



LOAN TO DIRECTORS

(Under Section 185 – Companies Act, 2013)

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APPLICABILITY OF SECTION

Section 185 of the Companies Act, 2013 is applicable on private company as well as public Company.

PROHIBITED TRANSACTIONS

IN CASE OF LOAN (INCLUDING BOOK DEBTS):-

- No Company advances any loan to **its director**.
- No Company advances any loan to **director of the lending company, or of a company which is its holding company or any partner or relative of any such director**.
- No Company advance any loan to any **firm in which any such director or relative is a partner**;
- No Company advance any loan to **any private company of which any such director is a director or member**;
- No Company advances any loan **to anybody 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
- No Company advance any loan **to anybody 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**

GUARANTEE AND SECURITY

Company in no circumstances gives any guarantee or provides any security in connection with aforesaid loan.

ALLOWABLE TRANSACTIONS UNDER THIS SECTION

- 1- Loan given to Managing Director or Whole Time Director as part of the conditions of services etc or pursuant to the scheme approved by the member by Special Resolution.
- 2- A company make loan or give guarantee or provide security in ordinary course of its business for due repayment of loan. In this regard interest is charged at a rate not less than the bank rate declared by RBI.

PENAL PORVISIONS

1- IN CASE OF COMPANY

If default has been made by the company relating to provision of sub section (1) of the Act, the company shall be punishable with fine which shall not be less than Five Lacs Rupees but which may be extended to Twenty Five lacs.

2- IN CASE OF DIRECTOR

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.

BARE ACT LANGUAGE

“185. (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 in whom the director is interested** or give any guarantee or provide any security in connection with any loan taken by him or such other person:**

Provided that nothing contained in this sub-section shall apply to—

(a) the giving of any loan 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) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the ue repayment of any loan and in respect of loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.

Explanation.—For the purposes of this section, the expression “to any other person in whom director is interested” means—

(a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;

(b) any firm in which any such director or relative is a partner;

(c) any private company of which any such director is a director or member;

(d) 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

(e) 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.