

INDIA BUSINESS LAW JOURNAL

Amended Companies Act eases restrictions on loans

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The Companies (Amendment) Act, 2017, has alleviated some of the restrictions under section 185 of the Companies Act, 2013, for a company to provide loans. Section 185 earlier prohibited a company from advancing loans/providing guarantees/ securities to its directors/persons in whom the director was interested, with limited exemptions to such prohibition such as loan to a managing or whole-time director under special circumstances, company whose ordinary course of business is the advancement of loans, etc. The amendment has now made such prohibition applicable only to the advancing of loans/providing guarantees or securities to (i) any of its directors, (ii) its holding company, (iii) a partner/relative of a director, or (iv) any firm in which the director/relative is a partner.

The amendment has further made it explicitly permissible to advance a loan/give a guarantee/provide security in connection with a loan taken by a person in whom the director is interested, subject to the satisfaction of the following conditions: (i) the loan/guarantee/security is approved by the company through a special resolution in a general meeting where the notice for the meeting contains adequate details regarding such loan, including end-use of the proceeds, and (ii) the loans are utilized by the borrowing company for its principal business activities.

Additionally, where the phrase “persons in whom the director is interested” earlier included the holding company, partner/relative of a director, and any firm in which any director/relative is a partner, this has been removed by the amendment.

The business law digest is compiled by Nishith Desai Associates (NDA). NDA is a research-based international law firm with offices in Mumbai, New Delhi, Bengaluru, Singapore, Silicon Valley, Munich and New York. It specializes in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner.