



SECTION 185 COMPANIES ACT, 2013

*As amended by Companies (Amendment) Act, 2017
w.e.f. May 07, 2018*

*Prepared and Presented by-
Parul Chadha & Kailash Chandra Pandey
On 22.06.2018*

CONTENTS

- Brief History
- Major Change in Companies (Amendment) Act, 2017
- Allowed without falling u/s 185
- Case Studies
- Procedure



BRIEF HISTORY

September 12, 2013

Date of notification of section 185 of the Companies Act 2013

May 29, 2015

Companies Amendment Act 2015 inserted 2 clauses (c) and (d) in sub-section (1), in the proviso, after clause (b)

June 05, 2015

Private Co., Nidhi Co. and Government Co. were exempted from the provisions of section 185 vide MCA Exemption Notification subject to specified conditions.

January 04, 2017

IFSC Public and Private Companies were exempted from the provisions of section 185 vide MCA Exemption Notification subject to specified conditions

*Companies (Amendment) Act
2015 dated
May 29, 2015*

- The Companies Amendment Act 2015 inserted 2 clauses (c) and (d) in sub-section (1), in the proviso, after clause (b) which are as detailed below:-
- Loans/Guarantees/Security made by Holding Company to its Wholly owned Subsidiary Companies
- Guarantee/Security provided by Holding Company to its Subsidiary Company in respect of any loan made to it by Bank/FIs.
- Provided that the loans made under clauses (c) and (d) are utilised by the subsidiary company for its principal business activities.

*Exemption Notification dated
June 05, 2015*

- Certain Private Companies were exempted in whose:-
- Share capital no other body corporate has invested any money;
- 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
- Such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.

*Exemption Notification dated
January 04, 2017*

- In case of **Specified IFSC Public Company and Specified IFSC Private Company** -Sub-section (1) of section 185, in the Explanation, clause(c) shall be substituted.



MAJOR



CHANGES

- Deletion of the *non obstante* clause “**Save as otherwise provided in the Act**”
- After the notification of Companies (Amendment) Act, 2017, the provisions of section 185 allows the Companies to extend loans to the **Persons in whom the director of the Company is interested**, subject to passing of **SPECIAL RESOLUTION:-**

Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilized by the recipient of the loan or guarantee or security and any other relevant fact and the loans are utilized by the borrowing company for its principal business activities.

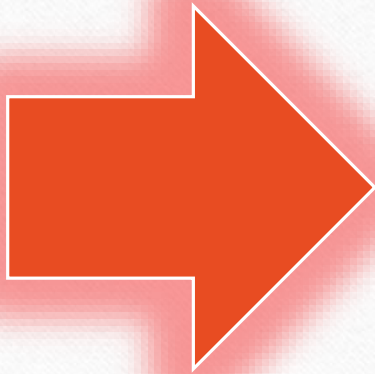


- The expression “any person in whom any of the director of the company is interested” means
 - (a) any private company of which any such director is a director or member
 - (b) any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
 - (c) 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
- Penalty Provisions have been amended to include officer of the Company in default with imprisonment extending to 6 months or fine of Rs. 5 Lakhs to Rs. 25 Lakhs

S. No	Particulars	Old Provisions	New Provisions
1	Whether the Company can advance loan, or provide guarantee or security to:		
A	Director of the Company	No	No
B	Director of holding Company	No	No
C	Partner of the Director of the Company	No	No
D	Relative of the Director of the Company	No	No
E	Firm in which Director or his relative is a partner	No	No
F	Private company in which Director is a director	No	Yes
G	Private company in which Director is a member	No	Yes
H	Body Corporate at a general meeting of which not less than 25% of the total voting power may be exercised or controlled by any director, or by two or more directors, together	No	Yes
I	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	No	Yes
2	Conditions for Companies ordinarily engaged in providing loans, guarantees or securities	Rate of interest of loan \geq bank rate	Rate of interest \geq prevailing yield of 1 year, 3 year, 5 year or 10 year government security

ALLOWED WITHOUT FALLING U/S 185

- Loan to any Public Company if any of the Director(s) of Lender is/are not holding 25% voting power of the said Public Company and the said Public Company is not accustomed to act as per instruction of any Director / Board of the Lender Company.
- Loan to any Public Company (having common Director or not).
- Private Company fulfilling all 3 conditions mentioned in Exemption Notification dated June 5, 2015.
- Government Companies obtaining approval from Ministry as per Notification dated June 5, 2015.
- Nidhi companies providing note in annual accounts as per notification dated June 5, 2015.
- Guarantee / Security provided for the purpose other than loan taken by other entity.
- Loan to Holding Company (subject to condition that holding Company doesn't have common directors)
- Loan to Subsidiary Companies (subject to condition that subsidiary Company doesn't have common directors)

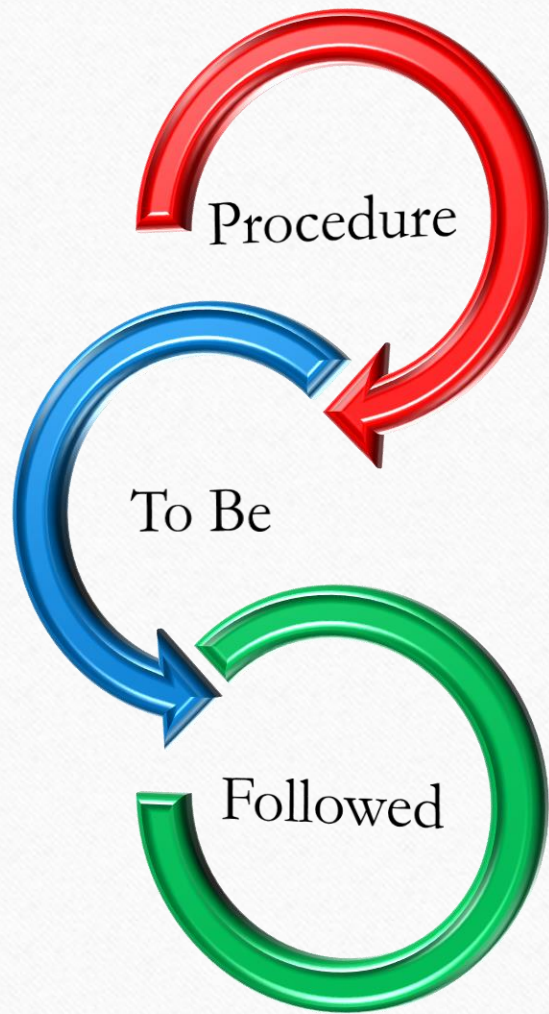


CASE STUDIES

WHETHER COVERED U/S 185



1. ABC Limited proposes to give a loan to Mr. Rajneesh who is a director of its subsidiary company, PQR Limited- **YES**
2. ABC Limited proposes to give a loan to M/s XYZ & Associates, a partnership firm in which Mr. Rajneesh (who is a director of its subsidiary company PQR Limited) is a partner- **YES**
3. Mr. Rajneesh is a director of ABC Limited and also DEF Limited. ABC Limited proposes to give a loan to DEF Limited - **YES**
4. Mr. Rajneesh is a director of ABC Limited and also a member of DEF Limited. ABC Limited proposes to give a loan to DEF Limited - **YES**
5. Mr. Rajneesh is a director of ABC Pvt. Limited and also a member of DEF Limited. ABC Pvt. Limited proposes to give a loan to DEF Limited - **YES**
6. Mr. Rajneesh is a member of ABC Limited and also a member of DEF Pvt. Limited. ABC Limited proposes to give a loan to DEF Pvt. Limited. **NO**



PROCEDURE

S.NO.

TIMELINES

1	Checking Limits under section 186 of the Companies Act 2013 -The proposed loan/guarantee/security to be made along with the existing loan/guarantee/security already made by the Company shall fall within the limits under section 186 other wise the Company needs to pass SR	
2	Issue Notice of Board Meeting 7 days advance notice and file Form MGT-14 for the same	X-7
3	Convene Board Meeting -To approve/ratify loans, guarantee and security made by the Company to Directors/Persons in whom the Directors are interested in terms of section 185 of Companies Act 2013 subject to approval of members in General Meeting by way of Special Resolution. - Issue notice of General Meeting proposing the aforementioned Special Resolution.	X
4	SS Compliances Prepare and circulate draft minutes within 15 days from the date of the conclusion of the Board Meeting, by hand/speed post/registered post/courier/e-mail to all the Directors for their comments.	X+15
5	Send Notice of the General Meeting 21 clear days notice and the explanatory statement shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilized by the recipient of the loan or guarantee or security and any other relevant facts.	X+2
6	Convene General Meeting Hold a shareholders meeting on the date fixed for the meeting and pass the Special Resolution for approval/ratification of loans, guarantee and security made by the Company to Directors/Persons in whom the Directors are interested.	X+27
7	ROC Compliances Filing Form MGT-14 within 30 days of passing SR	X+57

“X” denotes Board Meeting



THANK YOU