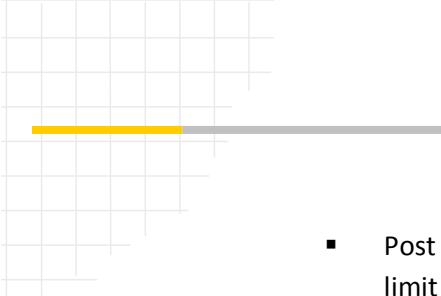


**CLARIFICATION REGARDING SECTION 185 OF THE COMPANIES ACT, 2013**

- Section 185 which is notified w.e.f. 12<sup>th</sup> September 2013 restricts granting of loan, guarantee or security to directors and persons in whom directors are interested. To remove ambiguity on applicability of section 186, the Ministry of Corporate Affairs ('MCA') in November 2013, had clarified that section 372A of the Companies Act, 1956 would continue to remain in force till section 186 of the Companies Act, 2013 is notified. Section 372A(8)(c) and (d) of the Companies Act, 1956, specifically exempts any loans made and any guarantee given or security provided by the holding company to its wholly owned subsidiary. However post clarification; there was no clarity on whether loans, guarantee or security granted to subsidiary company would be a non-compliance u/s 185 of the Companies Act 2013.
- Based on the several representation received including from the banking industry in regard to above clarification, the MCA has issued another clarification vide circular dated 14<sup>th</sup> February 2014 to clarify whether holding company can give guarantee or security in respect of loans granted by a bank or financial institutions to its subsidiary as per provision of section 372A(c) and (d) vis a vis provision of section 185. As per clarification, any guarantee given or security provided by a holding company in respect of loans made by a bank or financial institution to its subsidiary company, exemption as provided in section 372A(8)(d) of the Companies Act, 1956 shall be applicable till section 186 of the Companies Act, 2013 is notified. This clarification will be applicable to cases where loans so obtained are exclusively utilized by the subsidiary for its principal business activities.
- The latest clarification raises further doubts as under:
  - The circular is silent on loan transactions and has given clarification only on granting of guarantee and security. Whether loan transactions are still restricted as per the provision of section 185?
  - The circular uses word 'subsidiary' whereas section 372A(8)(d) uses word 'wholly owned subsidiary'. Whether subsidiary which is not wholly owned subsidiary would get the exemption as per this circular?
  - Whether circular can prescribe new conditions, which do not find place in section 186:
    - the circular prescribes condition of obtaining loan by subsidiary for its 'principal business activities'.
    - the circular prescribes that exemption is available only in respect of loans given by banks / financial institution to the subsidiary.

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- Post notification of section 186 whether such transactions will be permitted subject to limit specified or will not be permitted in view of restriction under section 185?

**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.

In case of any clarification, you may reach us at [nashah@nashah.com](mailto:nashah@nashah.com)