



Comprehensive Overview of Section 186 of the Companies Act, 2013

1. Investment through Two Layers of Companies (Section 186(1)):

A company can only make investments through two layers of other companies. However, there are exceptions:

- If the company is investing in a foreign company, it can have more than two layers if required by that country's laws.
- A subsidiary can also have more than two layers if required by law.

2. Limits on Loans, Guarantees, and Investments (Section 186(2)):

A company cannot give loans, guarantees, or invest in other companies if the total value exceeds the following limits:

- 60% of its own paid-up share capital, free reserves, and securities premium, OR
- 100% of just its free reserves and securities premium (whichever is higher).

3. Approval for Loans, Guarantees, and Investments (Section 186(5)):

Before a company can give a loan, guarantee, or make an investment, it must:

Have approval from all the directors in a Board meeting.

If the company has any existing loan from a public financial institution, it needs their approval too.

4. Special Resolution Approval for Large Loans or Investments (Section 186(3)):

If the company's total loans or investments, along with those proposed, exceed the set limits, the shareholders must approve the decision through a special resolution at a general meeting.

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5. No Approval Needed for Wholly Owned Subsidiaries or Joint Ventures:

If a company gives loans or guarantees to its wholly owned subsidiary or joint venture, it doesn't need approval from shareholders, even if it exceeds the limits.

6. Disclosure in Financial Statements (Section 186(4)):

The company must disclose the full details of any loans, investments, guarantees, or securities in its financial statements, including the purpose of the loan or guarantee.

7. Loans to Companies with Public Financial Institutions (Section 186(5)):

If a company has any loans from public financial institutions, it must get their approval before giving any new loans or guarantees. However, if it's within the limits, no approval is needed.

8. Rate of Interest on Loans (Section 186(7)):

The interest rate on loans given by the company must be at least equal to the government's interest rate for a similar term (e.g., 1 year, 3 years, etc.).

9. Restrictions in Case of Defaults (Section 186(8)):

If a company fails to repay any loans or deposits, it cannot give any further loans, guarantees, or make investments until it resolves the default.

10. Register of Loans, Guarantees, and Investments (Section 186(9)):

The company must keep a register of all loans, guarantees, and investments it has made. This register should be updated within 7 days of the transaction and should be available for inspection.

11. Exemptions from Section 186:

Certain companies are not required to follow these rules:

- Banking, insurance, and housing finance companies.
- Investment companies.



- Non-banking financial companies (NBFCs) involved in investments.

12. Exemptions for Certain Companies from section 186

In case of Government Company - section 186 shall not apply to :-

(a) a Government company engaged in defence production;

(b) a Government company, other than a listed company, in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security or making any investment under the section. - **Notification dated 5th June, 2015.**

In case of Specified IFSC Public Company — In Sub-section (5) of section 186 after the proviso, the following proviso shall be inserted —

“Provided further that in case of a Specified IFSC public company, the Board can exercise powers under this sub-section by means of resolutions passed at meetings of the Board of Directors or through resolutions passed by circulation.”. -**Notification Date 4th January, 2017.**

In case of Specified IFSC Public Company - In Sub-sections (2) and (3) of section 186 shall not apply if a company passes a resolution either at meeting of the Board of Directors or by circulation.- **Notification Date 4th January, 2017.**

In case of Specified IFSC Public Company — In Sub-section (1) of section 186 shall not apply.— **Notification Date 4th January, 2017.**

In case of Specified IFSC Private Company — In Sub-section (1) of section 186 shall not apply.— **Notification Date 4th January, 2017.**

In case of Specified IFSC Private Company — In Sub-sections (2) and (3) of section 186 shall not apply if a company passes a resolution either at meeting of the Board of Directors or by circulation. — **Notification Date 4th January, 2017.**



In case of Specified IFSC Private Company — In Sub-section (5) of section 186 after the proviso, the following proviso shall be inserted —

“Provided further that in case of a Specified IFSC public company, the Board can exercise powers under this sub-section by means of resolutions passed at meetings of the Board of Directors or through resolutions passed by circulation.” **Notification Date 4th January, 2017.**

In case of section 8 Company- In Sub-section(7) of Section 186, the following shall be inserted namely :- **Notification Dated 13th June, 2017.**

Provided that nothing contained in this sub-section shall apply to a company in which twenty-six per cent. or more of the paid-up share capital is held by the Central Government or one or more State Governments or both, in respect of loans provided by such company for funding Industrial Research and Development projects in furtherance objects as stated in its memorandum of association.”

13. Penalties for Violating Section 186 (Section 186(13)):

If a company breaks the rules in Section 186:

The company could be fined between ₹25,000 and ₹5,00,000.

Company officers (those in charge) could be imprisoned for up to 2 years and fined between ₹25,000 and ₹1,00,000

Explanation.—For the purposes of this section,—

(a) the expression “investment company” means a company whose principal business is the acquisition of shares, debentures or other securities; [and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income.]

(b) the expression “infrastructure facilities” means the facilities specified in **Schedule VI**

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In simple terms, Section 186 sets clear rules for how companies can give loans, provide guarantees, and make investments. It requires proper approvals, transparency, and keeping track of all such transactions to protect stakeholders. Violating these rules can result in significant penalties.

