

SECTION 186 OF THE COMPANIES ACT, 2013

▪ Loan and investment by company-

(1) Without prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, make investment through not more than two layers of investment companies:

Provided that the provisions of this sub-section shall not affect-

- (i) a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;
- (ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.

(2) No company shall directly or indirectly -

- a. give any loan to any person or other body corporate;
- b. give any guarantee or provide security in connection with a loan to any other body corporate or person; and
- c. acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent of its free reserves and securities premium account, whichever is more.

(3) Where the giving of any loan or guarantee or providing any security or the acquisition under subsection (2) exceeds the limits specified in that sub-section, prior approval by means of a special resolution passed at a general meeting shall be necessary.

(4) The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made 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.

(5) No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained:

Provided that prior approval of a public financial institution shall not be required where the aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given does not exceed the limit as specified in sub-section (2), and there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.

(6) No company, which is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) and covered under such class or classes of companies as may be prescribed, shall take inter-corporate loan or deposits exceeding the prescribed limit and such company shall furnish in its financial statement the details of the loan or deposits.

(7) No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three years, five year or ten-year Government Security closest to the tenor of the loan.

(8) No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.

(9) Every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a register which shall contain such particulars and shall be maintained in such manner as may be prescribed.

(10) The register referred to in sub-section (9) shall be kept at the registered office of the company and -

- a. shall be open to inspection at such office; and
- b. extracts may be taken therefrom by any member, and copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed.

(11) Nothing contained in this section, except sub-section (1), shall apply-

- a. to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;
- b. to any acquisition-
 - (i) made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of 1934) and whose principal business is acquisition of securities: Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities;
 - (ii) made by a company whose principal business is the acquisition of securities;
 - (iii) of shares allotted in pursuance of clause (a) of sub-section (1) of section 62.

(12) The Central Government may make rules for the purposes of this section.

(13) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

For the purposes of this section, -

- a. the expression “investment company” means a company whose principal business is the acquisition of shares, debentures or other securities;
- b. the expression “infrastructure facilities” means the facilities specified in Schedule VI

- **Explanation-** Section 186 of the Companies Act, 2013 regulates loans and investments by companies. It imposes restrictions on certain transactions by a company, including:
 - Making loans to other companies or entities,
 - Giving guarantees or providing securities in connection with loans taken by others, and
 - Acquiring securities of other companies.

Exceptions: Despite the general prohibition, there are exceptions outlined in the section. These include transactions made:

- As part of the company's ordinary course of business,
- In accordance with the provisions of any law,
- By a non-banking financial company registered under the Reserve Bank of India Act, 1934,
- By a housing finance company registered under the National Housing Bank Act, 1987, and
- By a company whose principal business is providing loans.

For transactions exceeding certain limits, prior approval of the company in a general meeting is required. The section also mandates the disclosure of details regarding such transactions in the financial statements of the company.

Penalties: Any contravention of the provisions of this section can lead to penalties for the company and its officers, including fines as prescribed above.