

**THE COMPANIES ACT, 2013- SIGNIFICANT CHANGES  
IN RESPECT OF SECTIONS NOTIFIED AND APPLICABLE W.E.F. 12th SEPTEMBER 2013**

**1. Section 180 - Restriction on power of Board (Corresponding section 293)**

- Shareholders' approval required in general meeting even in case of private companies before Board of Director's can exercise the powers e.g.
  - Sell, lease or dispose undertaking of the Company
  - Invest the compensation received in merger/amalgamation
  - Borrow money exceeding aggregate of its paid up capital and free reserves (apart from temporary loans from bankers in ordinary course of business)
- Shareholders' approval is required by passing special resolution for both public & private companies.

**2. Section 185 - Loan to directors (Corresponding section 295, 296)**

- Restriction on giving loan to director or guarantee/security in connection with borrowing by director or person in whom director is interested now applies even to a private company.
- Accordingly, no company directly or indirectly give any loan (including loan represented by book debt) to any of its directors or to any other person in whom directors is interested or give any guarantee/ security in connection with loan taken by them.
- The person in whom director is interested includes:
  - any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;
  - any firm in which any such director or relative is a partner;
  - any private company of which any such director is a director or member;
  - 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
  - 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.

- Restrictions being applicable to private companies have a far reaching impact in terms of granting of loan and/or providing guarantee or security in connection with borrowing by entities covered above. The penalties are stringent. There exists possibility of these restrictions being relaxed in separate section (Section 186 – yet to be notified); however clarity on this would emerge only over a period of time and by a possible clarification on the matter.
- Loan to MD/WTD can be given if similar offer is given to all employees or it is pursuant to scheme approved by members vide special resolution.

### **3. Section 192 - Restriction on non cash transactions involving directors (New provision)**

- Now there is a restriction on arrangement involving acquisition of assets for consideration other than cash by director (being Director of the company or holding company or subsidiary or associate company) or person connected with the Director from the Company and vice versa unless prior approval is sought from shareholders for such arrangement.
- The assets so being bought or sold for consideration other than cash has to be valued by a Registered Valuer. However the provisions relating to registered valuer are yet to be notified.

### **4. Section 2(43) – Definition of free reserves**

- Significant change in the definition
- Free reserves are defined as such reserves, as per last audited balance sheet of the Company which is available for distribution as dividend. However it does not include following:
  - Any amount representing unrealized gains / notional gains / revaluation of assets
  - Any change in the carrying amount of an asset or liability including surplus in profit & loss account on measurement of the asset or liability at fair value.
- Definition needs clarification as regards what items would be covered under unrealized gains/notional gains.

**Disclaimer:**

This document has been prepared as a service to the clients. We recommend you to seek professional advice before taking any action on the specific issues.

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