



Attachment to Note on section 185 of Companies Act, 2013

**A TABLE SHOWING ANALYSIS OF THE PROVISIONS IN RESPECT OF LOANS TO DIRECTORS ETC**

Note: The portion in **red** indicate the provisions while those in **blue** indicate the comments.

	<b>295. Loans to Directors etc</b>	<b>S 185 Loan to Directors, etc.</b>
Applicability	Sub Section(1) Save as otherwise provided in sub-section (2), no company (hereinafter in this section referred to as "the lending company") <b>without obtaining the previous approval of the Central Government in that behalf</b> shall, directly or indirectly,	Sub Section (1) Save as otherwise provided in this Act, no company shall, directly or indirectly,
Comments	<i>In old section a company can make a loan after taking CG permission</i>	<i>In new Act, a strict prohibition has been imposed.</i>
	make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by, -	advance any loan, <b>including any loan represented by a book debt</b> , 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:
Comments	<i>There is no reference to a book debt.</i>	<i>The above reference to director, has been repeated in (a) below.</i>
		<b>Explanation.</b> —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 ;	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;
comments	<i>Both the provisions are para materia.</i>	
	(b) any firm in which any such director or relative is a partner ;	(b) any firm in which any such director or relative is a partner;



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<i>comments</i>		<i>An LLP is a Firm only for limited purposes of Income-tax Act. A loan to an LLP therefore may not be covered here.</i>
	(c) any private company of which any such director is a director or member ;	(c ) any private company of which any such director is a director or member;
<i>comments</i>	<i>Both the provisions are para materia.</i>	
	(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	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
<i>comments</i>		<i>An LLP is a Body Corporate but it is not amenable to a General Meeting unless the Agreement has provided such a protocol. The provision therefore may not extend to a loan to an LLP.</i>
Persons in whom director is interested	(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.	(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.
<i>comments</i>		<i>An LLP is a Body Corporate but it does not conform to requirement of there being a Board and a Director or a Managing Director. The provision therefore may not extend to a loan to an LLP.</i>
Book Debts in nature of <u>Loan.</u> <i>comments</i>	296 Application of Section 295 to book debts in certain cases Section 295 shall apply to any transaction represented by a book debt which was from its inception have a nature of "Loan".	<i>This element has been merged in earlier portion of Sec 185 above.</i>
Exceptions	Sub Section (2) Sub-section (1) shall not apply to	Sub-Section(1) Provided that nothing contained in this sub-section shall apply to -
<u>Provision</u>		New section has withdrawn relief to private



COMPARISON

<i>comments</i>	1. any loan made, guarantee given or security provided - A)by a private company unless it is a subsidiary of a public company, or B)by a banking company ;	<i>company. Hence section shall be applicable to private company also.</i>
<i>Provision comments</i>	2 any loan made by a holding company to its subsidiary company; 3. any guarantee given or security provided by a holding company in respect of any loan made to its subsidiary company.	<i>New Section is silent about applicability of loan to subsidiary company. Hence it may extend to such loans also.</i>
<i>comments Provision</i>	<i>New section says that, Loan can be given to MD/WTD backed by scheme through special resolution by members.</i>	a)the giving of any loan to a managing or whole-time director * as a part of the conditions of service extended by the company to all its employees; or * pursuant to any scheme approved by the members by a special resolution; or
<i>comments Provision</i>	<i>If a company in its ordinary course of business provides loan, then that shall not attract this section.</i>	b)company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.
<i>comments</i>	<i>The provision excluded loans BY a private company or a banking company TO a subsidiary company</i>	<i>The provision excludes loans TO a MD/WTD BY a Co which is in business of loans (Of course, one has to avoid NBFC provisions)</i>
<i>Penalty Provision.</i>	<b>Sub Section (4)</b>  Every person who is knowingly a party to any contravention of sub-section (1) or (3), including in particular any person to whom the loan is made or who has taken the loan in respect of which the guarantee is given or the security is provided, shall be punishable either with fine which may extend to [fifty] thousand rupees or with simple	<b>SubSection (2)</b>  any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any



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COMPARISON OF THE PROVISIONS

	<p>imprisonment for a term which may extend to six months :</p>	<p>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</p>
<p><i>Comments</i></p>	<p><i>Earlier Fine was up to 50 thousand rupees and Imprisonment up to 6 month.</i></p>	<p><i>In new law fine has been increased. Fine is 5 lacs to 25 lacs. The imprisonment is the same.</i></p>
<p><i>Repayment comments</i></p>	<p>Provided that where any such loan, or any loan in connection with which any such guarantee or security has been given or provided by the lending company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section ; and where the loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be proportionately reduced.</p>	<p><i>No such provision in new Act.</i></p>
<p><i>Comments</i></p>	<p><i>Imprisonment can be avoided under old companies act by repaying the loan.</i></p>	<p><i>No such provision is there under new act. But in general, guilty mind has to be proven for imprisonment. So if loan is repaid, it may help</i></p>



CONTRACTORS

<p>Parties to contravention to make good to company. <i>comments</i></p>	<p><b>Sub Section (5)</b></p> <p>All persons who are knowingly parties to any contravention of sub-section (1) or (3) shall be liable, jointly and severally, to the lending company for the repayment of the loan or for making good the sum which the lending company may have been called upon to pay in virtue of the guarantee given or the security provided by such company.</p> <p><b>SubSection(6)</b></p> <p>No officer of the lending company or of the borrowing body corporate shall be punishable under sub-section (4) or shall incur the liability referred to in sub-section (5) in respect of any loan made, guarantee given or security provided after the 1st day of April, 1956 in contravention of clause (d) or (e) of sub-section (1), unless at the time when the loan was made, the guarantee was given or the security was provided by the lending company, he knew or had express notice that clause was being contravened thereby</p>	<p><i>This subsection has been removed from new Act.</i></p>
<p><i>comments</i></p>	<p><i>Earlier , all the persons i.e Employees, other directors, etc who are knowingly parties to such transaction were liable to make good loan amount to company back.</i></p>	<p><i>There is no such provision here.</i></p>
<p>Transitory provisions <i>comments</i></p>	<p><b>Subsection (3)</b></p> <p>Where any loan made, guarantee given or security provided by a lending company and outstanding at the commencement of this Act</p>	<p><i>No such provision is made in the new Act. In other words. The old loans will live its own life.</i></p>



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	<p>could not have been made, given or provided, without the previous approval of the Central Government, if this section had then been in force, the lending company shall, within six months from the commencement of this Act or such further time not exceeding six months as the Central Government may grant for that purpose, either obtain the approval of the Central Government to the transaction or enforce the repayment of the loan made, or in connection with which the guarantee was given or the security was provided, notwithstanding any agreement to the contrary.</p>	
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