

Provisions of Loan to Director- Section 185

This article will help you to get to know about the provisions related to the loans to Director in accordance with the Companies Act 2013. Sec- 185 of Companies Act, 2013 deals with the provisions of loans to Director.

Loan to Director-

Section 185(1) of the Act states that a Company cannot –

- Advance loan directly or indirectly,
- Advance loan which includes a loan represented by a book debt,
- Give guarantee or provide security with connection to any loan taken
 1. To its Director
 2. To the Directors of its Holding Company
 3. To Relative of Directors
 4. To the partner of the firm in which Director is a Partner
 5. To the Partnership Firm in which its director or its Holding Company is a Partner

Loan to any Interested person of a Director- (Section 185(2))

Section 185(2) allows a company to give loans to any person/entity in whom any of the directors are interested in subject to certain conditions.

- Approval of shareholder by way of special resolution AND
- the loans are utilised by the borrowing company for its principal business activities.

The Act provides the list of the persons who are considered as persons in whom any of the directors of the company is interested. They are-

- Any private company of which any director of the lending company is a director or member.
- Any body corporate at whose general meeting not less than 25% of the total voting power may be exercised or controlled by any director of the lending company, or by two or more such directors together.
- Any body corporate, managing director, the board of directors, or manager, which is accustomed to act in accordance with the directions or instructions of the board, or of any director or directors, of the lending company.

Exemptions-

Section 185(3) of the Act provides exceptions to the restrictions on the company to grant loans.

1. The Companies providing Loan to Managing Director/Whole Time Director subject to:As conditions of service extended to all its employees **or**

Pursuant to a scheme approved by Special Resolution

2. The Companies providing Loan, Guarantee, Security in their ordinary course of business where interest charged not less than prevailing yield of Govt. securities of 1 year, 3 year, 5 year or 10 year.

3. Loan, Guarantee Security provided by Holding Company to wholly-owned subsidiary company for principal business activities.

4. Guarantee or security provided by Holding Company to its subsidiary for principal business activities.

Penalty Provisions-

Lending Company-

- Fine – not less than 5 Lakh extend to Rs. 25 lakh

Any officer in default-

- Imprisonment – may extend to 6 months or
- Fine – not less than 5 Lakh extend to Rs. 25 lakh

Recipient of the Loan-

- Imprisonment – may extend to 6 months or
- Fine – not less than 5 Lakh extend to Rs. 25 lakh or
- With both

Source : Taxguru