

Concept of Loans and Investments by a Company in India

(Section 186 of Companies Act, 2013)

1. Applicability of the Concept

- (i) A **domestic** company is **not permitted to invest** 'beyond' certain conditions & limits (60%/100%) in other **body corporates** and also not permitted to invest where investee companies are having more than **2 layers**.
- (ii) A **domestic** company is **not permitted to give** any loan, guarantee or security to any person or body corporate 'beyond' certain conditions & limits (60%/100%)

2. 'Not' Applicability of the Concept

- (i) Where investee companies **Outside India** are permitted for having **more than 2 layers**
- (ii) Where more than 2 layers are **mandatory required** to fulfill any legal compliance for investment by a subsidiary company in **another** subsidiary company
- (iii) (a) Where although loans and investments are **exceeding** limit of **60%** of its paid up capital + **free reserves + share premium**

Or

 (aa) **100%** of free reserves + share premium whichever is **higher** but prior **approval** is obtained through passing a Special Resolution (**SR**) in **EGM/AGM**
 (b) However **SR** is also **not** required where loans or guarantee is provided to
 (ba) 100% owned **subsidiary** company or
 (bb) **Joint venture** and also **disclosure** is made in the Financial Statements (**FSs**)
- (iv) Where loan is given to **employee** of the company under normal service contract
- (v) Where loan, investment, guarantee and security are **given** by anyone of the followings
 - (a) **Banking** company
 - (b) **Insurance** company
 - (c) **Housing** company
 - (d) **Infrastructure** financing company
- (vi) Where investments are made **by a investment company**
- (vii) Where investments are made **in right issue** of shares
- (viii) Where investments are made **by a NBFC** having investment and lending activities as **principal business** activities
- (ix) (a) Where loans and investments are made **by a Govt. company** as engaged in defence Production activities or

- (b) Where Govt. company has **taken prior approval** from any one of the followings
- (ba) Central Govt.
 - (bb) State Govt.
 - (bc) Concerned Ministry
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3. Penalty for per Default

- (i) **On the Company for default**
 - (a) Minimum **25** thousand
 - (b) Maximum **5** Lac
- (ii) **On the Officer** for Default
 - (a) **Imprisonment** maximum **2 years**
 - (b) **Fine**
 - (ba) Minimum **25** thousand
 - (bb) Maximum **1** Lac

4. Important Clarifications

- (i) Board of Directors (**BODs**) is required to pass a resolution with **100% voting** in favor of the resolution for any loan, investment, guarantee or security
- (ii) (a) A **consent** from the bank or financial institution is required before giving any loan or Investment where a **term loan** is taken from it
 - (b) However consent is **not required** where abovementioned limit of 60%/100% is **not exceeding** and also **no default** is made in **repayment** of the term loan
- (iii) A company is **not permitted to give** a loan or make investment where company has made a **default** in repaying of deposit or interest and such default is **still continued**
- (iv) **Investment** company is required to maintain minimum **50% investments** and **50% incomes** in financial assets to maintain its investment company status for claiming **exception** under section **186**

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