

Presentation on Acceptance of Deposits, Loans & Advances including Inter-Corporate Loans

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Loan, Advance, Deposit, ICD's under the Companies Act, 2013

Sec.73 to 76 deals with Deposits

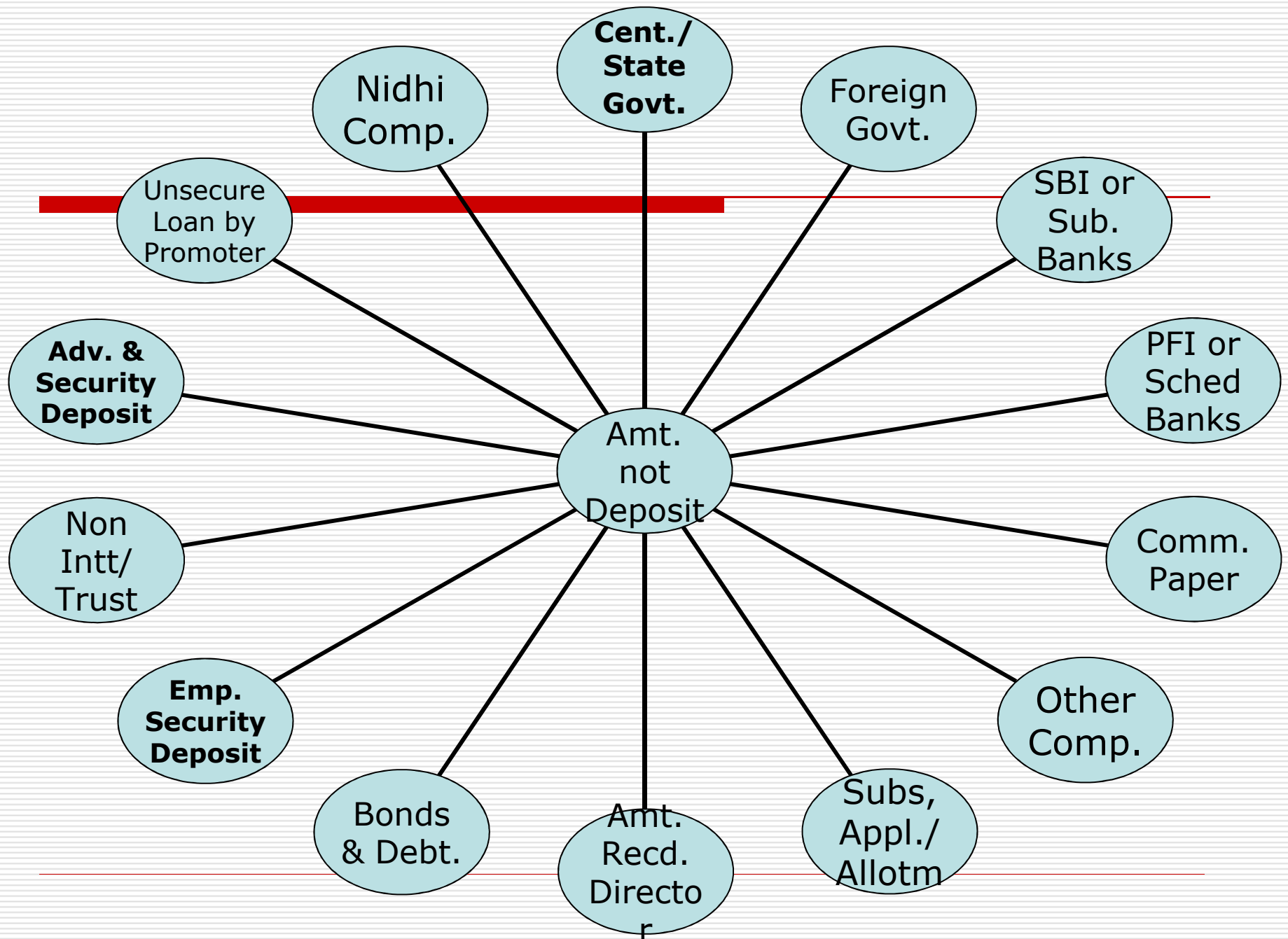
Sec.185 of the Act, covers Loans to Directors and;

Sec. 186 of the Act, deals with Loan and Investment by Company.



DEPOSITS

- ❑ As per Rule 2(c) of the Companies (Acceptance of Deposit) Rules, 2014 “Deposit” includes any receipt of money by way of deposit or loan or in any other form by a company but does not include;
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Acceptance of Deposits by Companies

- ❑ Acceptance of Deposit by Company from Members dealt in Sec, 73 and from Public dealt with under Sec 76. However, procedure for acceptance of Deposit for both categories to be in accordance with provision given under Section 73(2)
 - ❑ Rules 2(e) notified by CG defines eligible Company to mean a Public Company having net worth of > Rs.100 Cr. or a Turnover of > Rs.500 Cr. It is also required to have prior approval of members by Special Resolution and file the same with ROC before making any invitation to the Public for Acceptance of Deposit
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ACCEPTANCE OF DEPOSITS BY COMPANIES Continued.....

- ❑ As per Sec 73 a company prior to accepting deposit from Members should pass a resolution in General Meeting and issue a circular in Form DPT-1 to all the members giving statement of financial position of the Company, Credit Rating Obtained, Details of total Number of depositors and amount due towards previous deposits etc.
 - ❑ Copy of Circular along with Statement to be filed with ROC with 30 days before the date of issue of circular and deposit a sum not less than 15% of the amount of its deposits maturing during financial year and the financial year next following in a Schedule Bank in a separate bank account to be called a Deposit Repayment Reserve Account.
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Acceptance of Deposits by Companies Continued.....

- ❑ As per Rules Notified no company shall accept or renew any Deposit which is repayable on demand or upon receiving a notice within a period of less than 6 months or more than 36 months from the date of acceptance or renewal of such deposit
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Deposits

Private
Company

From Members
not exceeding
25% of the
PSC & FR

Eligible
Public
Companies

From Members
not exceeding
10% of the PSC
& FR

From Public not
exceeding 25%
of the PSC & FR
excluding
Members

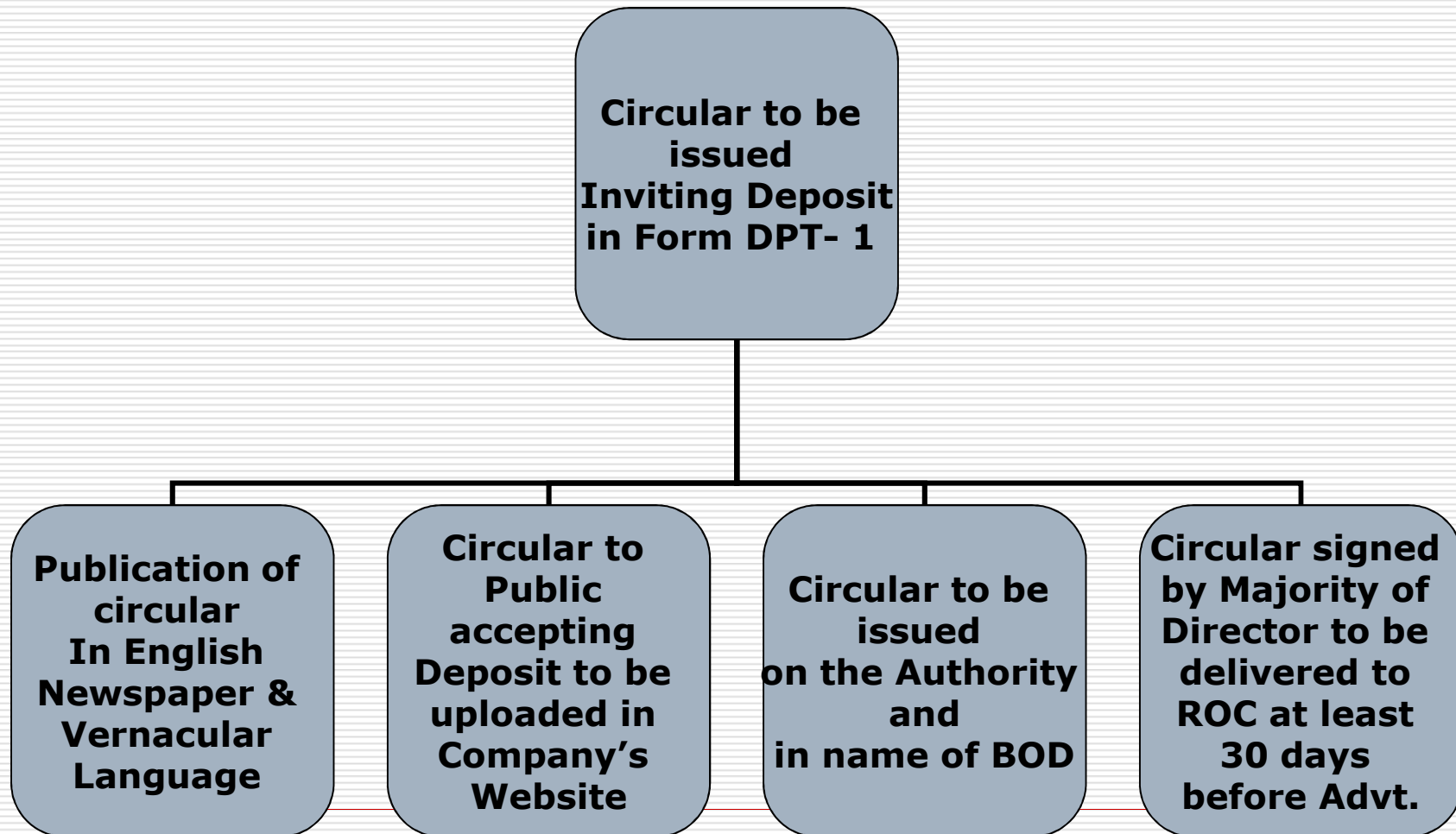
Eligible
Government
Companies.

Deposit accepted
not to exceed
35% of the PSC
& FR

ACCEPTANCE OF DEPOSITS BY COMPANIES Continued.....

- ❑ The limits mentioned above includes amount of Deposit to be accepted together with amount of Deposit outstanding as on date of acceptance or renewal of such Deposits.
 - ❑ No Company shall invite or accept or renew any Deposit in any form, carrying a rate of interest or pay brokerage thereon at a rate exceeding the maximum rate of interest or brokerage prescribed by the RBI for acceptance of deposit by NBFC.
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CIRCULAR FOR DEPOSIT IN FORM DPT-1



CIRCULAR FOR DEPOSIT IN FORM DPT-1 Continued.....

- ❑ The Circular in the Form of Advt. issued shall be valid until the expiry of 6 months from the date of closure of the FY in which it is issued or until the date on which the Financial Statements is laid before the company in AGM.
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DEPOSIT INSURANCE

- ❑ Every Company accepting Deposit shall enter into a contract for providing Deposit Insurance at least 30 days before the Issue of Circular or Advt. or before the Renewal of Deposit. The amount of insurance shall be both principal amount and interest due thereon.
 - ❑ In case Company defaults in repayment of Deposit the Depositor shall be entitled to repayment of principal & Interest thereon by the Insurer up to aggregate monetary ceiling as specified in the contract. Provided that if the Principal amount and interest exceeds Rs.20000/- then Deposit Insurance contract shall provide for payment of an amount not less than Rs.20000/- for each depositor.
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DEPOSIT INSURANCE Continue..

- ❑ The entire cost of insurance premium payable on the insurance of such deposit shall be born by the Company and shall not be recovered from the Depositors.
 - ❑ The entire cost of insurance premium payable on the insurance of such deposit shall be born by the Company and shall not be recovered from the Depositors.
 - ❑ In case of there is any defect in the contract the same shall be rectified by the Company immediately or enter into a fresh contract within 30 days.
 - ❑ Non compliance will result in repayment of deposit together with interest in next 15 days & if company does not repay amount then interest will be levied @ 15% and company shall also be treated as having defaulted and liable to punishment in accordance with the provisions of the Act.
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CREATION OF SECURITY AND TRUSTEES FOR DEPOSITORS

- ❑ Every Company accepting Deposit shall provide for Security by way of a charge on its assets excluding intangible Assets of the Company for the due repayment of the amount of deposit & interest thereon for an amount which shall not be less than the amount remaining unsecured by the Deposit Insurance.
 - ❑ Provided that the Deposits which are secured by Charge on the assets, the amount of such deposit and interest thereon shall not exceed the market value of such assets as assessed by the Registered Valuer
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CREATION OF SECURITY AND TRUSTEES FOR DEPOSITORS Cont..

- ❑ The Security for Deposit shall be created in favour of a Trustee for the Depositors on Specific Movable Property of the Company or Specific immovable property of the Company wherever situated, or any interest therein.
 - ❑ No circular or Advt. inviting secured Deposits shall be issued unless the Company has appointed one or more Trustees for Depositors for creating security for the Deposits. The Company shall execute a Deposit Trust Deed in Form No. DPT-2 at least 7 days before issuing the circular or Advt.
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CREATION OF SECURITY AND TRUSTEES FOR DEPOSITORS Cont..

- ❑ No person shall be appointed as Trustee for the Depositors if he is a
 - Director, KMP, officer, Employee of the Holding, Associate or Subsidiary Company or a Depositor in the Company.
 - Is indebted to the Company, Holding/Subsidiary/Associate included.
 - Has pecuniary relationship with the Company;
 - Has entered into a guarantee agreement in respect of principal debts secured by the Deposits or interest thereon;
 - Is related to any person who is Director, KMP, Officer or Employee of the Company or of the Depositor in the Company.
 - No Trustee shall be removed from office after the issue of circular or Advt. and before the expiry of his term except with the consent of all the Directors present at a meeting of the Board.
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GENERAL PROVISIONS AND COMPLIANCES FOR DEPOSITS

- ❑ Premature repayment of Deposit on the request of Depositor, after expiry of 6 months but before expiry of the tenure for which the Deposit was accepted shall result in reduction of interest rate by 1%.
 - ❑ Every Company to which has accepted Deposit shall on or before 30th day of June of every year, file with ROC a return in Form DPT-3 along with the fees and furnish the information contained as on 31st March of that year duly audited by the Auditors of the Company.
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GENERAL PROVISIONS AND COMPLIANCES FOR DEPOSITS Cont....

- ❑ Every company shall pay penal rate of interest of 18% p.a. for overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.
 - ❑ Companies which had accepted or invited public deposit under the provisions of Companies Act, 1956 to file a statement in Form DPT-4
 - ❑ Default may attract penalty from Rs.1 Cr. to Rs.10 Cr for Company in addition to repayment of amount due under Deposit & Interest. Defaulting Officer may face 7 years imprisonment or with Rs.25 to Rs.1 crore fine or both.
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PROCEDURE FOR DEPOSIT



Shareholders Approval for accepting Deposit

Issue of Circular/ Advt. in Form DPT-1

Circular/Advt. to be filed with ROC within 30 days before issue

Certifying that the Company has not defaulted in repayment of earlier Deposits or payment of Interest on such Deposits

Provision for Deposit Insurance

Creation of Security or Creation of charge on assets of the Co.

Appointment of Trustee for Depositors

Creation of Deposit Repayment Reserve Account

Entry in the Register of Deposits & Maintenance of liquid assets

Return of Deposit to be filed with ROC in Form DPT-3 by 30th June

MCA AMENDMENTS

- ❑ On 6th June, 2014 MCA vide its Notification clarified that companies may accept the deposits without deposit insurance contract till the 31st March, 2015."
- ❑ On 31st March, 2015 MCA further clarified that companies may accept Deposits without Deposit Insurance till 31st March, 2016 or till availability of Deposit Insurance, whichever is earlier.
- ❑ It has also been notified that all eligible companies should have their credit rating done at least once in a year in respect of Deposits accepted by them, and a copy of the ratings should be filed with ROC in Form DPT-3
- ❑ MCA also vide its Circular dtd. 30th March, 2015 clarified that amount received by Private Limited Company from its Member, Directors or their relatives prior to 1st April, 2014 shall not be treated as Deposit under the Act, provided that the relevant Private Limited Company shall disclose in the notes to its financial statement for the financial year commencing on or after 1st April, 2014 the figures of such amounts and the accounting head in which such amount have been shown in the financial statement. However, renewal of such deposit can be done only in accordance with the new CA, 2013.

MCA AMENDMENTS Cont.....

- MCA vide its Notification dtd. 31st March, 2015 also clarified that unless otherwise required under the Companies Act, 1956 (1 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules or regulations made there under to allot any share, stock, bond, or debenture within a specified period, if a company receives any amount by way of subscriptions to any shares, stock, bonds or debentures before the 1st April, 2014 and disclosed in the balance sheet for the financial year ending on or before the 31st March, 2014 against which the allotment is pending on the 31st March, 2015, the company shall, by the 1st June 2015, either return such amounts to the persons from whom these were received or allot shares, stock, bonds or debentures or comply with these rules."

Hence, extended time upto 1st June, 2015 has been granted for refund of money pending allotment.

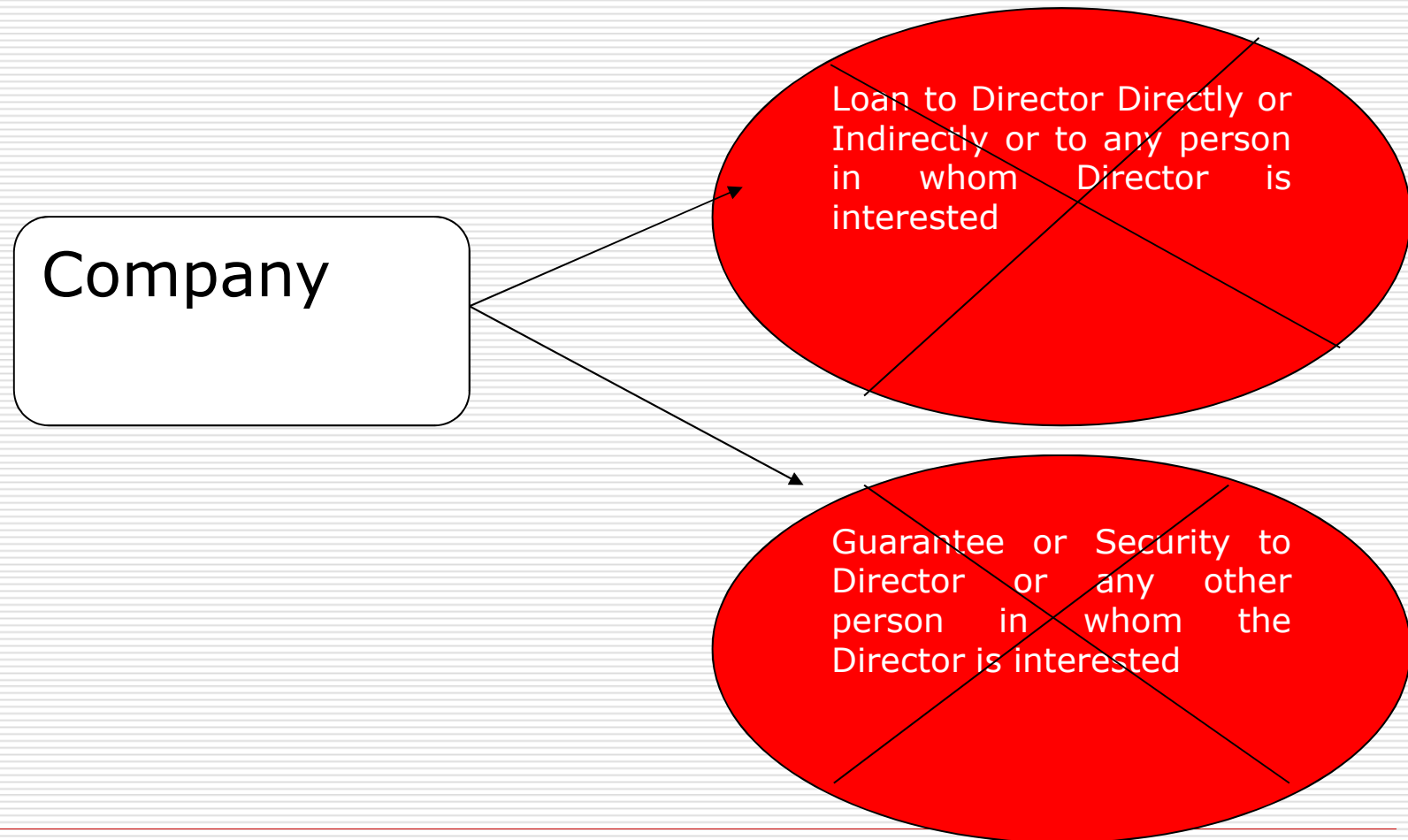
CONSEQUENCE OF DEFAULT

- ❑ Co. in addition to payment of Deposit & Intt. Amount punishable with fine not less than Rs.1 Cr which may extend to Rs.10 Cr.
 - ❑ Every Officer in default punishable with imprisonment upto 7 years or fine not less than Rs.25 lakhs but which may extend to Rs.2 Cr.
 - ❑ Officer in default also liable to Damages for Fraud.
 - ❑ Depositors can also take other action by filing suits, proceeding against Co. & officials.
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LOANS

- ❑ Section 185 (1) **Save as otherwise** provided in the Act, no Company shall directly or indirectly, advance any loan, including any loan represented by Book Debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person
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LOANS TO DIRECTORS U/S 185



LOANS TO DIRECTORS U/S 185

Conti.....

Section 185 Provisions does not apply to –

- Loan given to Managing or Whole-time Director
 - (i) as a part of the conditions of service extended by the company to all its employees; or
 - (ii) pursuant to any scheme approved by the members by a special resolution; or

 - A company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the RBI.
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LOANS TO DIRECTORS U/S 185

Conti.....

- ❑ **Exemptions**
- ❑ **Rule 10 of the Companies (Meetings of Board and its Powers) Rules , 2014 provides exemptions to following**

Loan, Guarantee or Security provided by any Holding Company Or

To

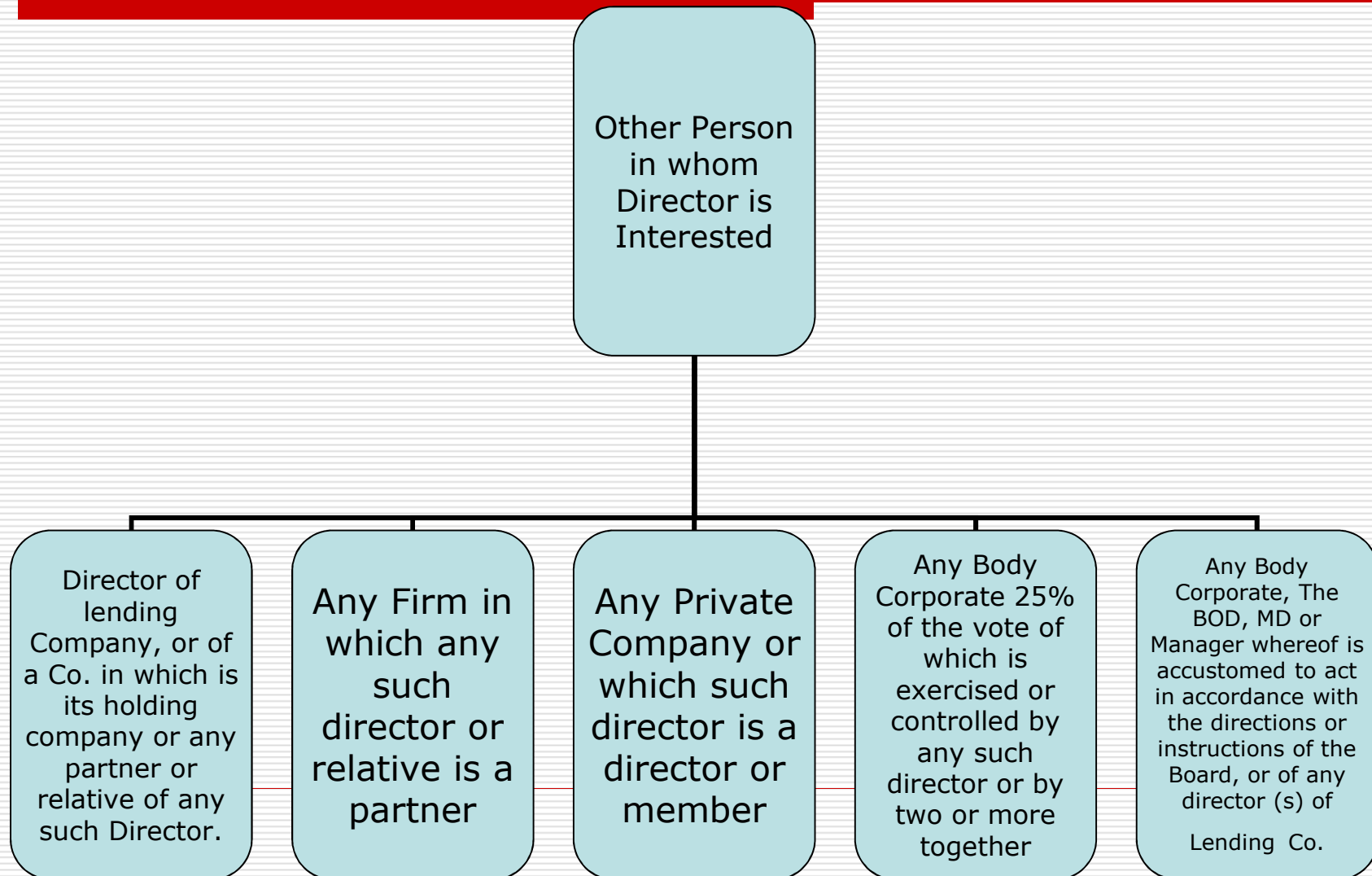
Wholly owned
Subsidiary
Company

Guarantee or Security given by Holding Co. to Banks or FI

To

**Subsidiary
Company**

ANY OTHER PERSON IN WHOM DIRECTOR IS INTERESTED



CONSEQUENCES OF

CONTRAVENTION OF SECTION 185

Consequence	Company	Director or Other Person
Fine not less than	Rs. 5 lakhs	Rs.5 lakhs
May extend to	Rs.25 lakhs	Rs.25 Lakhs
The Director or other Person to whom any loan / Guarantee / Security is advanced /given / provided, shall be punishable with imprisonment which may extend to 6 months or fine or with both.		

LOANS AND INVESTMENT BY COMPANY

Section 186 (1) **Without Prejudice** to the Provisions contained in this Act, a company shall unless otherwise prescribe, make investment through not more than two layers of investment companies.

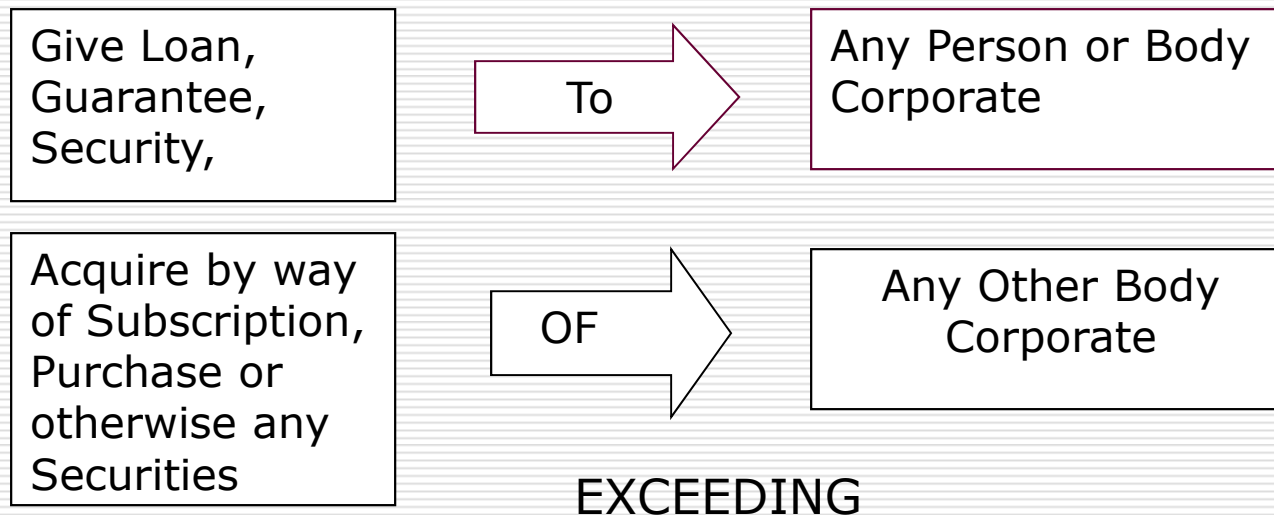
Investment Company means a company whose principal business is the ***acquisition of shares, debentures or other securities.***

LOANS AND INVESTMENT BY COMPANY Conti.....

- ❑ Provided that the provisions of this sub-section shall not affect, -
 - (i) a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;
 - (ii) a subsidiary company from having any investment subsidiary for the purpose of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.
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LOANS AND INVESTMENT BY COMPANY Conti.....

- ❑ **Section 186(2) provides that No company shall directly or indirectly**



60% of its Paid up Capital, Free Reserves and Securities Premium Account or 100% of its Free Reserves and Securities Premium Account, Which ever is more

LOANS AND INVESTMENT BY

COMPANY Conti.....

- ☐ In case the giving of loan or guarantee or providing any security or the acquisition of securities exceeds the limits mentioned above then, prior approval by means of a Special Resolution passed at the General Meeting shall be necessary.
 - ☐ The company shall disclose to Members in the financial Statement the full particulars of the Loans Given, investments made or guarantee given or security provided to the person and the purpose for which it is being given.
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LOANS AND INVESTMENT BY COMPANY Conti.....

- ☐ No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of **all the Directors present** at the meeting and the prior approval of the Public Financial Institutions concerned where any term loan subsisting, is obtained.
 - ☐ No Loan shall be given 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.
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LOANS AND INVESTMENT BY

COMPANY Conti.....

- ❑ 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.
 - ❑ Every Company giving loan or giving guarantee or providing security or making an acquisition shall maintain a Register in Form no. MBP-2 and make chronological entries in respect of each transaction within 7 days of the event. The Register shall be kept at the Registered Office of the Company and preserved permanently and authenticated by CS or any person authorised by BOD. The Register can be maintained
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LOANS AND INVESTMENT BY COMPANY Conti.....

- Section 186(11) provides that nothing contained in the Section, except sub-section (1), shall apply-
 - to loan made, guarantee given or security provided by a Banking Company or Insurance Company or a Housing Finance Company in Ordinary course of business or a company engaged in business of financing of companies or provides infrastructural facilities;
 - to any acquisition
 - made by a NBFC registered under Chapter IIIB of RBI and whose principal business is acquisition of securities. Provided that exemption to NBFC shall be in respect of its investment and lending activities.
 - made by a company whose principal business is the acquisition of securities;
 - of shares allotted in pursuance of clause (a) of sub-section (I) of Section 62. (i.e Right Issue)
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LOANS AND INVESTMENT BY COMPANY Conti.....

- ❑ Rule 11 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides that where a loan has been 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 requirements of sub-section (3) of Section 186 (i.e. relating to obtaining prior approval of shareholders by way of special resolution), shall not apply. Provided that company shall disclose the details of such loans or guarantee or security or acquisition in the financial statements as provided under sub-section (4) of the Section 186
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CONSEQUENCES OF

CONTRAVENTION OF SECTION 186

- ❑ Consequences of Contravention of Section 186- Company punishable with fine which shall not be less than Rs.25,000/- but which may extend to Rs.5,00,000/-
 - ❑ Every Officer who is in default shall be punishable with imprisonment for a term which may extend to 2 years and with fine which shall not be less than Rs.25,000/- but which may extend to Rs.1,00,000/-.
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MCA NOTIFICATION AND CLARIFICATION ON SECTION 185 & 186 OF THE ACT.

- ❑ MCA vide its General Circular dtd. 9th April, 2015 clarified that where the effective yield (effective rate of return) on tax free bonds is greater than the prevailing yield of 1,3,5 or 10 years Government Securities closest to the tenor of the Loan, there is no violation of sub-section (7) of Section 186 of the Act.
 - ❑ MCA vide its General Circular dtd. 10th March, 2015 has clarified that loans and/or advances made by the Company to their employees, other than MD or WTD are not governed by the requirements of Section 186 of the Act, provided such loan/advances to employees are in accordance with the conditions of service applicable to employees and remuneration policy.
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Thank You
