

Lecture - 11

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

	Part III - Sections dealing with Power of Board as to Loans and Investments and		
	Related Party transactions		
	↓	↓	↓
	Sec. 185	Sec. 186	Sec. 188
	Loans to Directors etc.	Loans and Investments by company	Related Party Transactions
		(Rule 11, 12, 13)	(Rule 15)
XIII	<u>Loans to director, etc.: Sec. 185</u>		
	No Company shall directly or indirectly		
	↓	↓	↓
	advance any loan (including any loan represented by a book debt) to	or	give any guarantee or provide any security in connection with any loan taken by
	- any director of company or	any partner or relative of any such director	any firm in which any such director or relative is a partner
	- any director of its holding company		
	Example: Check whether loan is prohibited u/s 185(1) in following cases:		
I	ABC Ltd. advance loan to its director (D ₁)		- Yes
II	ABC Ltd. advance loan to director of its holding Co.(D ₂)		- Yes
III	ABC Ltd. advance loan to director of its subsidiary Co. (D ₃)		- No
IV	ABC Ltd. advance loan to Partner/relative of D ₁ or D ₂		- Yes
V	ABC Ltd. advance loan to Partner/relative of D ₃		- No
VI	ABC Ltd. advance loan to XYZ and Co. [D ₁ or D ₂ - Partner]		- Yes
VII	ABC Ltd. advance loan to XYZ and Co. [Relative of D ₁ & D ₂ are partners]		- Yes

<u>Sec. 185(2):</u>	A Company may		
	Advance any loan	or	give any
	(including any loan		guarantee
	represented by a		or
	book debt		provide any
			security
			in connection with any loan taken by
	to		any person in whom director of the
			company is interested*
			subject to the Condition that
		(a)	A SR is passed by company in GM.
			Explanatory statement shall disclose
			- Full Particulars
			- Purpose of loan
			- Other relevant facts
		(b)	Loans are utilised by borrowing company for its
			Principal Business activities.
<u>*Meaning of any person in whom any of the director of the company is interested:</u>			
	any private company	any body corporate	any body corporate
	of which	at a GM of which	the BOD, MD or Manager
	any such director	not less than 25% of	whereof is accustomed to
	is a director	voting power	act in accordance with
	or	may be exercised by	directions or instructions
	Member.	or controlled by	of Board or of any
		≥ 1 such directors	director of lending company.

Example: Determine whether transactions mentioned below falls u/s 185(2)?

	Lending Co.	Borrowing Co.	Relationship / association etc.	Remarks
(i)	A Ltd.	X (P) Ltd.	None of director of A Ltd. is director or member of X (P) Ltd.	No.
(ii)	A Ltd.	X (P) Ltd.	Director of A Ltd. is director of X (P) Ltd.	Yes (SR)
(iii)	A Ltd.	X (P) Ltd.	Director of A Ltd. is Member of X (P) Ltd.	Yes (SR)
(iv)	A Ltd.	Y Ltd.	Director of A Ltd. is director of Y Ltd.	No
(v)	A Ltd.	Y Ltd.	Director of A Ltd. hold < 25% of voting power of Y Ltd.	No
(vi)	A Ltd.	Y Ltd.	Director of A Ltd. hold \geq 25% of Voting power of Y Ltd.	Yes (SR)
(vii)	A Ltd.	Y Ltd.	Relative of director of A Ltd. hold \geq 25% of voting power of Y Ltd.	No
(viii)	A Ltd.	Z Ltd.	Board of Z Ltd is accustomed to act as per directions of MD of A Ltd.	Yes (SR)
(ix)	A Ltd.	Z Ltd.	M.D. of Z Ltd. is accustomed to act as per instructions of Director of A Ltd.	Yes (SR)

Sec. 185(3):	Nothing Contained in Sec. 185(1) and 185(2)	
	↓	
	shall apply to	
	↓	
	(a) giving of any loan to M.D. or WTD -	as a part of Conditions of service extended to all employees; or
		- pursuant to any scheme approved by SR.
	(b) a company which in ordinary course of business provides loans or give guarantees or securities for due repayment of loan	
	and	
	in respect of such loans interest is charged at a rate not less than the rate of prevailing yield of 1, 3, 5 or 10 years Govt. securities closest to tenor of Loan.	
	(c) any loan made by a	(d) any guarantee given or
	↓	or
	holding company	security provided
	↓	↓
	to its wholly owned subsidiary	by a holding company
	or	↓
	any guarantee given or	in respect of any loan* made
	security provided	↓
	↓	by any bank or F.I.
	by a holding company	↓
	↓	to its subsidiary company
	in respect of any loan* made to	*Loans - to be utilized for
	its wholly owned subsidiary	Principal Business activities

Sec. 185(4) - Penalties and Exemptions:

Self Study from Main Book

DO Practice - Questions on Sec. 185

Sec. 186(2): Limits for loans and Investments:

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 higher of → 60% of PUC, Free Reserves and Securities Premium

OR

↘ 100% of Free Reserves and Securities Premium

* The 'word ' person' does not include on individual in the employment of company.

Sec. 186(3): Requirement of Special Resolution

If aggregate of Loans, Investments

Guarantee, Security
so far provided

along with → proposed Loan,
investment, guarantee, security

> limits specified
u/s 186(2)

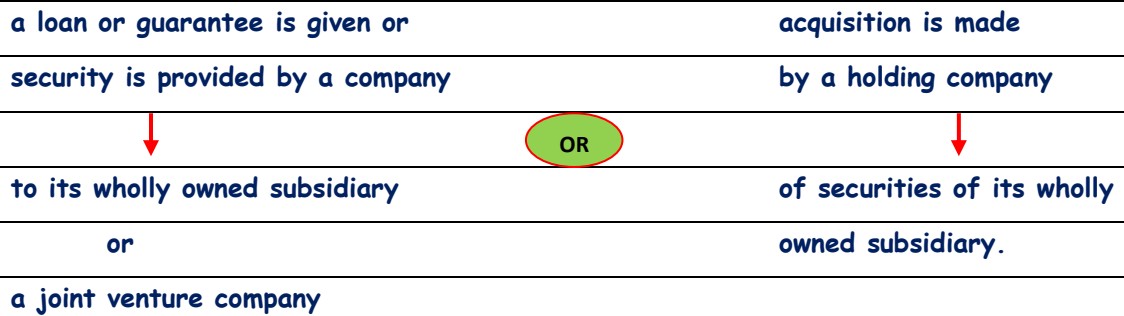


no investment or loan shall be made or guarantee shall be given or security shall be provided



unless previously authorised by a special resolution passed in a general meeting.

Proviso to Sec. 186(3): Special resolution will not be required, if



Note: Details of loans, guarantee, security or acquisition made without passing SR shall be made in financial statements.

Rule 11 and 13: Self reading from Book (Not Significant)

Examples: State the type of resolution required in below mentioned cases:

Case	Paid up capital	Free Reserves	Securities premium	60% of (Puc+FR+SP)	100% of (FR+S.P.)	Limit u/s 186(2)	Existing L/G/S/I	Proposed L/G/S/I	Resolution
I	50 Cr.	10 Cr.	40 Cr.	60 Cr.	50 Cr.	60 Cr.	40 Cr.	18 Cr.	Board
II	"	"	"	"	"	"	"	25 Cr.	SR
III	"	"	"	"	"	"	"	25 Cr.	Board
								(to employee)	
IV	100 Cr.	50 Cr.	100 Cr.	150 Cr.	150 Cr.	150 Cr.	140 Cr.	50 Cr.	Board
								(to wholly owned sub)	
V	100 Cr.	100 Cr.	100 Cr.	180 Cr.	200 Cr.	200 Cr.	190 Cr.	12 Cr.	Board
								(to employee)	
								25 Cr.	Board
								(to wholly owned sub)	
								8 Cr.	Board
								(to other co.)	

Other significant requirement as to loan, guarantee, security and investments:Sec. 186(4), 186(5), 186(7) and 186(8):Sec. 186(4): Disclosures in financial statements:

Company shall disclose in the financial statements the full particulars of:

- (a) loans given
- (b) investments made or guarantee given or security provided and
- (c) purpose for which the loan or guarantee or security is proposed to
Utilised by recipient.

Sec. 186(5): Unanimous resolution:

No investment shall be made or loan or guarantee or security given by
company unless



the resolution sanctioning it is passed at a meeting of Board with the consent
of the all directors present at the meeting.

Sec. 186(5): Prior approval of P.F.I.:

No investment shall be made or loan or guarantee or security given by the
company unless



the prior approval of P.F.I. concerned where any term loan is subsisting, is
obtained.

Note: Prior approval of P.F.I. is not required if:

- (a) Amount of existing L/G/S/I together with proposed L/G/S/I \leq
limit specified u/s 186(2)
and
- (b) no default in repayment of loan instalments or payment of
interest thereon as per the terms and conditions of such loan
to the P.F.I.

