrowing)of which any such director is a director or member; (read this with relaxation of subsidiary???) or

Note: 1 loan cant be given to director, or holding co, or partner or relative or firm in which the director or relative is partner or to pvt co in which the director of lending co is director or director of lending co is member.

Note:2 (does it mean that if relative say wife is dir or mem in borrowing co then .. Loan can be given) or if lending co holds shares in borrowing co then can the loan be given. What if the borrowing co is pub ltd. What if sh ho are common but non directors

CHAPTER XII

Companies(Meetings of Board and its Powers) Rules, 2014

Rule10 - Loans to Director etc. under section 185 (Sec. 185)

- (1) 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 is exempted from the requirements under this section; and
- (2) 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 is exempted from the requirements under this section:

Provided that such loans made under sub-rule (1) and (2) are utilised by the subsidiary company for its principle business activities.

Explanation 1 contd...

- a) any body corporate at a general meeting of which not less than 25% of the total voting power may be exercised or controlled by any such director, or by 2 or more such directors, together; **(public co???)** or
- b) 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.

Accustomed to act Contd...

- 2(59).. Officer
- 2(60).. Officer in default
- 2(69).. Promoter
- 2(76).. RP
- 185.. Loan to director

25% of total voting power

YOUR LOGO
HERE

PENALTY ON COMPANY (BUT DOES NOT INCLUDE OFFICER IN DEFAULT)

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 (lending) company** shall be punishable with fine which shall **not be less than 5 lakh rupees but which may extend to 25 lakh rupees.**

PENALTY ON COMPANY (BUT DOES NOT INCLUDE OFFICER IN DEFAULT)

- **Penalty also on director or other person, and includes imprisonment also.**
- 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.

NOTES

1. Earlier, S.295 was not applicable to a private limited company, unless it was a subsidiary of a public company [S.295(2)(a)(i)]. So such private company was free to give loan, but now it is no longer so.
2. Earlier section was applicable to guarantee or security in connection with loan made
 - By any other person **to INTERESTED PERSONS** or
 - To any other person **by INTERESTED PERSONS**.
 - Which means earlier section was double edged while new section is single edged. In new section, 'BY' has been removed.
3. Earlier, Government approval was required for lending company. Now, it is no longer so for eligible lending company. An ordinary board resolution will do.
4. Loan can be given by private company to public company, but it should not be the latter's holding company

NOTES (CONT.)

5. Loan can be given by private company to its subsidiary which should either be public company or if its private limited then as per explanation (c) director of lending company should not be director or member in such borrowing company and if borrower company does not fall in (c) then loan can be given to subsidiary even by private company as well.
6. Loan can be given by Private to private if does not fall in clause (c) to explanation.
7. Loan can not be given to director or its partner or its relative,
8. Loan can not be given to firm in which such director or relative is partner. To other firms it can be given.

NOTES (CONTD.)

9. Loan can not be given to private company where director is director or member. Which means can be given to private company where director's relative is director or member. In point 7 and 8 relative is barred it is not so in case of private company.
10. Lending and borrowing company chart.

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THANK YOU