

LOANS



This Document would assist the reader in understanding the Requirements for **Loans** under Companies Act, 2013

31st August 2015



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LOANS

“Loans” is not defined anywhere in Companies Act, 2013. However in normal parlance any transaction in which money is given with the intention to be returned, with or without interest is loan.

STATUTORY SUMMARY

Loans	Section	Forms	
Taking	179,180,185	MGT-14	Filing of Resolutions and Agreements to the Registrar
Giving	185,186	MBP 2	Register of Loans

DIFFERENCE BETWEEN LOAN, ADVANCE AND DEPOSIT

There is a difference between Loan, Advance and Deposit under Companies Act 2013. A deposit includes a loan, but every loan may not be a deposit. An advance may be deemed to be a deposit but it may not be a loan. We should understand the difference between Loan, Deposit and Advance for the purposes of Companies Act 2013 and related compliances.

A deposit is a much wider term in the Companies Act and includes loans as well as advances. All amounts of money received as loans and advances are deposits except as mentioned in Rule 2(1)(c) of Companies (Acceptance of Deposit) Rules, 2014.

For accepting amount of money as Advances which are NOT Deposits, no procedure is to be followed under the Companies Act 2013.

For accepting amount of money as Loans which are NOT Deposits, procedures have to be followed under the Companies Act 2013 as discussed further in this chapter.

For accepting amounts of money as Loans or Advances or Deposits, which ARE Deposits, procedure has to be followed under Companies Act 2013 which has been discussed in our earlier document which can be accessed at http://lunawat.com/Uploaded_Files/Attachments/F_3014.pdf



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LOAN FROM DIRECTORS

Amounts received from directors are loans and not deposits if the directors give the amount out of his own sources and not borrowed funds and give a certificate to that effect to the company. In such a case a company may accept loans from directors without interest too.

However, if the director gives the money out of borrowed funds, it would be deposit and provisions of section 76 read with Companies (Acceptance of Deposit) Rules 2014 would be applicable and only eligible companies can take such a deposit within the specified limits. An Eligible Company is a Public Company which has either minimum Net-Worth of Rs. 100 crores or Turnover of Rs. 50 Crores. A private company cannot accept such loan from the director.

In such a case if the director is a shareholder also then, section 73 (2) read with Companies (Acceptance of Deposit) Rules 2014 would be applicable and it would be treated as deposit from shareholder. For compliances read our document which can be accessed at http://lunawat.com/Uploaded_Files/Attachments/F_3014.pdf

LOAN FROM FRIENDS AND RELATIVES OF DIRECTORS

Amounts received from relatives of directors prior to 1st April 2014 by a private company are not deposits, but Loans. A public company could not have received any loans from relatives of directors under 1956 Act.

However, with effect from 1st April 2014 amounts received from relatives of directors are deposits even for a private company and if received would be in contravention of the Companies Act 2013.

Loan from friends were neither allowed in 1956 Act nor in 2013 Act. A company cannot accept loans from friends of the directors.

LOAN FROM SHAREHOLDERS

Amounts received from shareholders prior to 1st April 2014 by a private company are not deposits, but Loans.

However, with effect from 1st April 2014 amounts received from shareholders are deposits and the limits and conditions as specified and discussed in our document which can be accessed at http://lunawat.com/Uploaded_Files/Attachments/F_3014.pdf has to be complied.



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LOAN FROM COMPANIES

Any amount received by a company from another company is not a deposit as per the provisions of Companies (Acceptance of Deposit) Rules, 2014. It may be a loan or deposit and generally termed as Inter-Corporate Deposits, yet they are not deposits under the Companies Act 2013.

By Public Company

A Public Company can accept loan / deposit from any other company and would NOT be deposits under the Companies Act 2013, however, it cannot accept monies from another company (other than its wholly owned holding company) if:

- The lending company's director individually or along with one or more of its directors exercises or controls not less than 25% of its voting rights; or
- It's Board of Directors, MD or Manager is accustomed to act in accordance with the directions or instructions of the Board, or any director or directors of the lending company.

By Private Company

A Private Company can accept loan / deposit from any other company and would NOT be deposits under the Companies Act 2013, however, it cannot accept monies from another company (other than its wholly owned holding company) if:

- The lending company's any director is a director or member of the company. However, if the lending company is a private company then with effect from 5th June 2015 it can give loan to another private company even if its director is the director or member of the recipient company if:
 - In the lending company's capital no other body corporate has invested any money i.e., it's shareholder does not include any body corporate;
 - If the borrowings of the lending company from banks or financial institutions or anybody corporate is less than twice its paid up capital or Rs. 50 crores, whichever is lower; and
 - Lending company is not in default in repayment of such borrowings subsisting at the time of giving such loan.
- The lending company's director individually or along with one or more of its directors exercises or controls not less than 25% of its voting rights; or
- It's Board of Directors, MD or Manager is accustomed to act in accordance with the directions or instructions of the Board, or any director or directors of the lending company.



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LOANS WHICH ANY COMPANY CAN ACCEPT

A company whether Public or Private can accept amounts of loans from following:

- Central Government, State Government, Local Authority, Statutory Authority
- Foreign government, foreign or international banks, multilateral financial institutions, foreign export credit agencies, foreign collaborators, foreign bodies corporate and foreign citizens, foreign authorities or persons resident outside India subject to the provisions of Foreign Exchange Management Act
- Loan or facility from banking Company, SBI, etc. notified by CG as per RBI Act
- Loan or financial assistance from Public Financial Institutions, Regional Financial Institutions, Insurance Companies or Scheduled Banks
- Amount received against Commercial Papers, etc.
- Any other Company, subject to as discussed earlier in this document.
- Directors, subject to as discussed earlier in this document.
- Bonds / debenture secured by first charge on any assets (excluding intangible assets) or convertible into shares within 5 years
- Interest free security deposit from employee not exceeding his annual salary
- Interest free amount received in Trust
- Amount brought in by promoters as unsecured loans in stipulation of any lending Financial Institution or Banks subject to:-
 - Loan is brought in pursuance of stipulation imposed by lending institutions on promoters to contribute such finance; and
 - Loan is provided by the promoters themselves and/or by their relatives.

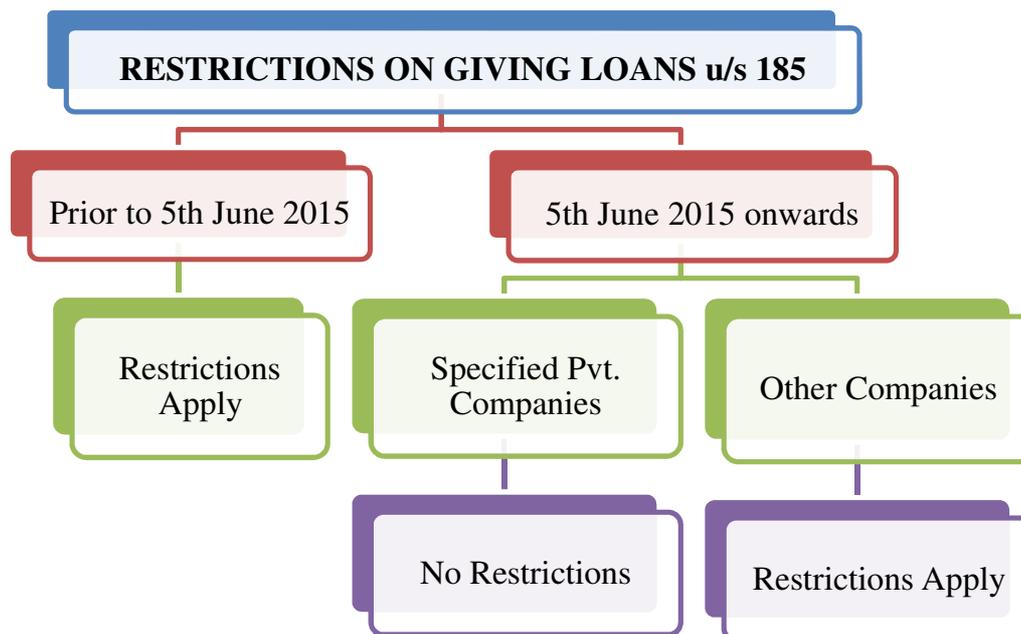
However, exemption is available only till loans are repaid



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RESTRICTIONS ON GIVING LOANS u/s 185

Restriction on giving of loan has been prescribed under section 185 of the Companies Act 2013. It has to be understood period-wise as under:



A company cannot directly or indirectly give any loan or any loan represented by a book debt to the following:

1. Director
2. Partner of its director
3. Relative of its director
4. Director of its holding company or his partner or relative
5. Any firm in which its director is a partner
6. Any firm in which relative of its director is a partner
7. Any Private Company in which its director is a director
8. Any Private Company in which its director is a member
9. Any company in which its director individually or along with one or more of its directors exercises or controls not less than 25% of its voting rights; or
10. Any company whose Board of Directors, MD or Manager is accustomed to act in accordance with the directions or instructions of the Board, or any director or directors of the lending company.



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However, such restriction would not be applicable to a specified private company with effect from 5th June 2015, which is discussed separately in this document.

LOANS ALLOWED TO BE GIVEN TO DIRECTORS u/s 185

Section 185 allows certain specific transactions and they when undertaken would not violate s. 185. In other words these loans can be given by any company. These are:

1. Loan given to a managing director/whole-time director, as a part of the conditions of service extended by the Company to all its employees.
2. Loan given to a managing director/whole-time director in pursuant to any scheme approved by the members by a special resolution.
3. Company which in the ordinary course of its business provides loans or gives guarantees or securities **and** the Company charges interest at a rate not less than the bank rate declared by RBI.
4. Loan given by a holding Company to its Wholly Owned Subsidiary, provided the money is utilised by the subsidiary for its principle business activity.

RELAXATION GIVEN TO SPECIFIED PRIVATE CO. U/S 185 W.E.F. 5TH JUNE 2015

A Private Company which satisfies the following conditions w.e.f. 5th June 2015 would not invite restrictions contained in section 185:

- (a) In its capital no other body corporate has invested any money, i.e., its shareholder does not include any body corporate;
- (b) If the borrowings of the lending company from banks or financial institutions or anybody corporate is less than twice its paid up capital or Rs. 50 crores, whichever is lower; and
- (c) Such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section

In such a case the private company can give loan to anyone without any restriction of section 185.

RESTRICTION ON SEBI REGISTERED COMPANIES

According to section 186(6) read with relevant Rules a company registered under section 12 of SEBI Act, 1992 i.e., a stock broker, share transfer agent, banker to the issue, trustee of trust deed, registrar to



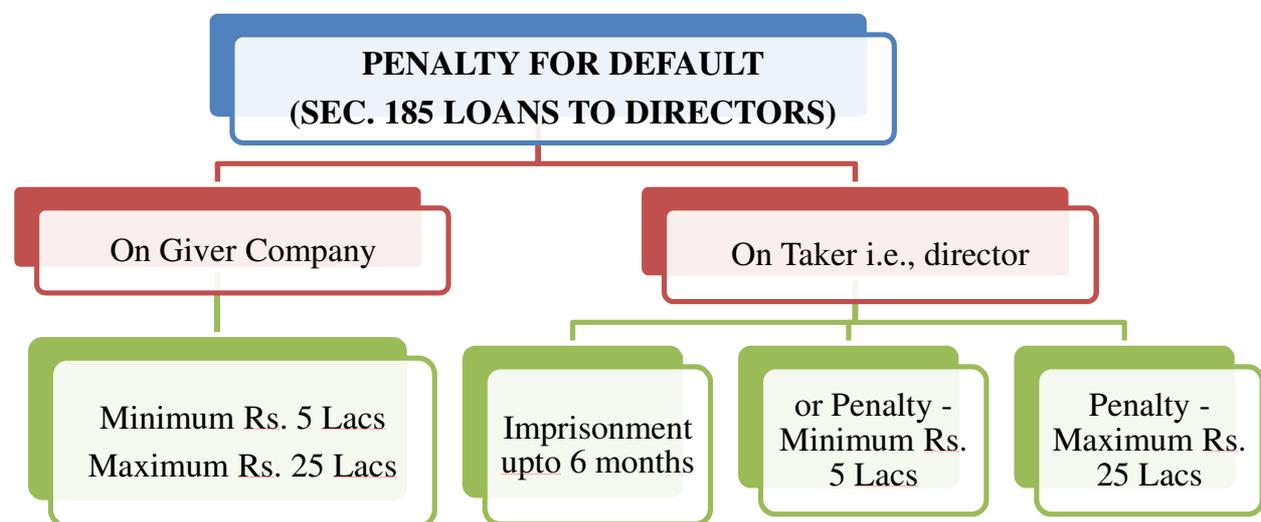
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an issue, merchant banker, underwriter, portfolio manager, investment advisors and intermediaries registered with SEBI cannot take intercorporate loans or deposit exceeding:

- (a) 60% of its paid-up share capital plus free reserves plus securities premium account; or
- (b) 100% of its free reserves plus securities premium account

whichever is more

PENALTY FOR DEFAULT u/s 185



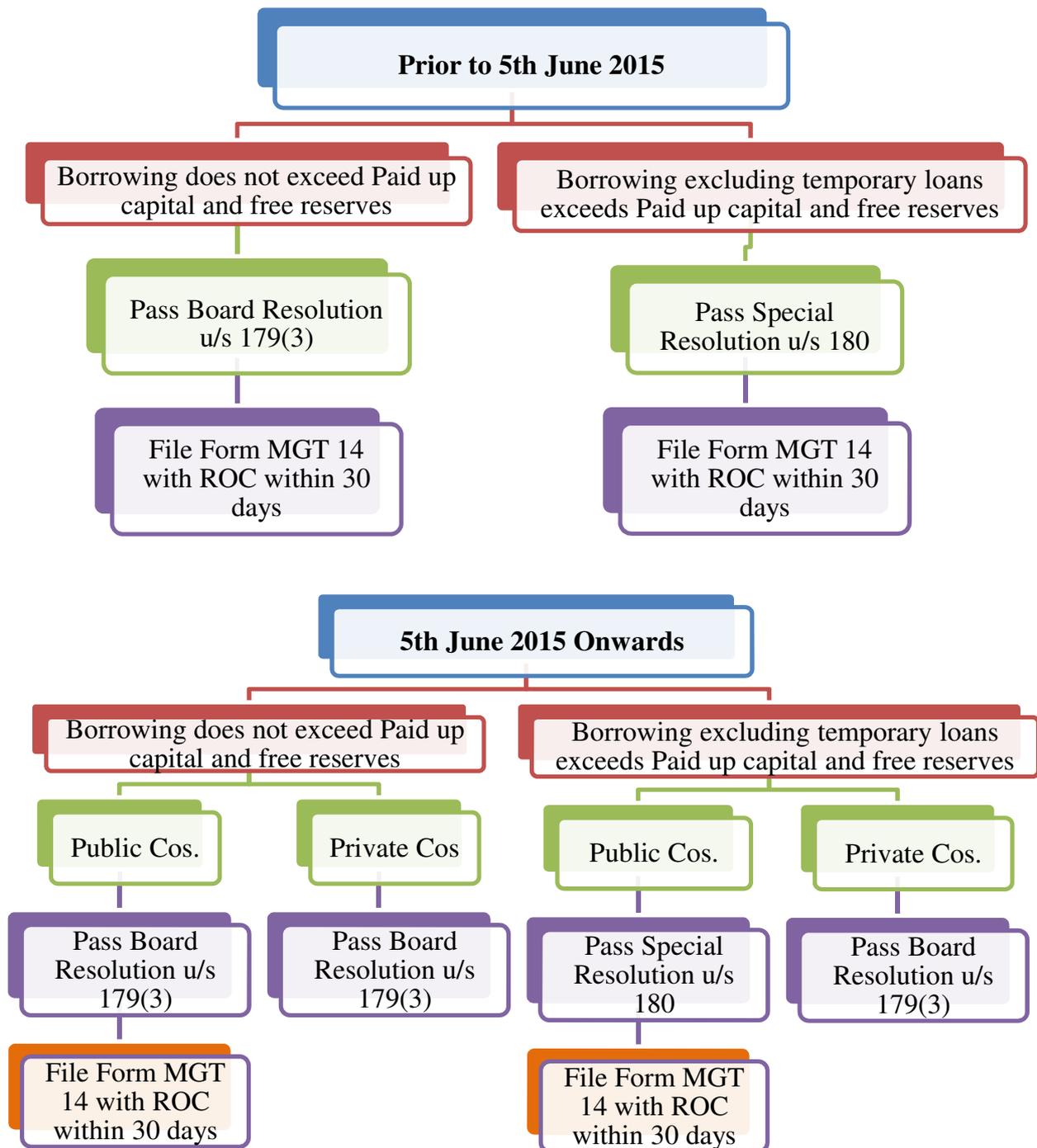
COMPLIANCES FOR TAKING LOAN

Compliance for taking loan under Companies Act 2013 can be bifurcated into two categories:

- 1. Where borrowings does not exceed paid up capital and free reserves
- 2. Where borrowings except temporary loans exceeds paid up capital and free reserves

Further the compliance as to be studied period-wise:-

- 1. Prior to 5th June 2015
- 2. 5th June 2015 Onwards

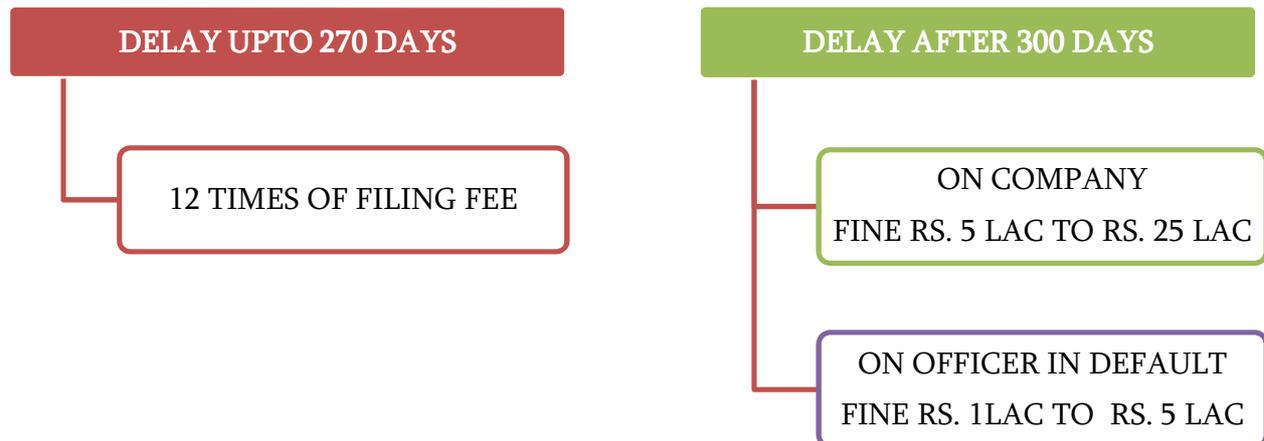


It is to be noted that section 180 is not applicable to a private company w.e.f. 5th June 2015.



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PENALTY FOR DELAY IN FILING MGT 14



GIVING OF LOANS

Apart from section 185, following companies cannot give loans:

- Any company which is in default of repayment of any deposit accepted under 1956 Act or 2013 Act and the default is subsisting.
- Any company which is in default of repayment of any interest on the above and the default is subsisting.

Also section 186 prescribes certain conditions to be complied for giving of the loans. Further the following transactions of giving loans are not covered under section 186, hence would not require compliances u/s 186. Loans given by:

- Banking Company
- Insurance Company
- Housing Finance Company in its ordinary course of business
- Company engaged in business of financing
- Company engaged in business of providing infrastructural facilities
- NBFC in business of giving loans
- Loans given to employees other than MD and WTD in accordance with conditions of service



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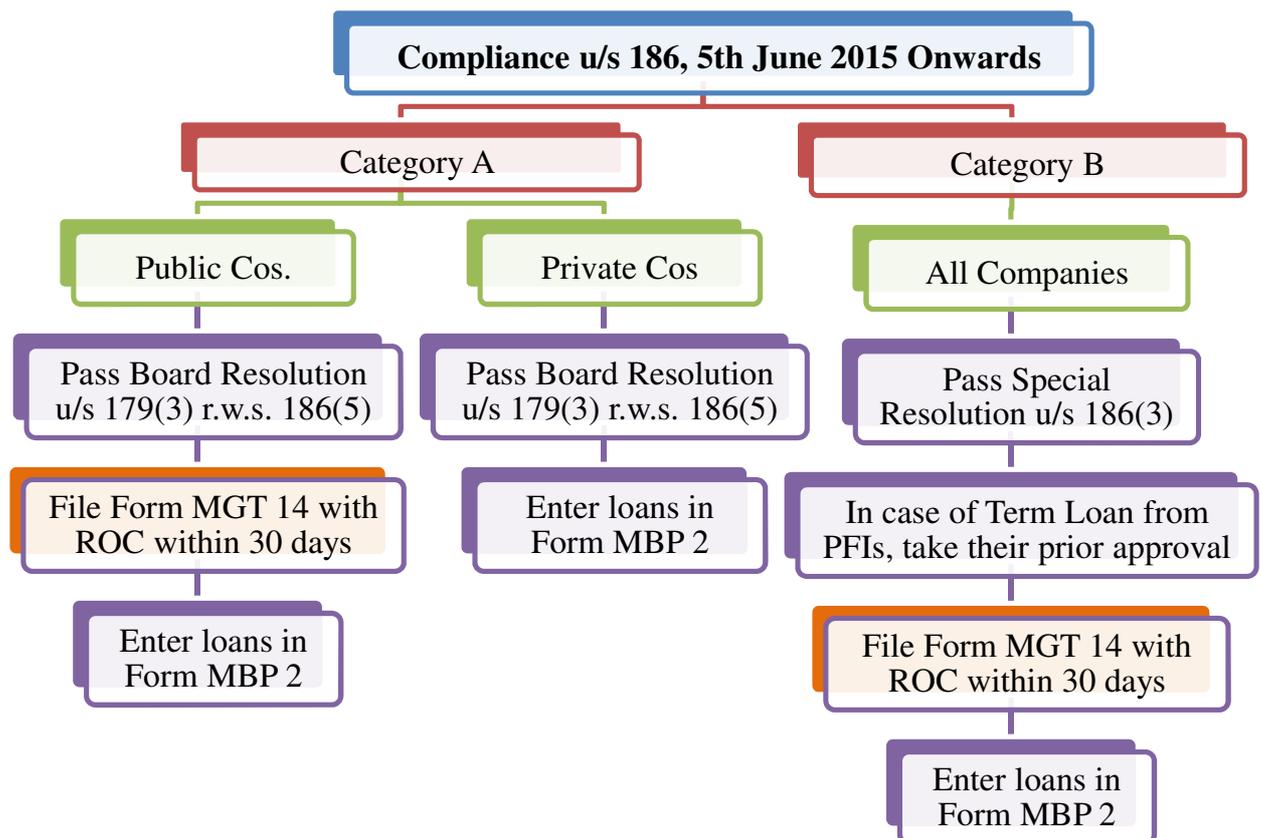
COMPLIANCE FOR GIVING OF LOANS U/S 186

Compliance for giving loan u/s 186 has to be divided in two parts, according to limits of loan to be given. These for simplicity are divided into 2 categories:

Category A - Amounts not exceeding:

- a) 60% of its paid-up share capital plus free reserves plus securities premium account; or
- b) 100% of its free reserves plus securities premium account

Category B - Amounts exceeding limits as stated above in A.





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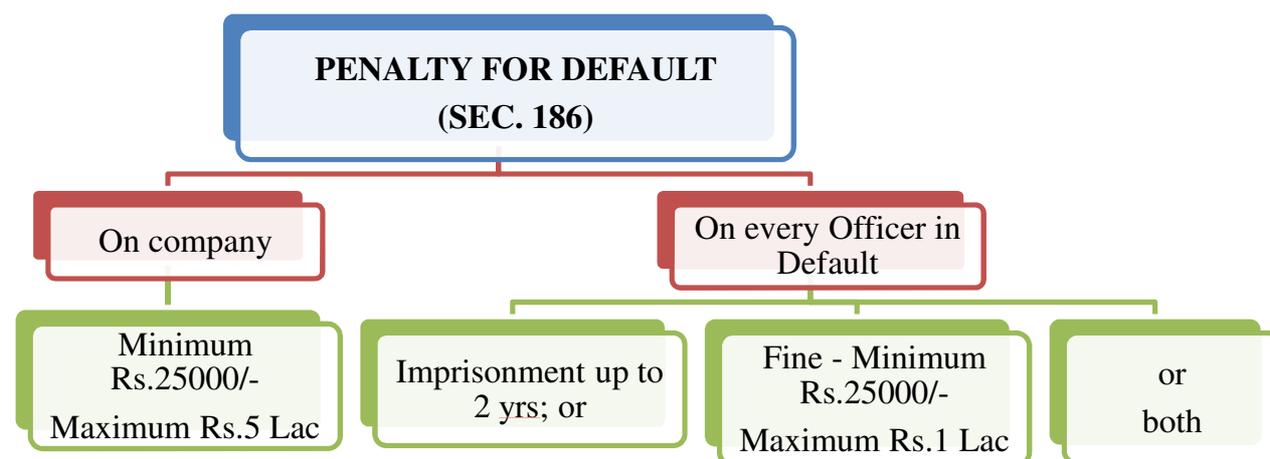
INTEREST ON LOANS U/S 186

According to section 186(7) no loans can be given under section 186 at a rate of interest lower than the prevailing yield of 1 year, 3 year, 5 year or 10 year government security closest to the tenor of the loan. There is a controversy in interest to be charged on loans by a company. There are two views on the same.

First View : Mandatory charging of interest is only on category B (as stated above) companies.

Second View : Mandatory charging of interest is on all companies category A and B both (as stated above)

PENALTY FOR DEFAULT u/s 186



I hope this document would be of use to you. I thank CS. Divya Khurana in assisting me to compile this document.

Best Regards

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(Disclaimer: Though full efforts have been made to state the interpretations correctly, yet the author is not responsible / liable for any loss or damage caused to anyone due to any mistake / error / omissions)