



SECTION 185: LOANS TO DIRECTORS, etc.

Section 185 of the companies act 2013 has been completely substituted by the Companies (Amendment) Act, 2017 Amendment Effective from 7th May 2018:

We have divided section 185 loan to director into three categories:

- A. Section 185 (1) Prohibited: Means not allowed; This subsection includes only “Individuals” and “Firms”.**
- B. Section 185 (2) Restricted: Allowed but subject to some Condition; This subsection includes Private company/ Body Corporate.**
- C. Section 185(3) Exempted: Allowed without any Condition**

(A) THE CASES WHERE LOANS TO DIRECTORS IS PROHIBITED U/S 185 (1):

Section 185 (1): No company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by:-

- (i) any director of company, or
- (ii) To director of its Holding Company or
- (iii) any of his Partner or
- (iv) his **Relative** or
- (v) any Firm in which such Director or
- (vi) **Relative** is a Partner



(B) THE CASES WHERE LOANS ARE PERMITTED SUBJECT TO CERTAIN CONDITIONS/RESTRICTION U/S 185 (2):

Section 185 (2): A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by **any person in whom any of the director of the company is interested,**

“any person in whom any of the director of the company is interested”

- (a) any Private company of which any such director is 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) Shadow Director: 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.

subject to the condition that—

- (a) a special resolution is passed by the company (Lending Company) in general meeting: (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 utilised by the recipient of the loan or guarantee or security and any other relevant fact; and)
- (b) the loans are utilised by the borrowing company for its principal business activities.



(C) THE CASES WHERE LOANS ARE EXEMPTED U/S 185 (3):

(a) The loan being given to a **Managing or Whole-time director**,

(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) Loan, security, or guarantee given by companies in their ordinary course of business and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan; or

(c) Loan, security, or guarantee Given by Holding company to its Wholly owned subsidiary with a condition to use it for its Principal business Activity.

(d) Any security or Guarantee Given by Holding company to its Subsidiary company with a condition to use it for its Principal business Activity.

A notification made in June 2015 notified the exemptions for private companies from certain provisions of the Companies Act, 2013. Section 185 shall not apply to a Private Company-

(i). In whose share capital no other body corporate has invested.

(ii). If the borrowings of such company from banks or financial institutions or any other body corporate is less than twice of its paid up share capital or fifty crore rupees whichever is lower.

(iii). The company has not defaulted in repayment of borrowings subsisting at time of making transaction.