

**Intensive Course on Companies Act,  
2013**

**Jointly Organised By  
WIRC and J. B. NAGAR CPE STUDY  
CIRCLE**

**11<sup>th</sup> June 2015 - Thursday  
By CA Yagnesh Desai**

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**Topics Covered**

Restrictions on acceptance of deposits – private/ public/eligible companies.

Related party transactions

Loans to directors

Loans / investments by companies

**Managerial remuneration**

Appointment of KMP

Limits on / computation of managerial remuneration

Schedule V – Appointment & remuneration of managers

**Declaration & payment of dividend**

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**Acceptance of Deposits-  
Restrictions-Private –  
Public and Eligible  
Company.**

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Lets Cast a Glance !!!

| Section- | Rule | Description   | Applicable to  |
|----------|------|---|--|
| 73       | 3(3) | Prohibition on Acceptance of Deposits from Public                       | All types of Companies - Except Private Limited Companies (subject to conditions), banking companies , NBFC, and housing finance Companies |
| 74       |      | Repayment of Deposits etc. accepted before the commencement of Act,2013 |  |
| 75 *     |      | Damages for Fraud;  |  |
| 76       | 3(4) | Acceptance of Deposits from Public by certain companies                 | Only to Public Companies - rather it defines "Eligible Companies " Deposits from Member and Others - Government Companies                  |

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Which Companies Are Exempt ?

Banking Companies , NBFC , Housing Finance Companies

Recently – Private Companies are Exempt from application [C:\Users\Yagnesh\Desktop\Companies Act, 2013\Company Law Lectures\JB Nagar\S 73\(2\)\(a\)\(e\).pdf](C:\Users\Yagnesh\Desktop\Companies Act, 2013\Company Law Lectures\JB Nagar\S 73(2)(a)(e).pdf) of S 73(2) (a) to (e)

**Which Type of Private Companies ?**

Shall not apply to a private company which accepts from its members monies not exceeding one hundred per cent. of aggregate of the **paid up share capital and free reserves**, and such company shall file the details of monies so accepted to the Registrar in such manner as may be Specified .

S 73(2)(f) – providing security will still needs to be complied with.

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Deposits prior to 1<sup>st</sup> April,2015 Changes on 30<sup>th</sup> March 2015

(A) such amounts received by private companies prior to 1<sup>st</sup> April, 2014 shall not be treated as 'deposits' under the Companies Act,2013 and Companies (Acceptance of Deposits) Rules, 2014 subject to the condition that relevant private company shall disclose, in the notes to its financial statement for the financial year commencing on or after 1<sup>st</sup> April, 2014 the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement.

(B) Any renewal or acceptance of fresh deposits on or after 1st April, 2014 shall, however, be in accordance with the provisions of Companies Act, 2013 and rules made there under.

Discuss Rule 19, Transitional [Provisions](#) Page 23

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### Analysis of S 73 - Any Company

- S 73. (1) On and after the commencement of this Act, **no company** shall **invite, accept or renew deposits** under this Act from the **public** except in a manner provided under this Chapter.

Proviso exempts banking companies , housing finance companies ,NBFC and such companies specified by Central Government

- (2) A company may, subject to the **passing of a resolution in general meeting** and subject to such rules ..... accept deposits **from its members** on such terms and conditions, .... subject to the fulfilment of the following conditions,namely....conditions \*a to f'. compliance requirements
- (3) Address issues of repayment of deposit and interest
- (4) Depositor may approach the Tribunal in case of default by the Company
- (5) Stipulates about deposit repayment reserve and restrictions thereon

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### Conditions & Ceiling

- A resolution in the General meeting
- Company invite , accept or renew deposits only from **members,**
- the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits should not exceed 25 % of the aggregate of the paid-up share capital and **free reserves** of the company – Private Companies \*

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### Restrictions on tenure of Deposit - The Company Can not accept or renew any deposit - secured or unsecured which is :

- I. Repayable On Demand;
- II. Repayable Within 6 months; or
- III. Repayable More than 36 months from the date of acceptance or renewal.

Thus - deposit's tenure should be not less than 6 months and not more than 36 months.

\* Applicable to eligible company by S 76 , Rule 3(1) read with S. 73(2)

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### Short Term Deposits (proviso to rule 3(1), r/w S 73)

- Any Company can accept – renew deposits for short term- should not be repayable :-
- within 3 months from the acceptance or renew and
- beyond 6 months from the date of deposit or acceptance
- Such deposit should not exceed 10 % of the paid share capital and free reserves.
- **Commentary :**
- Tenure not less than 3 months and not more than 6 months.
- This exemption ( privilege ) is applicable to all types of companies , whether S 73 or S 76

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### Eligible Company-Sec.76 & Rule 2(e)

- Public Company fulfilling the following Criteria can accept deposits from the public:
  1. Net Worth NOT less than 100 Crores Rs., OR
  2. Turnover NOT less than 500 crores Rs. **AND**
  3. Passing a **Prior Special Resolution** at a general meeting and filing it with the ROC.
  4. Obtain a rating form a Credit Rating agency (at the time of inviting deposits)

However, any deposits can be obtained by an **ordinary resolution** if it is within the Limits specified u/s.180(1)(c). – here is the controversy – mismatch

**(The limits u/s.180 (1)(c) :** Amount to be borrowed up to the Aggregate of the Paid up share capital and Reserves, (apart from the Temporary loans\* obtained from the Banks in ordinary course of business).

\*Temporary Loans for this purpose means Loans repayable on Demand or within **6 months from the date of such loan** Like Cash credit arrangement, Discounting Bill, etc. excluding the loan for expenditure of Capital nature.

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### Sec.76: Eligible Company & Rule 2(e)

- Sec.76 states that certain Public companies can borrow from members as well as Public (non-members)
- 
- “eligible company” means a public company as referred :-
  - having a net worth of not less than one hundred crore rupees or
  - a turnover of not less than five hundred crore rupees and
  - which has obtained the prior consent of the company in general meeting by means of a special resolution and
  - also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits:

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As Per Rule 3 read with Section 76(1) : No Eligible Company shall accept or renew

- (a) any deposit from its members, if the amount of such deposit **together with the amount of deposits outstanding** as on the date of acceptance or renewal of such deposits **from members exceeds 10 %** of the aggregate of the paid-up share capital and free reserves of the company;
- (b) any other deposit, if the amount of such deposit together with the amount of such other deposits, **other than the deposit referred to in clause (a)**, outstanding on the date of acceptance or renewal exceeds 25 % of aggregate of the paid-up share capital and free reserves of the company.

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**Government Company & Acceptance of Deposit – Rule 3(5)**

- Government company can accept upto accept or renew deposits together with the amount of other deposits **outstanding** as on the date of acceptance or renewal exceeds 35 % per cent. of the aggregate of its paid up share capital and free reserves of the company.

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**Summary -Table for the limit for the acceptance or renewal of Deposits outstanding**

| Company                              | Deposit from Members   | Other Deposits (excluding the deposit from members ) | All Deposits |
|--------------------------------------|--|--|--------------|
|                                      | Percentage of Aggregate of Paid up Share Capital and Free Reserves |  |              |
| Any Company - S 73                   | 25%  | -  |              |
| Eligible companies- Public Co. S. 76 | 10%  | 25%  |              |
| Government Companies                 |  | -  | 35%          |

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### Summary :Types of companies which can accept – renew deposits

- Eligible company – Public Company from member and non - members .
- Non Eligible Co. - Only from its members
- Government Co. - Only form public.

#### • Short Term Deposits

Any Company ( all types of companies ) may for the purpose of meeting any of its short term requirements may borrow , tenure not less than 3 months and not more than 6 months, subject to cap of 10 % of Share capital & Free Reserves.

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### DEPOSITS- FUNDAMENTALS

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### Deposit defined & exclusions- Rule 2 (C)

- As per the definition u/s.2(31) and Rule 2. 'deposit' includes any receipt of money by way of **Deposit** or loan in any other form by a company.
- Most of the exceptions as per the Companies (Acceptance of Deposits) Rules, 1975 (hereinafter referred as 'Old Deposit Rules') still continue, the key changes to the exceptions provided as per the New Deposit Rules which amend the scope of items covered under deposits are discussed in the paper - page 2 of [Acceptance of deposits](#).



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## Transitional Provision Rule 19

- Repayment of "Earlier Deposits" , and interest thereon paid in accordance with such provisions,
- the provisions of clause (b) of sub-section (1) of section 74 of the Act shall be deemed to have been complied with if the company complies with requirements under the Act and these rules and continues to repay such deposits and interest due thereon on due dates for the remaining period of such deposit in accordance with the terms and conditions and period of such Earlier Deposits and in compliance with the requirements under the Act and these rules;
- Provided further that the fresh deposits by every eligible company shall have to be in accordance with the provisions of Chapter V of the Act and these rules;

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## Deposit accepted before 1<sup>st</sup> April 2014 - S 74

- Where Deposit and Interest thereon remains unpaid or becomes due on or after 1<sup>st</sup> April 2014, the company shall:
  - ✓ Within 3 months of 1<sup>st</sup> April, 2014 or due date of repayment file with a registrar the statement of deposits accepted and amount remaining unpaid along with the arrangement made for such repayment.
  - ✓ Repay within One year from 1<sup>st</sup> April 2014 or Due date, whichever is earlier. In form DPT-4

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## Related Party Transactions

- Exemption to private companies from S 2(76)(iii)
- What precautions we should exercise in Related Party Transaction? Should we not enter into a deal at all?
- If at all its permissible to enter into transactions with related parties, what precaution to be exercised?
  - a. Any prior permissions?
    - Board or
    - Company – Special resolution or Ordinary
  - b. Post transaction compliances
    - Accounting Standards 18
    - Companies Act (Board Report)
    - RC 49
    - Standards on Auditing 550
- What if the conditions prescribed under Section 188 read with Rule 15 are not complied ?

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Related Party Transactions - Snap Shot

| Section - Rule                       | Description   |
|--------------------------------------|---|
| S 188                                | Related Party Transactions ..   |
| Rule 15                              | Contract or arrangement with a related party  |
| S 184                                | Disclosure of Interest by Directors   |
| Rule 16                              | Register of contracts or arrangements in which directors are interested   |
| S 2 (76)/(77)                        | Related Party / Relative  |
| General Circular 30 . Dt 17.7.2014   | Clarification concerning related party Transactions   |
| Circular Dated 14.8.2014             | Changes in limits of Transactions   |
| Section 16 of CA Amendment Act, 2015 | Requirement of resolution shall not be applicable to transactions entered into between a holding company and its wholly owned subsidiary vide notification date 29.5.2015. Not just to Private Companies. |

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Definition of related party- 2(76)(viii) will not apply to private company

- “related party”, with reference to a company, means—
- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager or his relative \* is a member or director;
- (v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

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Definition of related party- 2(76)(viii) will not apply to private company

- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:
- Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- (viii) any company which is—
- (A) a holding, subsidiary or an associate company of such company; or (B) a subsidiary of a holding company to which it is also a subsidiary;
- For the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

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### Who is relative ? S 2 (77)

- Members of a Hindu Undivided Family;
- Husband and wife; or
- Father: Provided that the term "Father" includes step-father.
- Mother: Provided that the term "Mother" includes the step-mother.
- Son: Provided that the term "Son" includes the step-son.
- Son's wife.
- Daughter.
- Daughter's husband.
- Brother: Provided that the term "Brother" includes the step-brother;
- Sister: Provided that the term "Sister" includes the step-sister.
  
- What is missing in the list ?

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### Related party Transactions - Sec 188(1) read with Rule 15 (3) - Private Companies Exempted vide Notification dated 5.6.2015 \*

Consent of the Board Resolution for

Contract or arrangement with a **related party** with respect to—

- (a) sale, purchase or supply of any goods or materials;
- (b) selling or otherwise disposing of, or buying, property of any kind;
- (c) leasing of property of any kind;
- (d) availing or rendering of any services;
- (e) appointment of any agent for purchase or sale of goods, materials, services or property;
- (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
- (g) underwriting the subscription of any securities or derivatives thereof, of the company

*Mark the difference between S 185 - which exempt only select private companies as against S 188 which gives blanket exemption.*

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### I. Approvals

- A. Prior approval by **resolution** \* by the Company on meeting **following threshold** S 188 Proviso 1 read with rule 15(3). Refer to the [Related Party Table.xlsx](#) table
  - Paid-up share capital- of ten crore rupees or more - Any related party - Any transaction , or
  - Various Transactions - different threshold Limits
- B. In other cases only **Board's** Approval is required.
- C. **No Approvals for transactions in ordinary course of business and at arms length are excluded from the purview of S 188.**
- D. For Private Companies . no approval for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated - Vide Notification 29.05.20015

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Miscellanea ....

**I Who can not vote ?**

- If member is a related party he shall not vote on such special resolution , exception, general circular 30 dt 17.7.2014, specifically interested party. - **Relaxation for member of private company. Vide Notification dt 5.6.2015**
- Interested director not to be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement- . Who is interested director ?

**II. Disclosure by interested director -**

- **S 184(2) : Disclosure by a director at the meeting of the Board, this not applicable to private company vide notification dated 5.6.2015**

What if director becomes interested after the contract/arrangement is entered into ?

- [Discuss](#) 174 (3) - Quorum - the recent exemption will remove the hardship of private companies.

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Clarification in July 2014-  
General Circular 30/2014 Dt  
17.7.2014

**Compromises - Arrangements and Amalgamations**

It is clarified that transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 1956/Companies Act, 2013, will not attract the requirements of section 188 of the Companies Act, 2013.

**Requirement of fresh approvals for past contracts under Section 188. :-**

Contracts entered into by companies, after making necessary compliances under Section 297 of the Companies Act, 1956, which already came into effect before the commencement of Section 188 of the Companies Act, 2013, will not require fresh approval under the said section 188 till the expiry of the original term of such contracts.

Thus, if any modification in such contract is made on or after 1st April, 2014, the requirements under section 188 will have to be complied with.

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Violation - Transaction

- **Query** :What if the director has not disclosed his interest or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement ?
- Section 184(3) - Voidable at the option of the Company.
- **Query** :What if any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special resolution in the general meeting ? S 188(3)
- If not ratified by the Board or the Company within three months - the contract or the arrangement becomes voidable at the option of the Company. Directors concerned shall indemnify the company against any loss incurred by it. Without prejudice to Company's right for action against the director or employee.

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### Violation - Penalty

Director or employee of a company, who violates provisions of S. 188 shall be punishable with :

**In case of listed Company :**

Maximum Imprisonment for one year or  
Minimum Fine of Rs. 25,000 and maximum of Rs. 5,00,000

**In case of any other Company :**

Minimum Fine of Rs. 25,000 and maximum of Rs. 5,00,000

**Caveat - default U/s 188 attracts disqualification**

*"S 164 (1) (a) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years."*

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### RTP Disclosures

I . Disclosures

- Board Report
- Notes to Accounts as per AS 18
- RC 49

II. Auditor to consider SA 550

III. Income tax Section 40(A)(2) – 3 CD

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### Lending and Investments Chapter XII

☞ Section 185: Loan to Directors – Rule 10  
*Certain class of private companies exempt from application of S 185*

☞ Section 186: Loans and Investment by Company; (Rules 11,12,13)

☞ Section 187: Investment of Company held in its own name (Rule 14)

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**Loan to Directors & others**

No Company shall

- Advance any loan , including any loan represented by book debts
- give any guarantee or provide any security in connection with any loan taken by him or such other person

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- to any of its directors or to any other person in whom the director is interested

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**Any other person in whom the director is interested**

- (a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;
- (b) any firm in which any such director or relative is a partner;
- (c) any private company of which any such director is a director or member;
- (d) 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
- (e) 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.

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Section 185 shall **NOT** apply in the following cases: -

- If a loan is given to **MANAGING or WHOLE TIME** director as a part of the conditions of service extended by the company to all its employees , or
- Pursuant to a scheme approved by the members by a **SPECIAL RESOLUTION;**
- If the company is in the business of providing loans and in respect of such loan interest is charged at the bank rate declared by RBI;.....Continue

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### S. 185 LOAN TO DIRECTORS

- It does contain any specific exemption/ exclusion with regard to loan given by a holding company to its subsidiary.
  - Rule 10 (1) - deals with Loans, guarantee, security to WOS
  - Rule 10(2) - deals with Guarantee- security provided to subsidiary companies \* Note the difference between (1) & (2)
- Now Subsection (c) & (d)

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### Section 185 shall **NOT** apply in the following cases: -

The provisions of Section 185 Shall not apply to a Private Company

- A) In whose share capital no other body corporate has invested any money
- B) If the borrowings of such a company from banks or FI or any body corporate is less than twice of its paid up capital or 50 crore rupees, whichever is **lower**; and
- C) Such a Company has no default in repayment of such borrowings subsisting at the time of making transactions under this section .....Vide Notification dated 5<sup>th</sup> June 2015

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### Clarification Re Loans and Advances to Employees

It was clarified that loans and/or advances made by the companies to their employees, other than the managing or whole time directors (which is governed by section 185) are not governed by the requirements of section 186 of the Companies Act, 2013. This clarification will, however, be applicable if such loans/advances to employees are in accordance with the conditions of service applicable to employees and are also in accordance with the remuneration policy, in cases where such policy is required to be formulated – Circular Dated 10<sup>th</sup> March 2015

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Holding - Subsidiary and S. 185 - Rule 10  
(1)& (2) / S 185(c)(d) wef 29.5.2015

- Any loan - any guarantee given or security provided in respect of **any loan made to** its **wholly owned subsidiary** company by holding company
- Any guarantee given or security in respect of loan made **by any bank or financial institution** to its subsidiary company. ( Loan is missing )
- **Subject to following condition :**
- Provided that such loans made under sub-rule (1) and (2) are utilised by the subsidiary company for its principle business activities.
- Circular 13/94/CL-VI /67 Dt 24.2.1971 - what if existing WOS cease to be the one

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Penalty

- For Company

- ❖ Minimum - Rs. 5 lakh-
- ❖ Maximum - Rs. 25 lakhs

**And**

The director to whom the loan etc is given

- ❖ Minimum - Rs. 5 lakh-
- ❖ Maximum - Rs. 25 lakhs

**Or**

**Imprisonment up to 6 Months.**

**Or**

**Both**



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Sec 186

**LOAN AND INVESTMENT BY COMPANY**

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### Posers

- How much can a company invest or give loan or give guarantee?
  - Is there any precondition?
  - Any post transaction compliance?
  - Sanctioning authority – Board or company?
  - Special or ordinary resolution
- Any restriction on interest?
- Any restriction on tenure?
- Any registers to be maintained?
- Are there any disclosure requirement?
- Any exceptions or exemptions?
- What if the company contravenes?

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### What is an Investment Company?

Investment company is a company whose principle business is to acquire shares, debentures or other securities – not defined in the Definition Section but in the explanation

[Relevant](#) definitions

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### Investment restriction

- All types of companies are covered , no exemption to private companies.
- S 186 is new modern Avatar of S 372A
- Maximum of two [layers](#) of investments – keyword “ Investment Company” (Not against operating company ).
- Key words “Investment Company” & “ Body Corporate”

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## Non Applicability

- (a) banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;
- (b) to any acquisition—
- (i) made by a non-banking financial company registered under Chapter III B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities;
- Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities;
- (ii) made by a company whose principal business is the acquisition of securities; ( Investment Company)
- (iii) of shares allotted in pursuance of clause (a) of sub-section (1) of section 62.

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## Example for 2 layers Investment Co.

➤ Structure violating Sec 186



➤ Structure not violating Sec 186




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## Exempted investments

1. A company acquiring any other company incorporated outside India if such other company has investment subsidiaries beyond 2 layers as per laws of that country; **and**
2. Subsidiary from having any investment subsidiary for the purpose of meeting requirements under any law or regulation framed under any law for time being in force.

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**Permissible Limits - Any Company Can :**

- o Give loan;
  - o Give guarantee or provide security in connection with a loan; to any person or other body corporate,
  - o Acquire by way subscription , purchase or otherwise securities (listed /unlisted ) or any body corporate.
- if it is within higher of the below limits:
- i. 60% of (Paid-up Share capital + Free Reserves + Securities Premium);
  - OR
  - ii. 100% of (Free Reserves + Securities Premium )

**What if the investments exceeds the above limits ??**

A prior special resolution is required exception by rule 11(1), next slide.

Transition period of one year if the limits exceeds

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**Exception to Section 186(3)**

- Where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a **joint venture company**, or **acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly \* owned subsidiary company**, the requirement of [sub-section](#) (3) of section 186 shall not apply;
- Provided that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4) of section 186.

\*S 186(3) Where the giving of any loan or guarantee or providing any security or the acquisition under sub-section (2) exceeds the limits specified in that sub-section, prior approval by means of a special resolution passed at a general meeting shall be necessary.

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**Can a Company provide the Loan etc. if they have a Loan subsisting with a Public Financial Institution (PFI)?**

Yes Provided :

- I. It passes a resolution with a **consent of all the directors present** at the Board meeting; and
- II. Prior approval of the Public Financial Institution concerned is received.




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Prior approval of Public Financial Institution is NOT required

- When :-
  - ✓ the limit specified u/s.186(2) is not exceeded, ( aggregate) - Recollect
  - ✓ there is no default in repayment of principal and interest installments as per the terms & conditions of such loan to such public financial institute.



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### Other Conditions

- **Interest**

No loan shall be given under this section at the rate of interest lower than the prevailing yield of 1, 3, 5 or 10 year Government Security closest to tenor of the loan.

- **Default in repayment of any deposit**

No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting S 186(8)

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### Disclosures

- The company has to disclose the full particulars to its Members as follows:

1. Loans given;
2. Investment made, or
3. Guarantee given or security provided; and
4. **The purpose for which the loan or guarantee or security is proposed to be utilized by the recipient of the loan or guarantee or security.**



Commentary: This step shall ensure that the funds of the company / members are utilized in a proper manner and appropriate earning is ensured on the same.

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## Penalty

- For Company
  - ❖ Minimum - Rs. 25,000/-
  - ❖ Maximum - Rs. 5 Lac

**AND**

- For Every Officer
  - ❖ Minimum - Rs. 25,000/-
  - ❖ Maximum - Rs. 1 lac

**Or**

**Imprisonment up to 2 years**

**Or**

**Both**




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## Investments of company to be held in it's own name -S 187

- All Investments made or held by the Company in any property, security or other asset shall be made in its own name.
- Nothing in this section shall prevent the company from :
  - depositing with a bank, being the bankers of the company, any shares or securities for the collection of any dividend or interest payable thereon
  - depositing with, or transferring to, or holding in the name of, the State Bank of India or a scheduled bank, being the bankers of the company, shares or securities, in order to facilitate the transfer thereof - 6 MONTHS - REVERSAL
- depositing with, or transferring to, any person any shares or securities, by way of security for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it

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## Investments of company to be held in it's own name - S 187

- holding investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner
- Where any shares or securities in which investments have been made by a company are not held by it in its own name, :
- a register shall be maintained by the company
- Containing particulars of the investments made and the company shall also record the reasons for not holding the investments in its own name
- The register shall be maintained at the registered office of the company. The register shall be preserved permanently

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### Maintenance of Register - Applicable to Section 186 & 187

- Every company shall keep a register which shall contain such particulars and shall be authenticated by the company secretary or by any other person authorized by the Board
- The Register shall be maintained at the Registered office
- The Register shall be preserved permanently and kept in custody of the CS or any Director or any other person authorized by the Board
- The Register shall be open for inspection to all
- Extracts may be taken by any member, and copies may be furnished to any member of the company on payment of such fees




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### Penalties

- For Company
    - ❖ Minimum - Rs. 25,000/-
    - ❖ Maximum - Rs. 25 Lac
  - For Every Officer
    - ❖ Minimum - Rs. 25,000/-
    - ❖ Maximum - Rs. 1 lac
- OR**
- ❖ Imprisonment up to 6 months
  - ❖ **OR BOTH**




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### KEY MANAGERIAL PERSONNEL (KMP) S 203

- ❖ Sec. 203
- **Persons included S 2(51)**
  - Managing Director or Chief Executive Officer or Manager or Whole time Director
  - Company Secretary
  - Chief Financial Officer
- **Appointment by**
  - Every **Listed Companies.**
  - **Unlisted public company having paid up share capital of Rs.10 crores or more \_ Rule 8 chapter 13.**

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**KEY MANAGERIAL PERSONNEL (KMP)**

- ❖ Unless :-
    - the articles of such a company provide otherwise; or
    - the company does carry multiple businesses...-
- .....An individual shall not be appointed or reappointed as the **chairperson** of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time.
- ❖ **Who appoints Whole Time Key Managerial Person the company?**
    - Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the **Board** containing the terms and conditions of the appointment including the remuneration.

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**KEY MANAGERIAL PERSONNEL (KMP)**

- ❖ **Can A whole-time key managerial personnel hold office in more than one company at the same time ?**
  - A whole-time key managerial personnel can hold office in its subsidiary company ( ONLY ) at the same time.
  - Key managerial personnel can be a director of any company with the permission of the Board.
- ❖ **Exception to above rule**
  - A company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

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**KEY MANAGERIAL PERSONNEL (KMP)**

- ❖ **What if whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act ?**
  - He shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel.
- ❖ **Vacancy**
  - Vacancy in the office of any whole-time key managerial personnel shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

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**Key Managerial Person – Penal Provision**

- ❖ If a company contravenes the provisions of this section,
  - the company shall be punishable with minimum fine of one lakh rupees which may extend to five lakh rupees and
  - every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees
  - and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

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**Managerial Remuneration**

Chapter XIII APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

- **Section 196** : Appointment of MD, WTD or Manager
- **Sub Section (4) & (5) are not applicable to private companies**
- **Section 197** : Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits – Not applicable to private company.
- **Section 198** : Calculation of Profits
- **Section 199** : Recovery of remuneration in certain cases
- **Section 200** : Central Government or company to fix limit with regards to remuneration
- **Section 201** : Forms of, and procedure in relation to, certain applications
- **Section 202** : Compensation for loss of office of MD or WTD or Manager
- Rules 3, 4 & 5 of Chapter XIII.
- Schedule V – Part II , Section I to V
- Schedule V is also not applicable to private companies.

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**About Appointment in a nutshell**

- Applicable to all types of Companies
- Simultaneously cant have MD & Manager
- Appointment not more than 5 years
- No re appointment earlier than 1 year before the expiry of the term.
- Not below 21 Years and not more than 70 years. Upper limit of age can be justified by special resolution.
- Inform ROC in MR 1 –within 60 days
- Stay in India – for a continuous preceding 12 months. + Visa

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**Appointment & Approval of Managerial Remuneration**

Subject to S 197 & Schedule V .MD, WTD or Manager , SHALL be appointed by the Board , which shall be subject to approval by resolution in next GM ,and approval by Central government in some cases.

Notice conveying Board or GM- include T & C for appointment shall include the terms and conditions such appointment, remuneration payable and interest of other directors

Return in form no MR 1, per Rule 3 within 60 days of approval

What if not approved by the company ? Any act done by him shall not be invalid

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**Rudimentary of Remuneration**

- Who are managerial personnel
  - Directors, MD, WTD and Managers
- What is Managerial Remuneration ?

S 2 (78) "remuneration" means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites [Section IV](#) of Part II of Schedule V

Schedule V : Explanation to Part IV ..

- (B) "Remuneration" means remuneration as defined in clause (78) of section 2 and includes reimbursement of any direct taxes to the managerial person.

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**Exclusions from Remuneration**

Directors Sitting Fees (u/s 197(5)) / Rule 4, maximum Rs. 1 lakh per meeting = Independent & Women Director to have the same fees.

Remuneration for services rendered in other capacity if:

- the services rendered are of a professional nature; and
- in the opinion of the Nomination and Remuneration Committee, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

Indemnity Premium on behalf of managing director, whole-time director, manager unless such person is proved to be guilty.

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**Perquisites considered as Managerial Remuneration ?**

- Following perquisites shall not be included in the computation of the ceiling on remuneration specified in Section II and Section III of Schedule V .
- (a) contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961
- (b) gratuity payable at a rate not exceeding half a month's salary for each completed year of service; and
- (c) encashment of leave at the end of the tenure

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**Additional exclusion if the managerial personnel is expatriate ( including Non resident Indian)**

- **(a) Children's education allowance:** In case of children studying in or outside India, Allowed only for two children : lesser of Rs 12,000 per month per child or actual expenses incurred.
- **(b) Holiday passage for children studying outside India or family staying abroad:**  
Return holiday passage once in a year by economy class or once in two years by first class to children and to the members of the family from the place of their study or stay abroad to India if they are not residing in India, with the managerial person.
- **(c) Leave travel concession:** Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.

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**S 197 . Applicable to Public Companies Overall Limits of Managerial Remuneration**

- Total remuneration not to exceed 11% of net profit of the company , Net profit computed as per Section 198 , may exceed ,subject Schedule V, authorise in GM, with approval of CG .
  - Individual limit to MD – WTD Sub limit
- Total remuneration payable to any one MD or WTD or Manager shall not exceed 5% net profit
- If there is more than one such director remuneration shall not exceed 10% of net profit to all such directors and managers taken together
- Remuneration to Directors other than MD & WTD
- 1 % of the net profits of the company, if there is a managing or whole-time director or manager;
- 3 % of the net profits in any other case.

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## Part II of Schedule V

- **Section I.**— Remuneration payable by companies having profits – S 197
- **Section II.**— Remuneration payable by companies having no profit or inadequate profit without Central Government approval, not exceeding higher of (A) & (B)
- **Section III.**— Remuneration payable by companies having no profit or inadequate profit without Central Government approval in certain special circumstances:
- **Section IV.**— Perquisites not included in managerial remuneration
- **Section V.** —Remuneration payable to a managerial person in two companies

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### Section II ....(A) Pro rata if less than one year

| Where the effective capital is                      | Limit of yearly remuneration payable                                      |
|---|---|
| (i) Negative or less than 5 crores                  | Rs 30 lakhs   |
| (ii) 5 crores and above but less than 100 crores    | Rs 42 Lakhs   |
| (iii) 100 crores and above but less than 250 crores | Rs 60 lakhs   |
| (iv) 250 crores and above                           | 60 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores: |

(B) In the case of a managerial person who was not a security holder holding securities of the company of nominal value of rupees five lakh or more or an employee or a director of the company or not related to any director or promoter at any time during the two years prior to his appointment as a managerial person, — **2.5% of the current relevant profit:**

**If the resolution passed by the shareholders is a special resolution, this limit shall be doubled: For Conditions apply >>>>**

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## Conditions Apply ....

- (i) payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee;
- (ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person;
- (iii) a special resolution has been passed at the general meeting of the company for payment of remuneration for a period not exceeding three years;
- (iv) a statement along with a notice calling the general meeting referred to in clause (iii) is given to the shareholders containing the following information, namely:—

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## Effective Capital

| What is included                                 | What is not included ?                        |
|--|---|
| Share capital                                    | Share Application Money                       |
| Share Premium Account                            | Advances against shares                       |
| Reserves & Surplus                               | Revaluation Reserves                          |
| Long Term Loans                                  | Working capital loans + Overdrafts            |
| Deposits repayable after one year                | Unfunded interest due on loans                |
| Minus : Investments except by Investment Company | Bank Guarantee & other Short Term Arrangement |
| Minus Accumulated Losses                         |   |
| Minus : Preliminary expenses not written off     |   |

***Appointment made in the year in which company has been incorporated, the effective capital shall be calculated as on the date of such appointment; in other cases on the last date of the preceding financial year.***

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## Current Relevant Profit

(A) "current relevant profit" means the profit as calculated under section 198 but without deducting the excess of expenditure over income referred to in sub-section 4 (l) thereof in respect of those years during which the managerial person was not an employee, director or shareholder of the company or its holding or subsidiary companies.

(B) "Remuneration" means remuneration as defined in clause (78) of section 2 and includes reimbursement of any direct taxes to the managerial person.

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## Information to be given in statement accompanying the Notice

**• I. General Information:**

- (1) Nature of industry
- (2) Date or expected date of commencement of commercial production:
- (3) In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus
- (4) Financial performance based on given indicators
- (5) Foreign investments or collaborations, if any.

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**Information to be given in statement accompanying the Notice**

- **II. Information about the appointee:**
- (1) Background details
- (2) Past remuneration
- (3) Recognition or awards
- (4) Job profile and his suitability
- (5) Remuneration proposed
- (6) Comparative remuneration profile with respect to industry, size of the company, profile of the position and person (in case of expatriates the relevant details would be with respect to the country of his origin)
- (7) Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personnel, if any.

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**Information to be given in statement accompanying the Notice**

- **III. Other information:**
- (1) Reasons of loss or inadequate profits
- (2) Steps taken or proposed to be taken for improvement
- (3) Expected increase in productivity and profits in measurable terms.

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**Section III** Remuneration payable by companies having no profit or inadequate profit without Central Government approval **in certain special circumstances – may pay** remuneration to a managerial person in excess of the amounts provided in Section II

- Remuneration is paid by a foreign company or (the company which )has got the approval of its shareholders in general meeting to make such payment, and treats this amount as managerial remuneration for the purpose of section 197,
  - the total managerial remuneration payable by such other company to its managerial persons including such amount or amounts is within permissible limits under section 197.
- where the company—
  - (i) is a newly incorporated company, for a period of seven years from the date of its incorporation, or
  - (ii) is a sick company, -the Board for Industrial and Financial Reconstruction or National Company Law Tribunal, for a period of five years from the date of sanction of scheme of revival, it may pay remuneration up to two times the amount permissible under Section II.

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**Section III** Remuneration payable by companies having no profit or inadequate profit without Central Government approval **in certain special circumstances - may pay** remuneration to a managerial person in excess of the amounts provided in Section II

Where remuneration of a managerial person exceeds the limits in Section II but the remuneration has been fixed by the Board for Industrial and Financial Reconstruction or the National Company Law Tribunal Provided :

- (i) the managerial person is not receiving remuneration from any other company;
- (ii) certificate from the auditor or Company Secretary of the company or Secretary in whole-time practice, that all secured creditors and term lenders have stated in writing that they have no objection and such certificate is filed along with the return as prescribed under sub-section (4) of section 196.
- (iii) the auditor or Company Secretary or a secretary in whole-time practice certifies that there is no default on payments to any creditors, and all dues to deposit holders are being settled on time.

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**Section III** Remuneration payable by companies having no profit or inadequate profit without Central Government approval **in certain special circumstances - may pay** remuneration to a managerial person in excess of the amounts provided in Section II

a company in a Special Economic Zone as notified by Department of Commerce from time to time which has not raised any money by public issue of shares or debentures in India, and has not made any default in India in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in any financial year, may pay remuneration up to Rs. 2,40,00,000 per annum.

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**Section V. —Remuneration payable to a managerial person in two companies**

- Subject to the provisions of sections I to IV.
- a managerial person shall draw remuneration from one or both companies
- provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.

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**Disclosure in Board’s Report under the heading “Corporate Governance”**

- (i) all elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors;
- (ii) details of fixed component and performance linked incentives along with the performance criteria;
- (iii) service contracts, notice period, severance fees;
- (iv) stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.

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**How Profit is Determined S 198**

| Section   | Treatment   |
|-----------|---|
| S 198 (2) | Credit Shall be Given , e.g bounties and subsidiaries                           |
| S 198 (3) | Credit Shall not be given , capital profit , premium on shares etc, revaluation |
| S 198 (4) | Permissible Deduction ,e.g., bonus commission etc 15 items                      |
| S 198 (5) | Non permissible deductions Income tax , capital loss etc                        |

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**Independent Director- ID**

- Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option and
- ID receive remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

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### Other Issues

- S 199 Recovery of remuneration in certain cases - Restatement
- S 200 Central Government or company to fix limit with regard to remuneration.
- S 202 (1) A company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.
- S 202(2) Limits cases where compensation for loss of office of MD - WTD or Manager can not be made.

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### Chapter VIII Declaration and Payment of Dividend

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### Sources of Dividend Section 123 read with Rule 3 of Chapter VIII

- **Current Year's Profit**
- Out of the profits of the company for that year arrived at after providing for depreciation provided as per Schedule III.
- **Previous Year's Profit**
- Out of the profits of the company for any previous financial year or years arrived at after providing for depreciation and remaining undistributed.
- Out of money provided by CG or SG for payment of dividend in pursuance of a guarantee given by that Government

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**Sources of Dividend** Section 123 read with Rule 3 of Chapter VIII

- **In the event of inadequacy/absence of profit ; then Company may declare dividend out of Free Reserves on following conditions:**
- ✓ Maximum dividend rate = average of 3 years immediately preceding that year
- ✓ Maximum amount drawn from Accumulated Profit = 1/10 of Paid Up Share Capital + Free Reserves
- ✓ First set off the losses in the financial year in which dividend is declared
- ✓ Balance of reserves after such withdrawal shall not fall below 15% of it's paid Up Share Capital.

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**Meaning of Free Reserve S 2 (43)**

\*Free reserves means reserves the latest audited balance sheet of a Company, are available for distribution as dividend:

**provided that:-**

- Any amount representing unrealized gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
- Any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves

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**Compliances**

- Dividend shall be declared only:
- On the recommendation of the board , Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years
  - At Annual General Meeting
  - In line with the rate as recommended by the Board
  - The company is in compliance with the provisions of Section 73 & 74
- Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year – inserted in S123 vide Companies Amendment act 2015 w.e.f. 29.05.2015 now part of the Act 2015

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### Deposit the amount of Dividend

- Deposit in a separate account with a scheduled bank
- It is to be deposited in such separate account within 7 days from the date of declaration
- It must be paid within 30 days from the date of declaration
- It shall be paid by cheque or warrant or through any electronic mode and not in kind
- Calls in arrears and other sum due from a member may be adjusted against dividend payable to him
- Company shall not issue any bonus share in lieu of dividend

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### Entitlement to Dividend

- Only the registered holders of shares are entitled to dividend
- Company should pay dividend to Preference Shareholder before dividend is paid to the Equity Shareholder.
- Dividend on equity shares should be paid in accordance with the right of the respective classes of shares
- A company may, if so authorised by its articles, pay dividends in proportion to the amount paid-up on each share (S 51)

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### Unpaid Dividend Account (Section 125)

- Dividend which is unpaid/unclaimed after 30 days of declaration should be transferred to account called as "Unpaid Dividend Account"
- Amount of unpaid dividend should be transferred within 7 days from the expiry of 30 days
- A statement giving out the following details shall be placed on the co's website or other website approved by CG within 90 days from such transfer:
  - Name
  - Last known address
  - Amount of unpaid dividend
- If these funds remain in the account for more than 7 years then it should be transferred to the Investor Education and Protection Fund

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### Disclosure Requirement

- Unpaid Dividend Account and Interest should be disclosed in Current Liabilities and provisions
- The annual report should disclose total amount lying in the Unpaid Dividend Account in respect of last 7 years
- If dividend during the year is transferred to Investor Education and Protection Fund, then disclose
- Annual return should mention amount of dividend to be transferred to Investor Education and Protection Fund along with the interest accrued has been credited to the same

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### Punishment (Section 127)

- If the dividend is declared BUT has not been paid or dividend warrant has not been posted within 30 days from the date of declaration then punishment is as under:
  - Director
    - ❖ Imprisonment upto 2 years
    - AND**
    - ❖ Fine atleast Rs.1,000 everyday during which such default continues
  - Company
    - ❖ Simple interest at 18%p.a. during the period which such default continues

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### Exceptions to Punishments (Section 127)

- No punishment for failure to distribute dividend :
  - ✓ If dividend could not be paid due to Operation of law
  - ✓ Where shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him
  - ✓ Any dispute regarding right to receive the dividend
  - ✓ Dividend has been duly adjusted against any dues from SH's
  - ✓ If dividend could not be paid due to any default which was not on the part of the company

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Friends !!! It was indeed a great pleasure

Catch on Whats App 09820133227  
Email ymdesaiandco@gmail.com



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