

Chapter - 2 "Meetings of the Board and its Powers"

(viii)	<u>Restrictions on Powers of Board: Sec. 180</u>			
	↓	↓	↓	↓
	Sec. 180(1)(a)	Sec. 180(1)(b)	Sec. 180(1)(c)	Sec. 180(1)(d)
	Sec. 180(3)		Sec. 180(2)	
	Sec. 180(4)		Sec. 180(5)	

(A) Sec. 180(1)(a), 180(3) and 180(4):

BoD shall only with consent of company by a Special Resolution

sell, lease or otherwise dispose of the

whole or substantially the whole of the undertaking OR whole or substantially the whole of any of undertaking

(if company own only one undertaking)

if company own > 1 undertaking

Undertaking: means an undertaking in which > 20% of net worth of company is invested (as per audited B/S of last year)

Or

an undertaking which generates ≥ 20% of total income of company. (during previous financial year)

Substantially the whole of the undertaking → ≥ 20% of value of undertaking (as per audited B/S of last year)

Example:

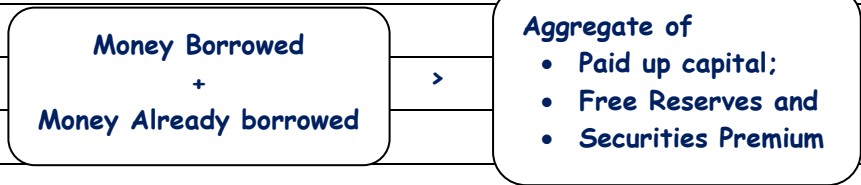
	U ₁	U ₂	U ₃	U ₄	U ₅	U ₆	U ₇	Company
Net Worth	10 Cr.	15 Cr.	20 Cr.	25 Cr.	30 Cr.	35 Cr.	40 Cr.	175 Cr.
Whether NW > 20% of NW of company	NO	NO	NO	NO	NO	NO	Yes	
Income	2 Cr.	3 Cr.	4 Cr.	5 Cr.	6 Cr.	7 Cr.	6 Cr.	33 Cr.
Whether Total income ≥ 20% of NW of company	NO	NO	NO	NO	NO	Yes	No	
Whether Undertaking As per Sec. 180(1)(c)	NO	NO	NO	NO	NO	Yes	Yes	
Nature of resolution required if whole or substantially the whole of undertaking is sold leased or otherwise disposed	Board	Board	Board	Board	Board	Board and SR	Board and SR	

Sec. 180(3): Nothing contained in Sec. 180(1)(a) shall affect title of buyer or other person if he acted in good faith.

Sec. 180(4): Special resolution passed u/s 180(1)(a) may stipulate conditions as to use, disposal or investment of sale proceeds.

(B) Sec. 180(1)(b): BoD shall only with consent of company by a Special Resolution
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 invest otherwise in trust securities, the amount of compensation received by it as a result of any merger or amalgamation.

(C) Sec. 180(1)(c): BoD shall only with consent of company by a Special Resolution borrow money, where

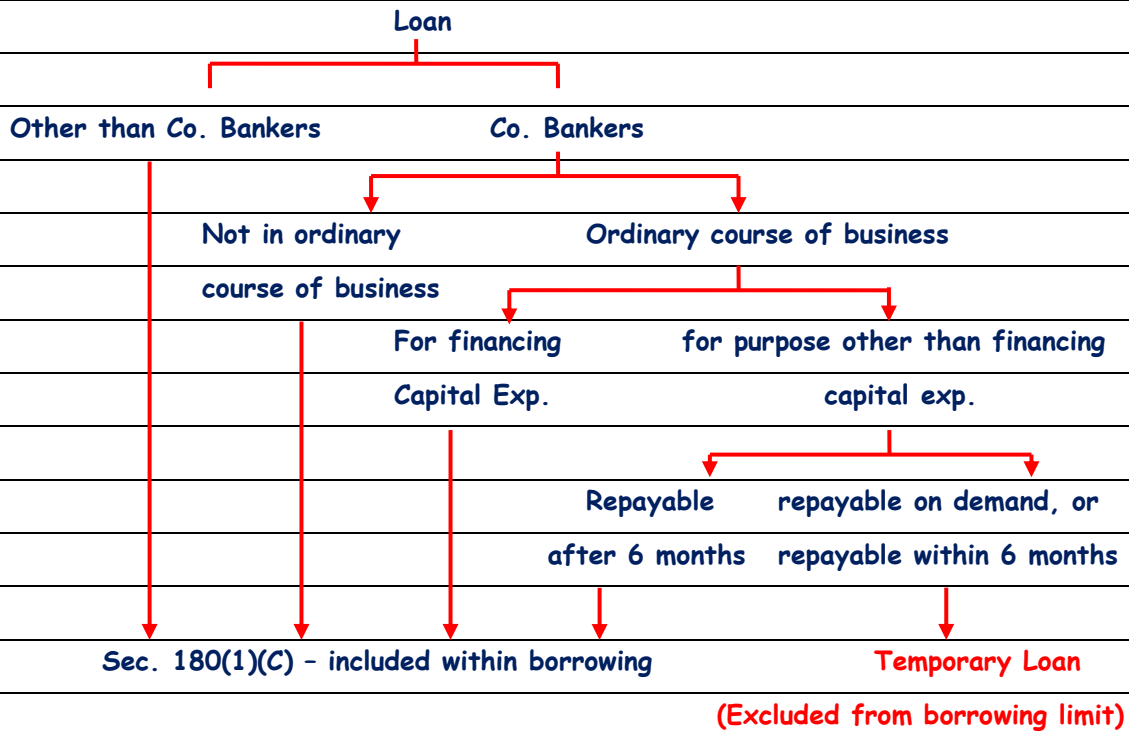


Note: Temporary loans from company bankers in ordinary course of business will not be included in borrowings for this purpose.

Meaning of Temporary loan: Loans repayable on demand or repayable within 6 months from date of loan

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but does not include loans for purpose of financial expenditure of Capital Nature.



Example: BOD of X Ltd. borrows working capital loans (repayable on demand) to finance raw material purchases from S Ltd. (Subsidiary of X Ltd.)

Q. Whether such loan is considered as temporary loan?

Sol.: No, as working capital loan not availed from bankers.

Q. Whether such loan is considered as Money borrowed u/s 180(1)(c)?

Sol.: Yes, as loan is not covered within meaning of temporary loan.

Example:	Determine nature of resolution required for the purpose of borrowing money in case of X Ltd. in below mentioned situations, considering the aggregate of PUC, free reserves and securities premium as ₹ 100 crores.		
Situation - I:	Existing Borrowing = ₹ 60 Cr.		
	Proposed borrowing:		Resolution
Case - I:	Working Capital Loan repayable on demand taken from S Ltd.	₹ 35 cr.	Board
Case - II:	6 months loan for purchase of P & M from bankers	₹ 50 Cr.	SR
Case - III:	20 months loan for purchase of Building from Bankers	₹ 30 Cr.	Board
Case - IV:	Cash Credit limit repayable on demand from bankers	₹ 70 Cr.	Board
Case - V:	9 months short term loan from bankers to finance export sale	₹ 48 Cr.	SR
Situation - II:	In case I, III and IV, where Board resolution is required, whether it can be passed by circulation.		
	Ans.: No, Refer Sec. 179(3)(d)		
Situation - III:	Will your answer change in situation II, if it is a case of Sec. 8 Co.		
	Ans: BoD of Sec. 8 Company is allowed to borrow money by passing resolution through Circulation.		
Situation - IV:	If your answer in situation III is affirmative, state the conditions to be complied with.		
	Ans: Refer Section 175 (circulation and approval)		

Sec. 180(2): SR required u/s 180(1)(c) shall specify the total amount upto which money may be borrowed by Board.

Sec. 180(5): Debt incurred by company in excess of limit specified u/s 180(1)(c) shall be valid, if lender proves that

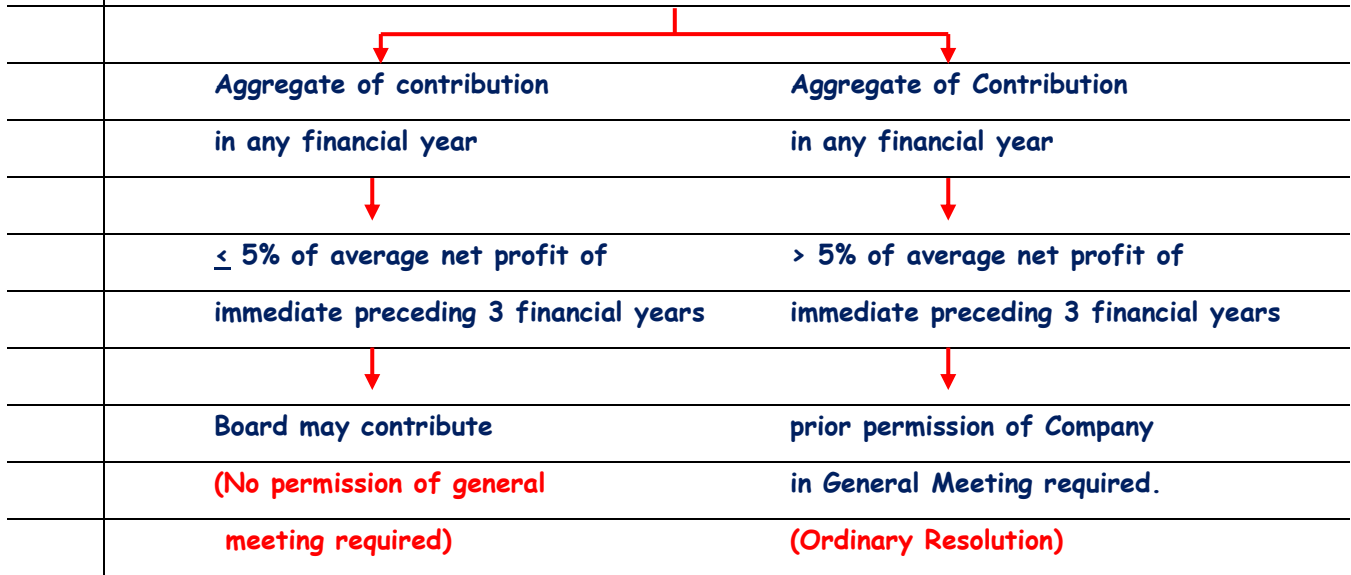
- he advanced the loan in good faith
- and
- without knowledge that the limit imposed u/s 180(1)(c) has been exceeded.

(d) Sec. 180(1)(d): BoD shall only with the consent of company by a special Resolution remit or give time for permission of any debt due from a director.

Note: Entire Sec. 180 shall not apply to a private company.

DO PRACTICE - Questions on Sec. 180

(ix) Company to contribute to bonafide and charitable funds etc.: Sec. 181



DO PRACTICE - Questions on Sec. 181

(x)	<u>Prohibitions and Restrictions regarding political Contributions Sec. 182:</u>	
(a)	<u>Companies not eligible to contribute:</u>	(a) Govt. Companies
		(b) A company which is not in existence \geq 3 years
(b)	<u>Limit of Contribution:</u> No limit (i.e. any amount may be contributed)	
(c)	<u>Conditions:</u>	
	(i) A resolution to be passed in Board Meeting authorizing the contribution.	
	(ii) Company shall disclose in its Profit & Loss account, the total amount contributed during any financial year, to which the P & L A/c relates.	
	(iii) Contribution can be made by	- A/c Payee cheque or Draft
		- Use of ECS through a Bank A/c.
(d)	<u>Penalty for Contravention:</u>	
	If company makes any contribution in contravention of the provisions of Sec. 182	
	↓	↓
	the company	every officer of the company who is in default
	↓	↓
	shall be punishable with	shall be punishable with
	fine which may extend to	- imprisonment upto 6 months
	↓	and
	5 times the amount so	- fine which may extend to 5 times
	Contributed	the amount so contributed.
(xi)	<u>Powers of Board & other persons to make contributions to NDF: (Sec. 183)</u>	
	- The BOD of any company or any person or authority exercising the powers of the BOD of a company, or of the company in general meeting, may,	
	- notwithstanding anything contained in Sections 180, 181 and 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company,	
	- contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence.	
DO PRACTICE - Question on Sec. 182 and 183		

(xii)	<p><u>Disclosure of Interest by director: (Sec. 184)</u></p> <p>(a) <u>Sec. 184(1): Time and Manner of disclosure of interest:</u></p> <p style="text-align: center;">Every director shall disclose his concern or interest in</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">any company, body corporate, firm or other association of individual</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">in prescribed manner*, at the first Board Meeting</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">in which he participates + in Every + held after any change in as a director Financial year disclosures already made.</p> <p style="text-align: center;">*Written notice in Form MBP - 1 (Refer Rule 9)</p> <p>(b) <u>Sec. 184(2): Circumstances requiring disclosure:</u></p> <p style="text-align: center;">Every director of a company, who is in any way, directly or indirectly</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">concerned or interested in a</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">Contract or arrangement or proposed contract or arrangement</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">entered into or to be entered into</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p style="text-align: center;">↓</p> <p style="text-align: center;">with a body corporate in which such director or such director in association with any other director</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">holds > 2% of shareholding of that body corporate or is a promoter, manager CEO of that body Corporate</p> </div> <div style="text-align: center;"> <p style="text-align: center;">↓</p> <p style="text-align: center;">with a firm or other entity</p> <p style="text-align: center;">↓</p> <p style="text-align: center;">in which such director is</p> <ul style="list-style-type: none"> - a partner - owner or - member </div> </div> <p style="text-align: center;">} shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.</p>
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Note: Where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or Interested after the contract or arrangement is entered into, disclose his concern or interest

- forthwith, when he becomes interested or concerned;

or

- at the first meeting of Board held after he becomes so concerned or interested.

Example 1:

ABC Ltd. enters into a contract with XYZ Ltd. State in which of the below mentioned situation, Mr. D director of ABC Ltd. is required to make disclosure u/s 184(2).

Situation - I: Neither Mr. D, nor his relatives is a shareholder, promoter, manager, CEO of XYZ Ltd.

Situation - II: Mr. D holds 1% shareholding of XYZ Ltd.

Situation - III: Mr. D along with Mrs. D hold 3% shareholding of XYZ Ltd.

Situation - IV: Mrs. D hold 5% shareholding of XYZ Ltd.

Situation - V: Mr. D hold 1.5% shareholding in XYZ Ltd. and another director of ABC Ltd. also hold 1% shareholding of XYZ Ltd.

Situation - VI: Son of Mr. D hold 1% shareholding of XYZ Ltd. & Son of other director of ABC Ltd. hold 1.5% shareholding of XYZ Ltd

Sol.: Disclosures required u/s 184(2) in case of Situations III, IV and V.

Example 2: MN Ltd. enters into a contract with PQR and Sons. Mr. M director of MN Ltd. is owner of PQR and Sons.

Whether Mr. M. is required to make any disclosures u/s 184(2).

Answer: Yes

Example 3: MN Ltd. enters into a contract with Kapoor sons, a partnership firm. Mr. D, director of MN Ltd., is father of one of the partners of Kapoor Sons. Whether Mr. D is required to make any disclosure u/s 184(2).

Answer: Yes

	(c) <u>Other provisions:</u>
	(i) <u>In case of Private companies:</u>
	Sec. 184(2) shall apply with the exception that interested director may participate in such meeting after disclosure of interest.
	(ii) <u>In case of Sec. 8 companies:</u>
	Sec. 184(2) shall apply only if the transaction with reference to Sec. 188 on the basis of terms and conditions of the contract or arrangement > 1 Lac.
	(iii) <u>Sec. 184(3):</u>
	A contract or arrangement entered into by the company, without complying the provisions of Sec. 184(2)
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	shall be <u>voidable</u> at the option of the company.
	(iv) <u>Sec. 184(4):</u>
	If any director of the company contravenes the provisions of Sec. 184(1) or Sec. 184(2), such director shall be liable to a penalty of ₹ 1 lakh.
	(v) <u>Sec. 184(5):</u>
	Nothing in this section-
	(a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;
	(b) shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than 2% of the paid-up share capital in the other company or the body corporate.
DO PRACTICE - Questions of Sec. 184	