



NAVARATNA-SEASON 2

CALICUT BRANCH OF SIRC OF ICAI

Companies Act, 2013-Deposits, Loans and Related Party Transactions

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Section 185,186,188 of the Companies Act 2013

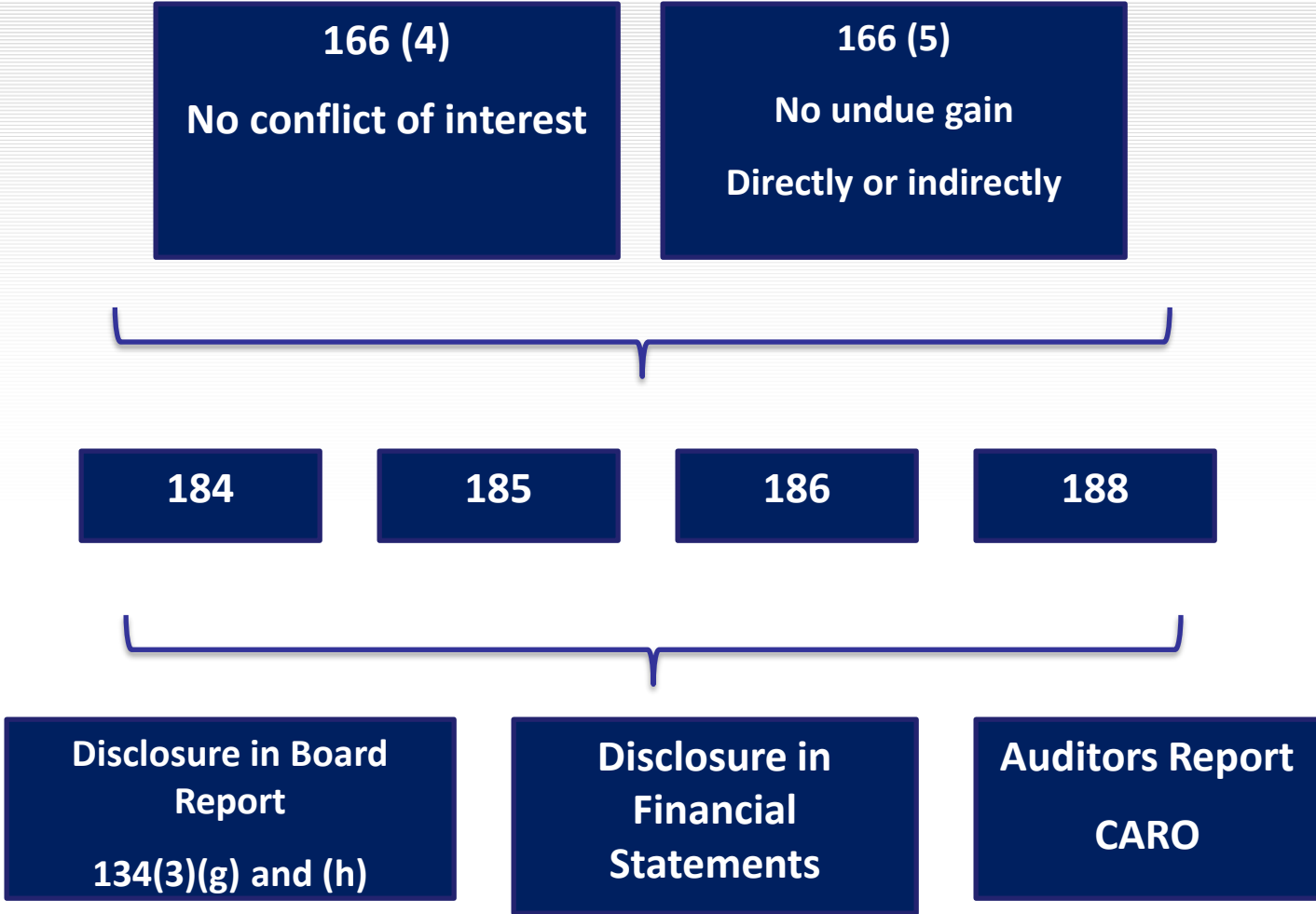
Items of discussion Today

- ✓ **An in-depth analysis of the intricacies of Sections 185,186,188**
- ✓ **Penal provisions**
- ✓ **Sections 185,186,188,184 – Auditor's Duties**



Discussion Item 1
Sections 185 , 186. 184 and 188
Intricacies and Procedures

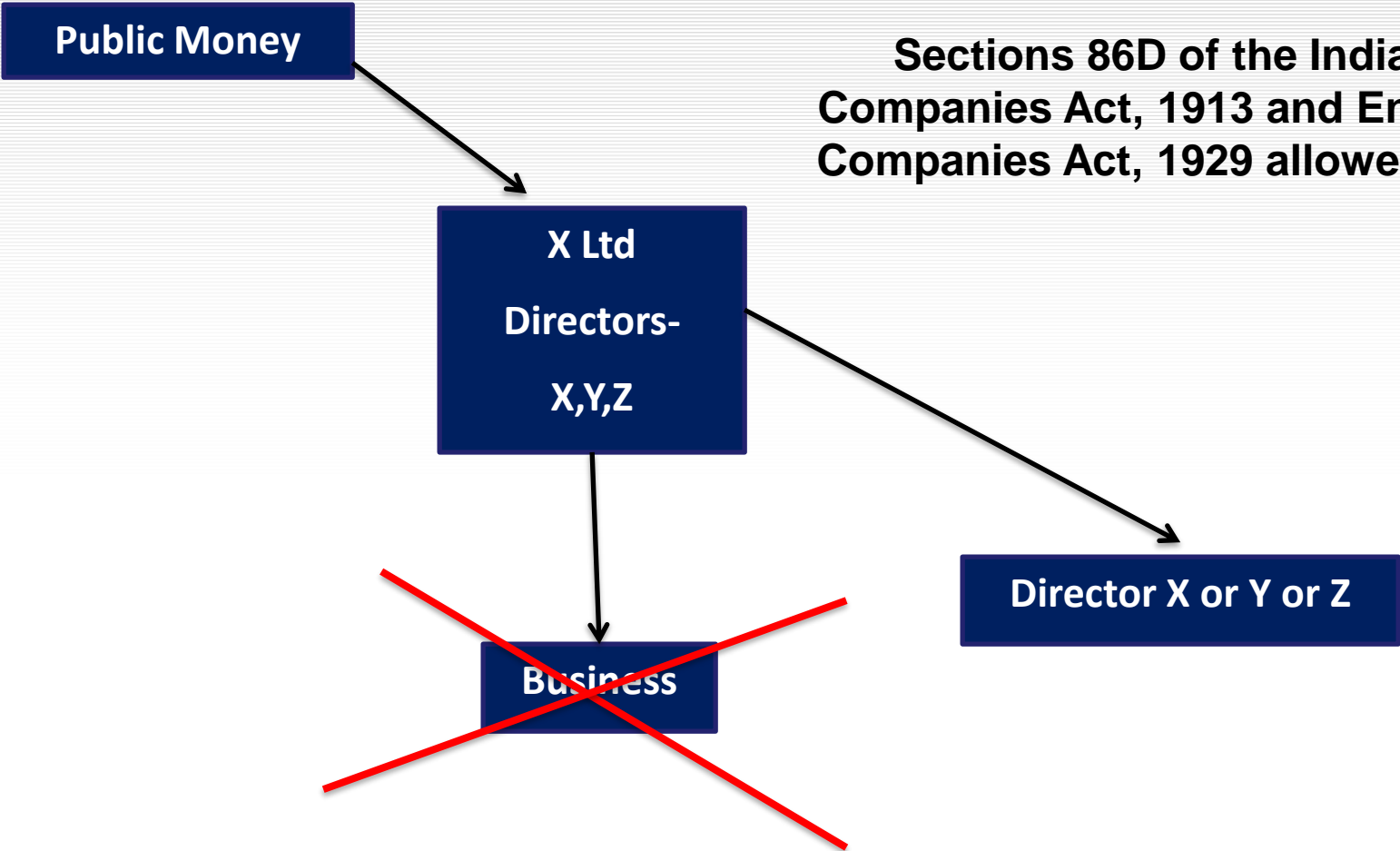
Section 166(4) and (5) of the Companies Act 2013





Section 185 – Loans to Directors

Loans to Directors – Section 185



Sections 86D of the Indian Companies Act, 1913 and English Companies Act, 1929 allowed this

Loans to Directors – Section 185

Public Money

Section 295 of Co Act 1956 –
allowed with CG permission

1960 Amendment Act – Indirect
Loans into the ambit

X Ltd
Directors-
X,Y,Z

Director X or Y or Z

~~Business~~



Loans to Directors – Section 185

Public Money

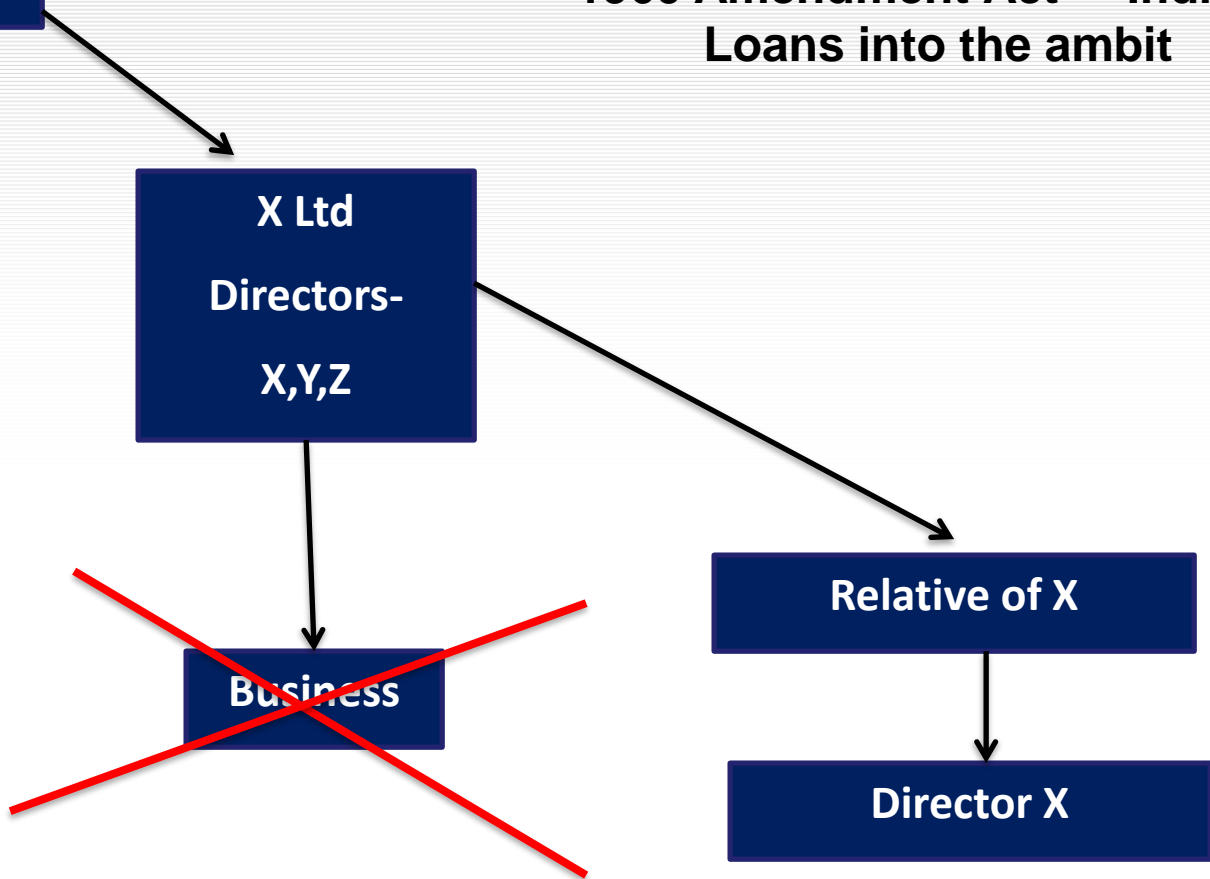
1960 Amendment Act – Indirect Loans into the ambit

X Ltd
Directors-
X,Y,Z

~~Business~~

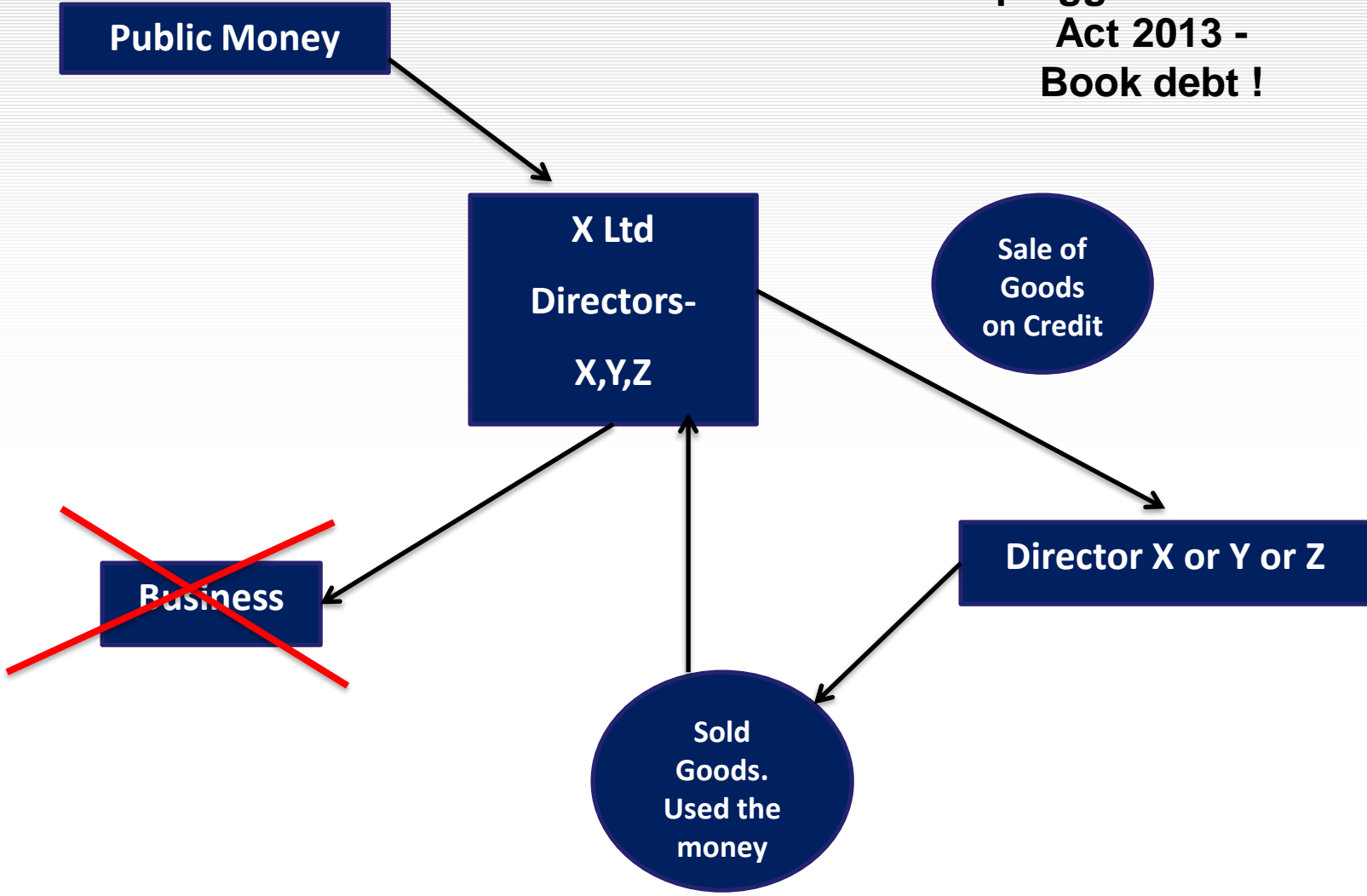
Relative of X

Director X



Loans to Directors – Section 185

Lacuna is plugged in the Companies Act 2013 - Book debt !



Loans to Directors – Section 185 – w.e.f 7th May 2018

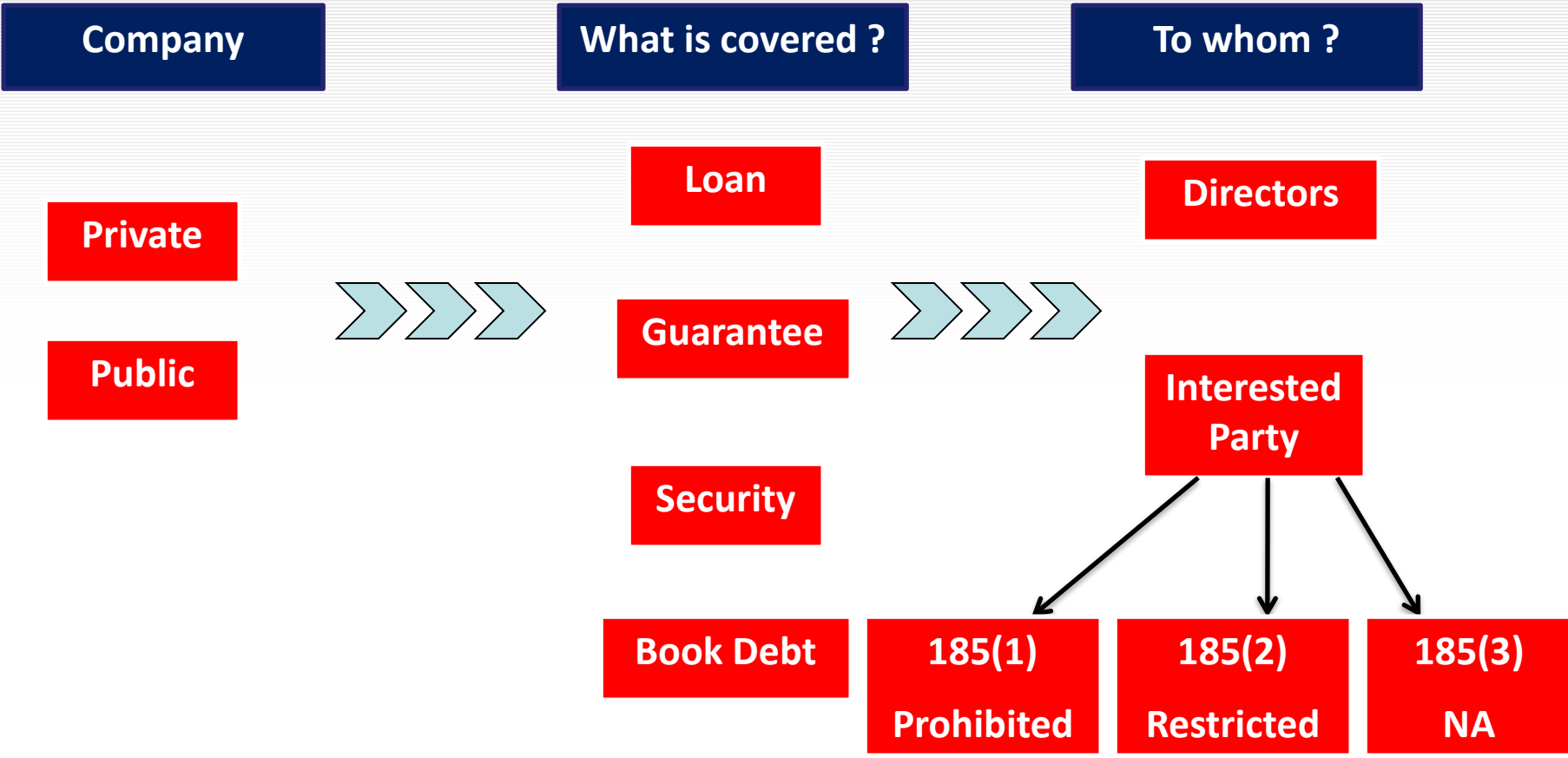
- 1) *No company shall, directly or indirectly , advance any loan , including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by **interested party***

- 2) *A company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, **subject to conditions***

Loans to Directors – Section 185

- (3) Nothing contained in sub-sections (1) and (2) shall apply to—
- (a) the giving **of any loan** to a 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
 - (b) 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 rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or
 - (c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or
 - (d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Section 185 break-up



185
Prohibition of Loans to Directors

186
LGS – “Person”
BMR + SR

179(3)(f)
BMR + Delegation possible to MD



Harmonious Construction not possible ?



Loan and investment by company Sec 186

- ✓ *Whether specified transactions with parties covered under Section 185 will also be governed by Section 186?*

Section 186 applies to all specified transactions generally. However, Section 185 of the Act prohibits loans to specific related parties. Since 185 deals with parties where conflict of interest is involved, it will prevail over Section 186. If the clause “Save as otherwise provided in the Act” used in Section 185 is construed in a manner to negate the restriction imposed therein, **the very object with which the provision has been enacted will be frustrated**. We have, therefore, to construe the expression “save as otherwise provided by or under the Act” in a harmonious manner so that provision of Section 185(1) is not reduced to a nullity. [**Based on State of Rajasthan v. Noor Mohammad AIR 1973 SC 2729**].

Loans to Directors – Section 185

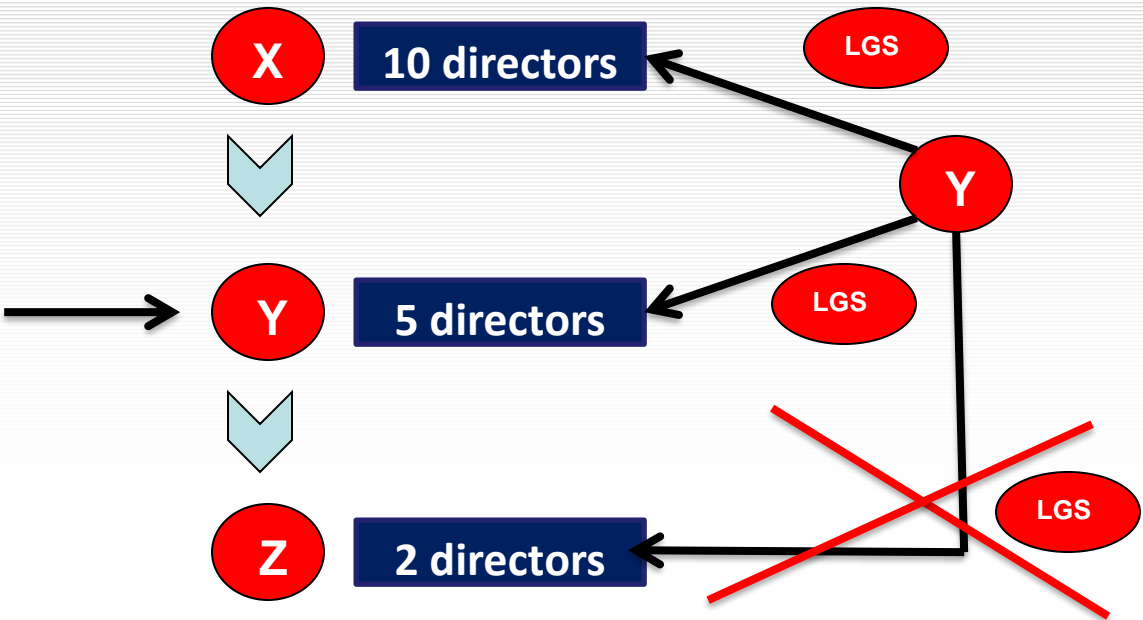
The expression “to any other person in whom director is interested” means

- ✓ 1. to a director of lending company or its holding company.
- ✓ 2. to a relative of any such director.
- ✓ 3. to a partner of such director.
- ✓ 4. to any firm in which such director or a relative is a partner

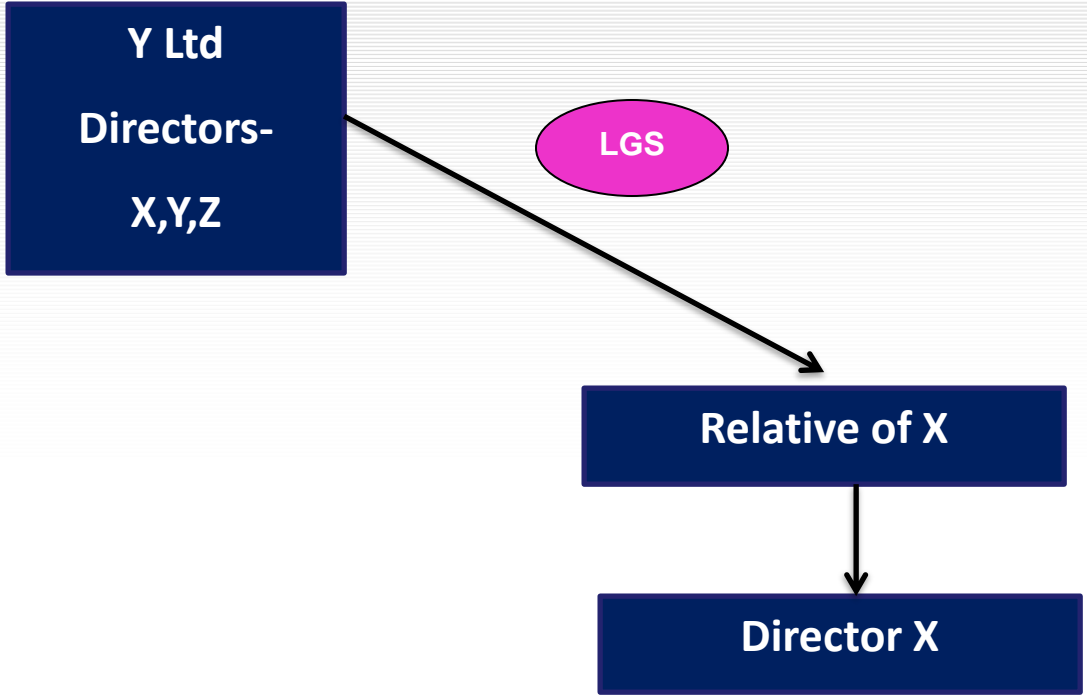
185(2) covers

- ✓ 5. to a private company in which such director is a director or a member.
- ✓ 6. to any body corporate in which 25% or more of total voting power is exercised or controlled by one or more such directors.
- ✓ 7. to any body corporate, in which the Board / M.D./Manager is accustomed to act in accordance with directions or instructions of the Board or any director of the lending company

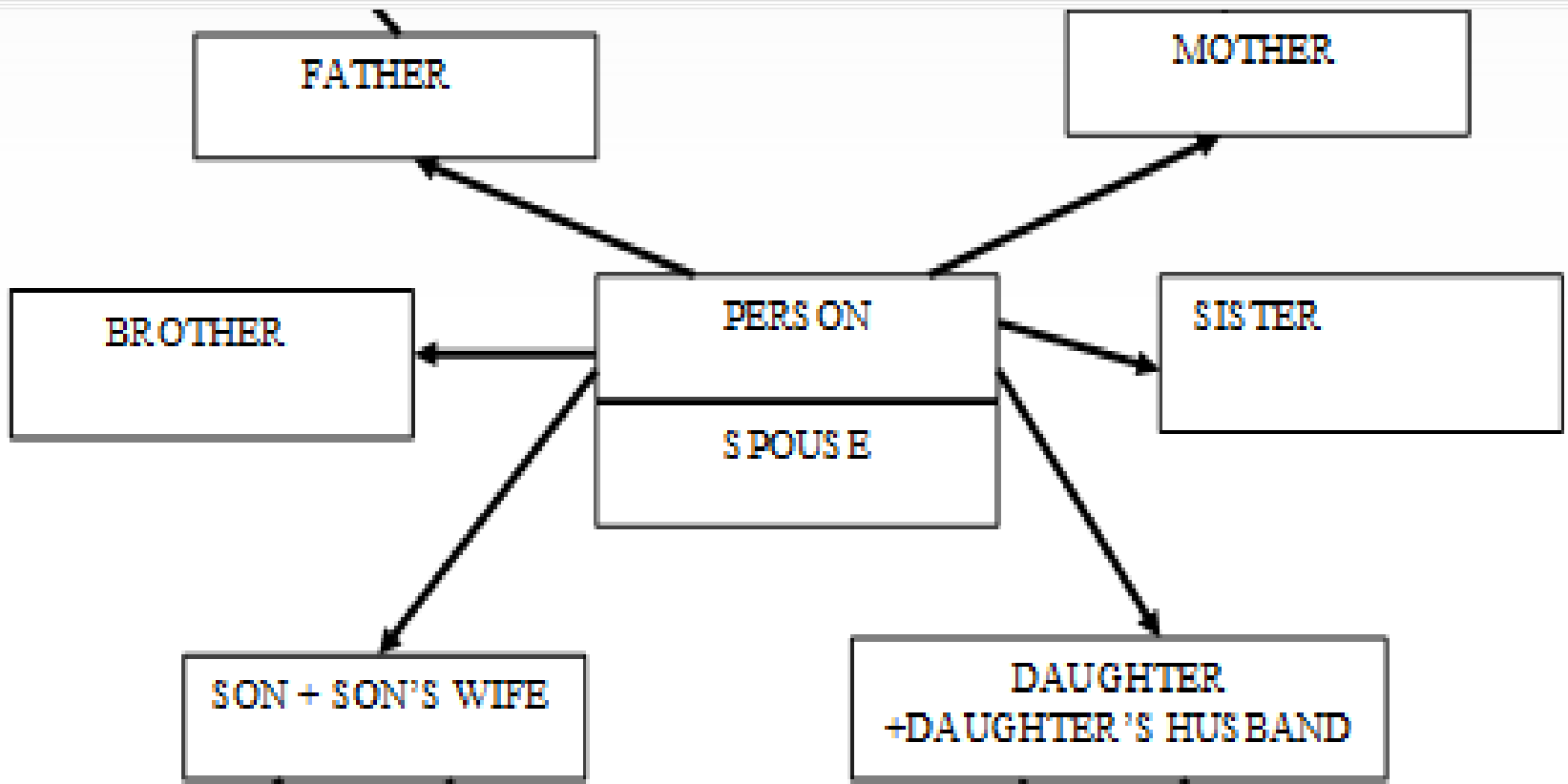
Director of lending company or its holding company



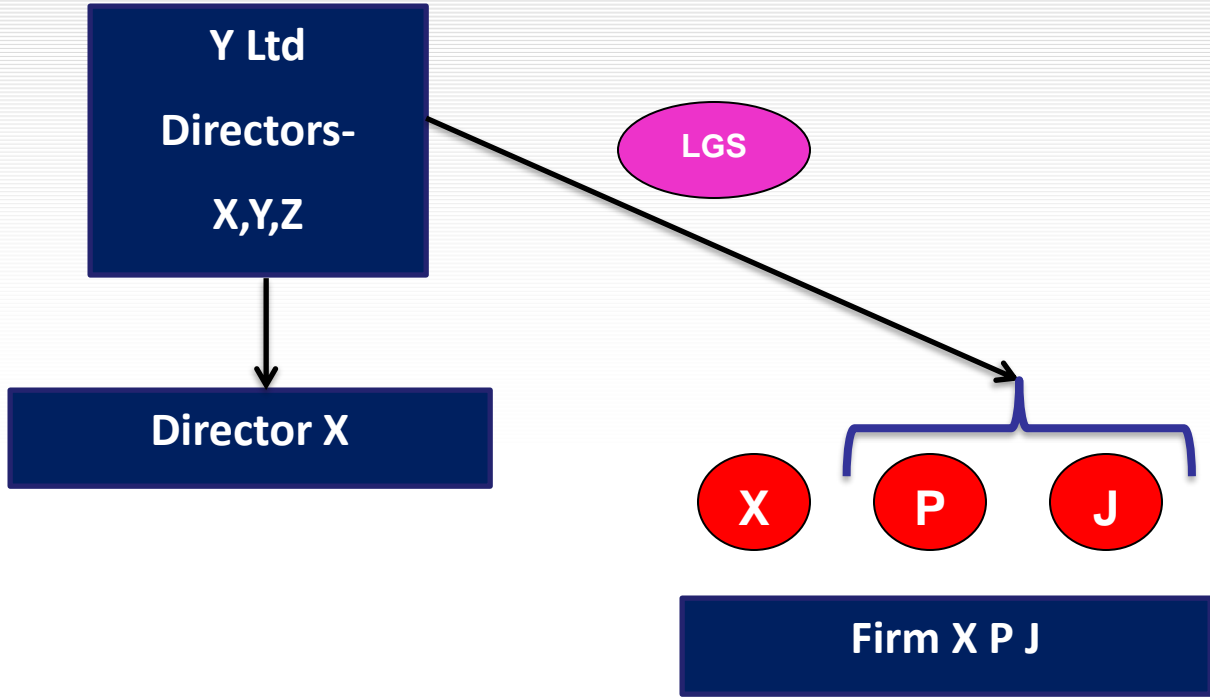
Relative of such director



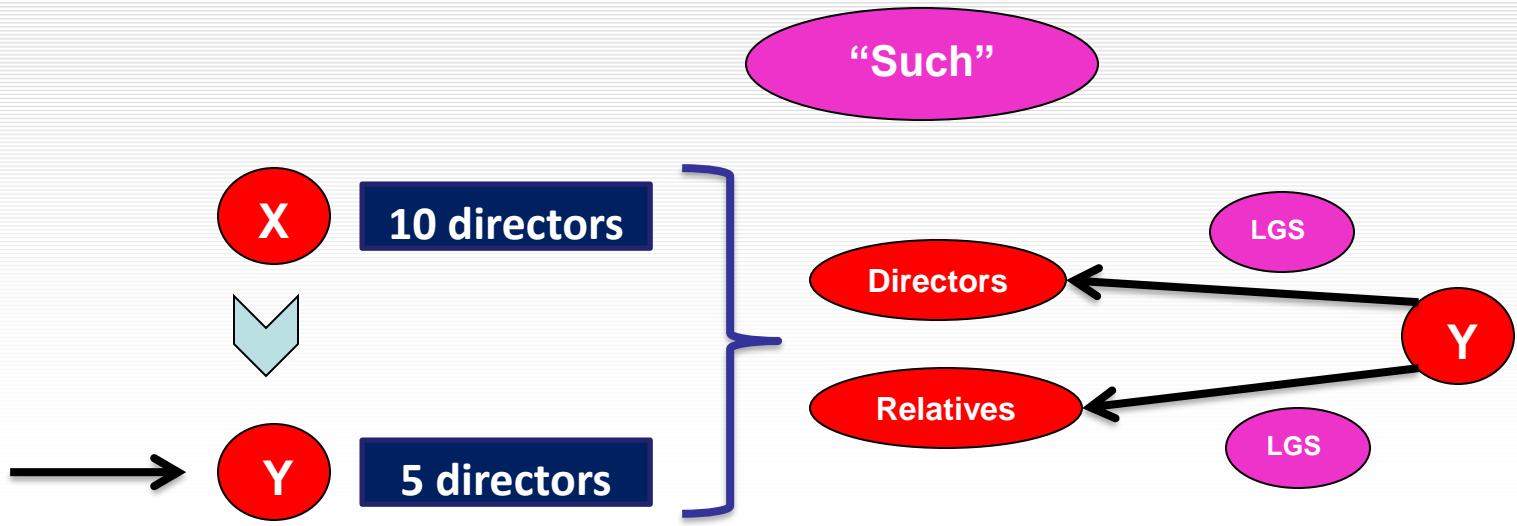
Relative of such director – Sec 2(77) r/w Rules



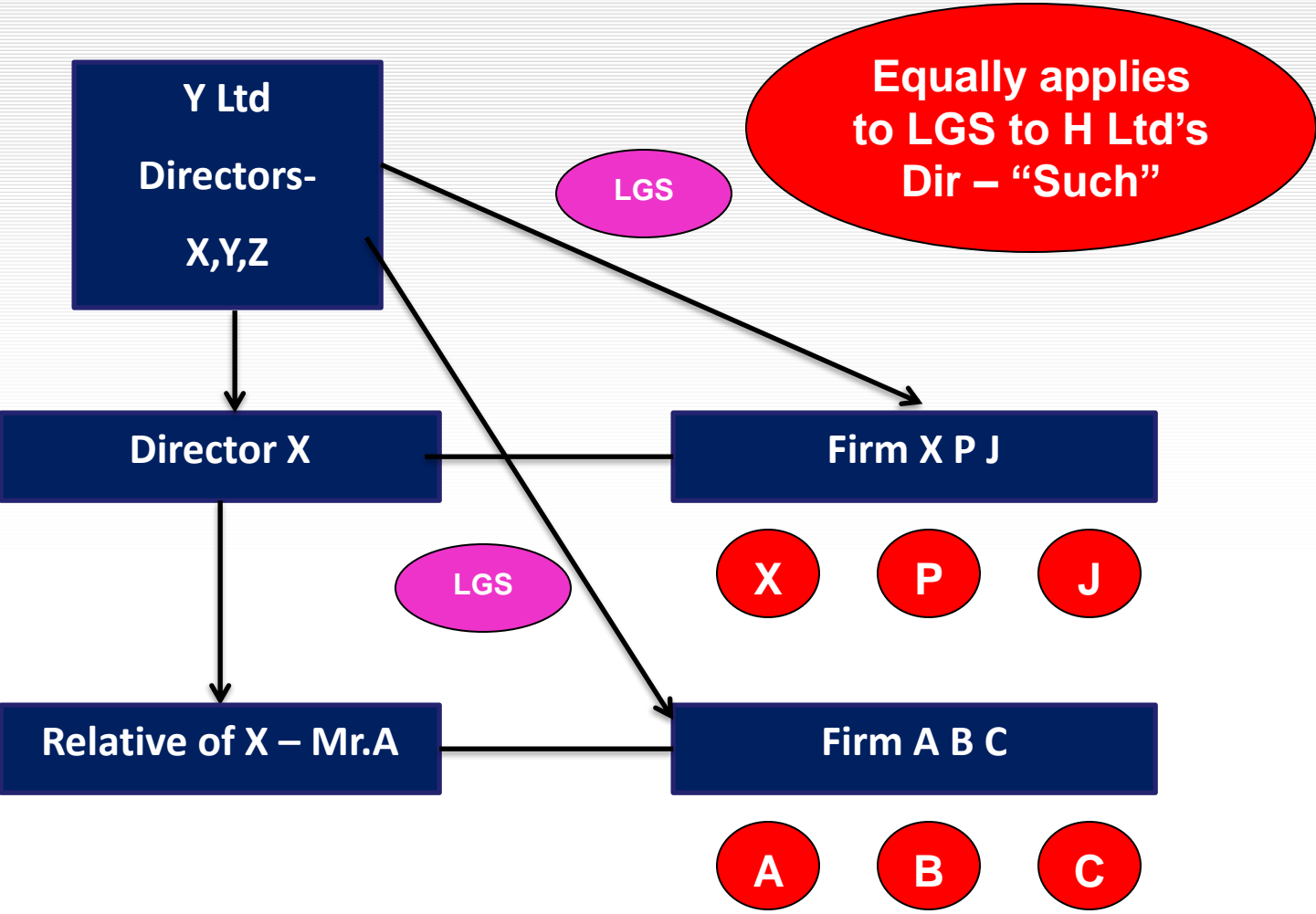
Partner of such director



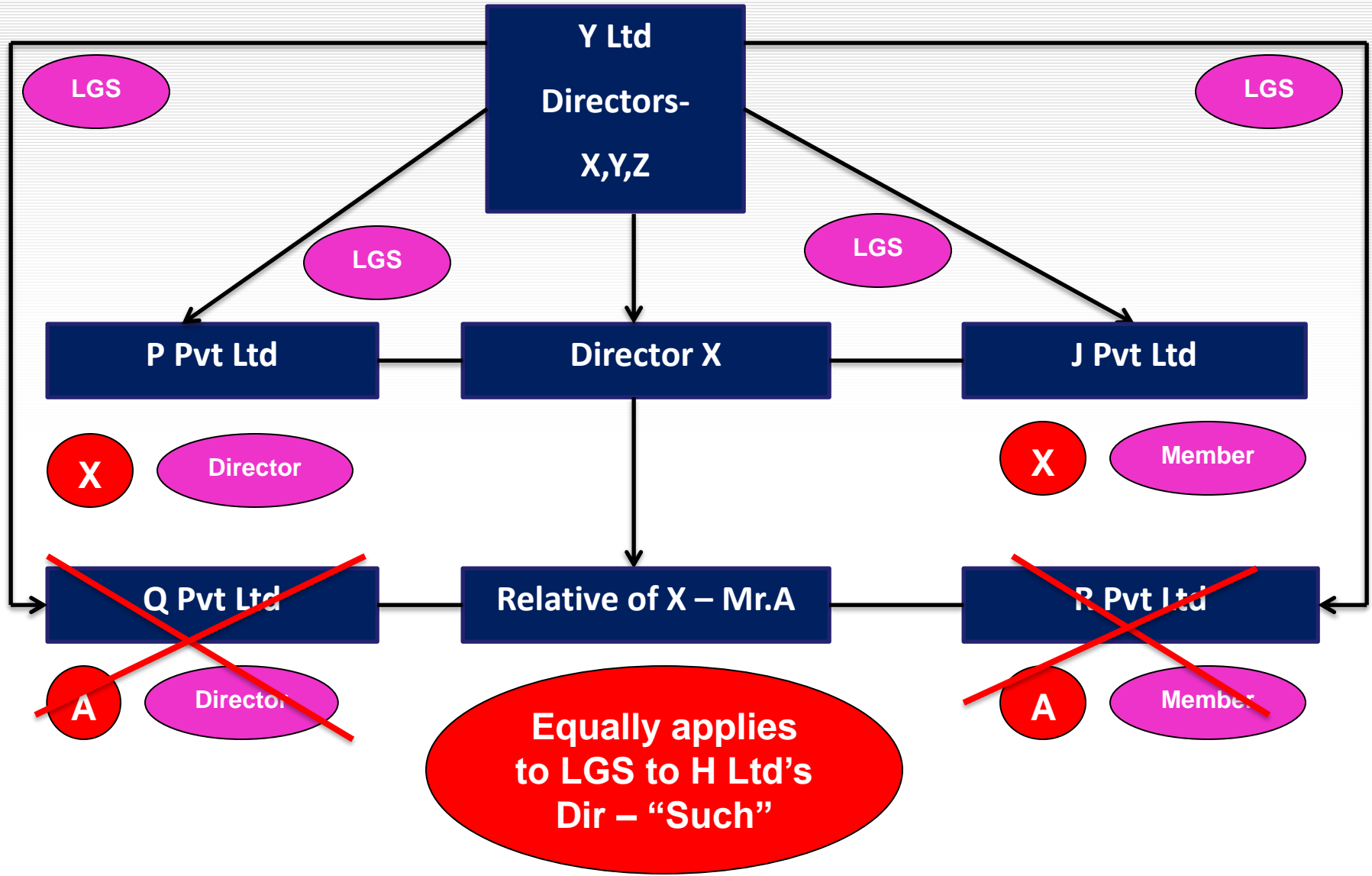
Partner or Relative of Director of which Company ?



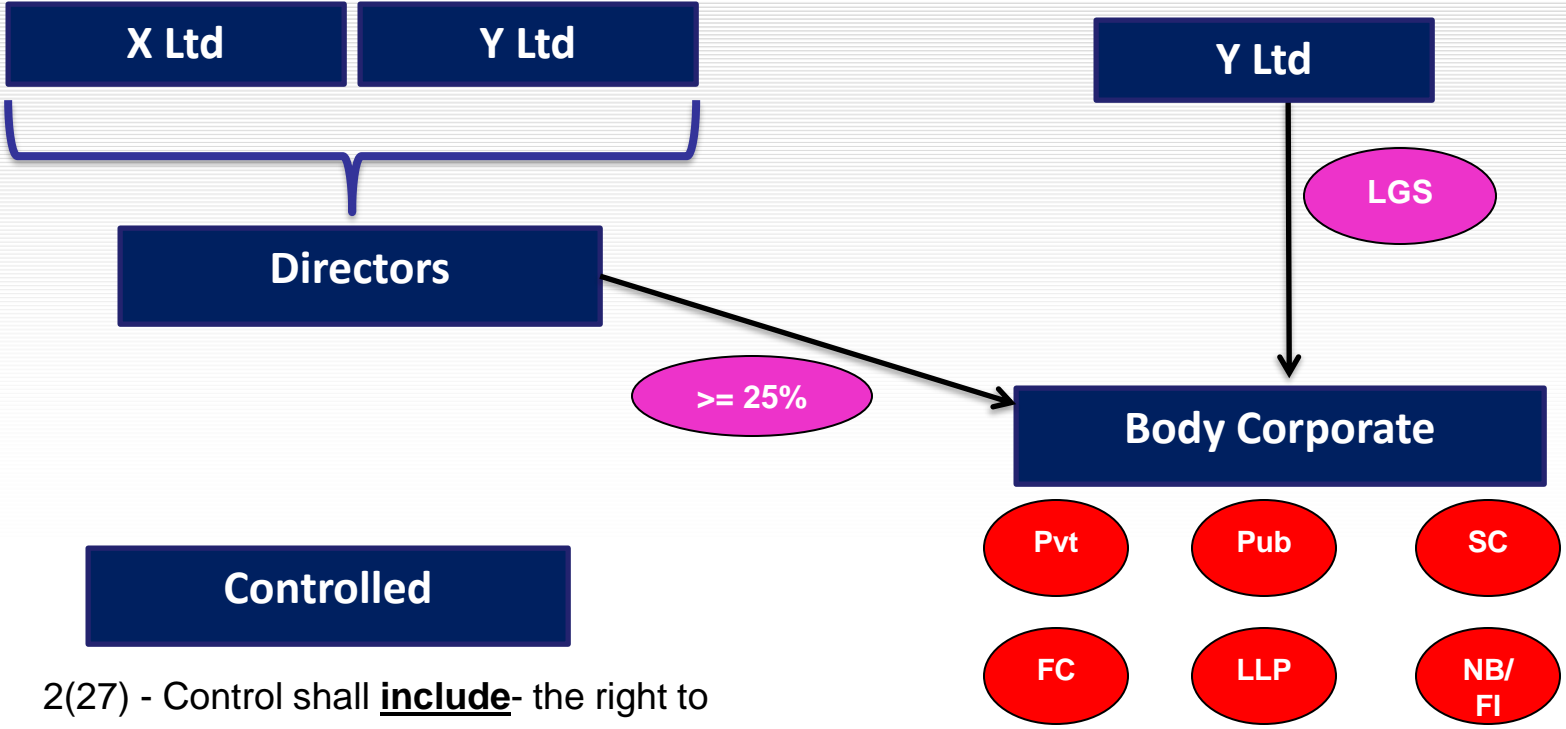
any firm in which such director or a relative is a partner



any Private company in which such dir is a dir or member



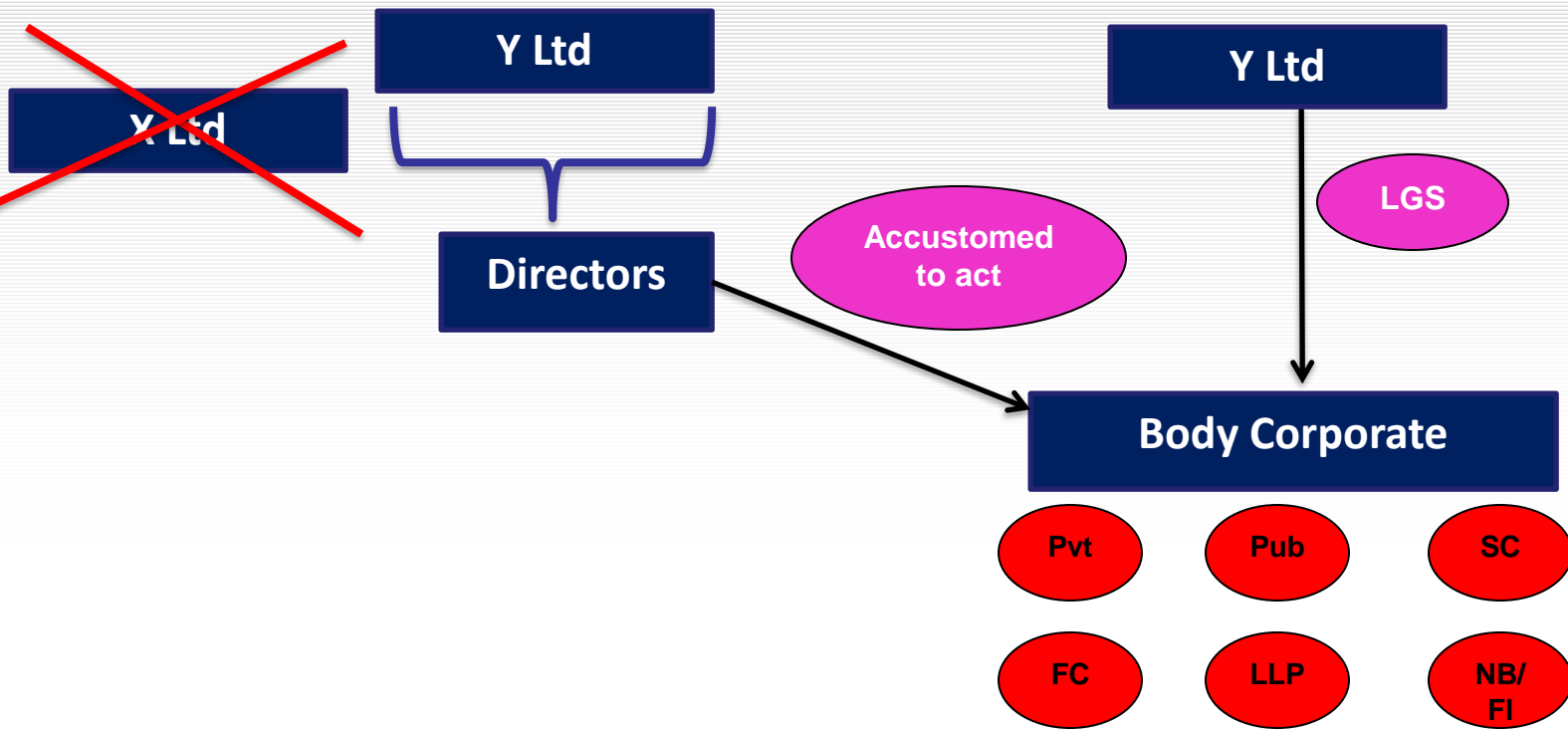
any Body Corp where $\geq 25\%$ Voting power held



Controlled

2(27) - Control shall **include**- the right to
- appoint majority of the directors
- to control the management or policy
- by virtue of their **shareholding or management rights or shareholders agreements or voting agreements**

any Body Corp in which BOD accustomed to Act



Loans to Directors – Section 185

Indirect loans - covers what?

- ✓ No “round-tripping” .Any form of subterfuge to be avoided
- ✓ 1. Loan to a Trust/HUF - will it attract sec 185? - Loans or advances to a trust in which directors are trustees / beneficiaries or to a HUF in which the director is a karta / member are not covered within the 7 parameters of section 185. It cannot be even called as “indirect loans”
- ✓ 2. Quasi loans - will it attract 185? - When a company pays money for the director to a third person in such circumstances that the director becomes liable to reimburse the company; it is a quasi-loan to a director. Such a transaction does not constitute even as indirect loan.
- ✓ 3. The word “indirectly” can be extended to cover only the “agents” of the persons specified in section 185.

Scope of Guarantees/securities covered

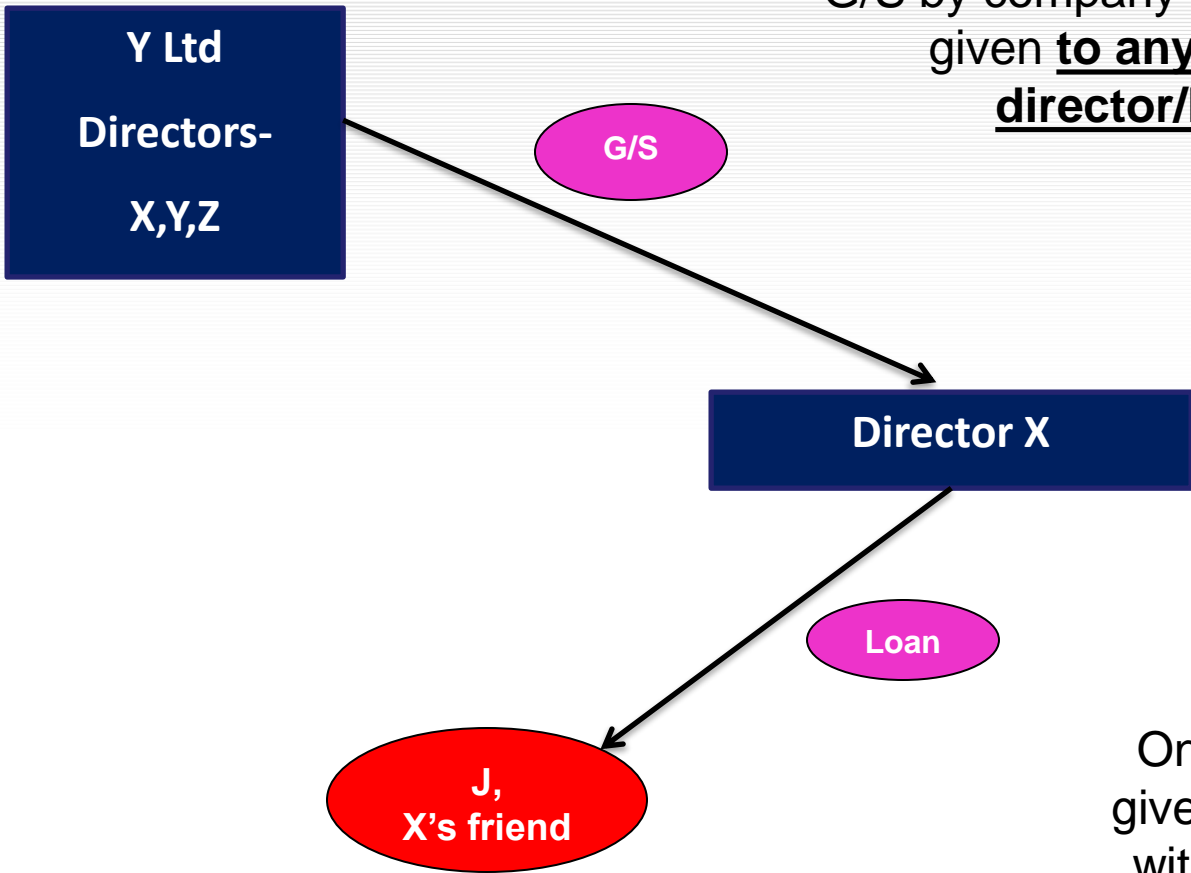
Any guarantee/security not involving transaction of lending/borrowing would not attract this section including, performance guarantees given to third parties guarantees against advance received for goods/project.

(1) Co	→	G/S	→	Sp. Person	→	Loan	→	Sp. Person
(2) Co	→	G/S	→	Person	→	Loan	→	Sp. Person
(3) Co	→	G/S	→	Sp. Person	→	Loan	→	Person
✓ ✓ (4) Co	→	G/S	→	Person	→	Loan	→	Person

Guarantee/Security

S.295 – G/S by company in connection with a loan given by any other person to a director/Interested party

G/S by company In connection with a loan given to any other person by a director/Interested party



Lacuna due to wording

S.185

Only covers G/S by company given to outsiders in connection with a loan taken by director

Loans to Directors – Section 185

Supply of goods to Director on credit - will it attract section 185?

- ✓ 1. The answer depends on facts of the case.
- ✓ 2. It has to be found out in each case whether the sale on credit was a genuine credit sale or a loan disguised as a credit sale.
- ✓ 3. Such transaction may look like ordinary trade dealings, but will attract sec 185, if the intention was to give accommodation in that manner.

Loans to Directors – Section 185

Traveling advance/conveyance advance/salary advance to Director - will it attract section 185?

- ✓ 1. The answer depends on facts of the case.
- ✓ 2. It has to be found out in each case whether the advance was a genuine advance or a loan disguised as a advance.
- ✓ 3. In M.R. Electrical Components Ltd. case a company had given an advance of Rs. 5,000/- to MD's wife who was employed by the company on a monthly salary.
- ✓ 4. The High court held that merely because the beneficiary, happened also to be the wife of a director could not justify that an offence had been committed.

Loans to Directors – Section 185

5. The court had to find out in each case whether the salary advance was a genuine salary advance or a loan disguised as a salary advance and for this purpose, facts of the case shall be considered and in particular the following:

- ✓ - Whether the beneficiary is a bona fide employee.
- ✓ - Whether the advance falls in the general scheme of advances given by the company to other employees.
- ✓ - Whether the amount paid is disproportionate to the salary of the employee.
- ✓ - The conditions of repayment, like the rate of interest.
 - Whether there was laxity in the recovery of advance.
- ✓ - What is the capacity of the person receiving the advance.

Loans to Directors – Section 185

Rental advance & section 185

- ✓ Payment of rental advance by the company to the landlord to secure accommodation for MD will not attract section 185 because
- ✓ 1. The company has not given any deposit to the MD. The amount deposited with the landlord cannot be said to be an ‘indirect loan’, unless such deposit is diverted by the landlord to the MD.
- ✓ 2. It is a usual practice to give a security deposit to the landlord when a rental agreement is entered into. Thus, the security deposit is on account of bonafide business considerations.
- ✓ 3. It is of no concern of the MD as to the terms on which the company secures residential accommodation for him.
- ✓ 4. It is the company and not the director who has entered into the lease agreement. Therefore, the company can at any time use the accommodation for any other purpose and the MD will have to vacate it, as and when desired by the company.

Loans to Directors – Section 185

Loan and debt

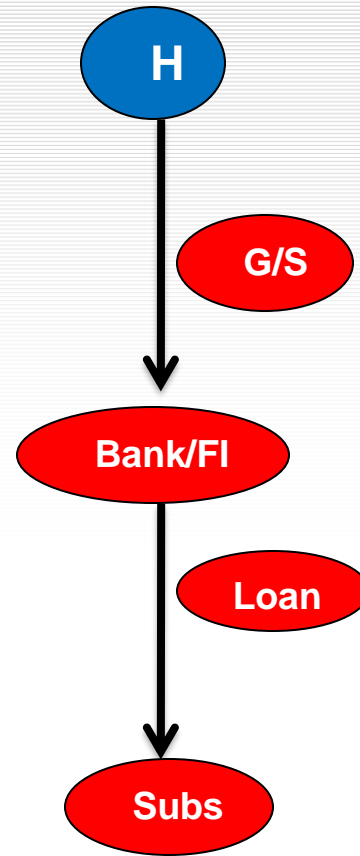
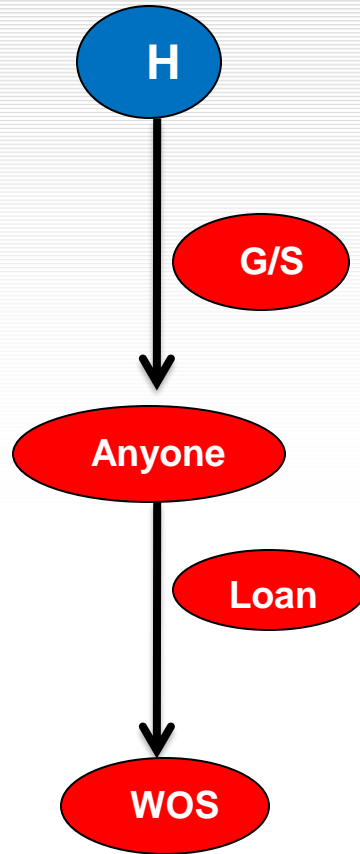
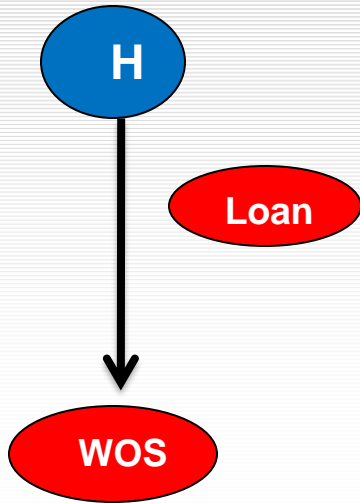
- ✓ 1. Where a company sells a flat to one of its directors and receives half the price in cash and the balance in installments, the transaction amounts to a credit sale; it does not amount to even an 'indirect loan'.
- ✓ 2. The word 'indirect' cannot be read as converting what is not a loan into a loan.
- ✓ 3. Therefore, the Court held that there was no contravention of section 295 (presently sec 185). [Dr. Freddie Ardeshir Mehta v. Union of India, 1991].

Loans to Directors – Section 185

- (3) Nothing contained in sub-sections (1) and (2) shall apply to—
- (a) the giving **of any loan** to a 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
 - (b) 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 rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or
 - (c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or
 - (d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

Significant Amendments

Companies (Amendment) Act 2017



Compliance Action Point

Loans Given – A breather for Private Companies

Notification – 05/06/2015

Shall not apply to a private company -

(a) in whose share capital no body corporate has invested any money;

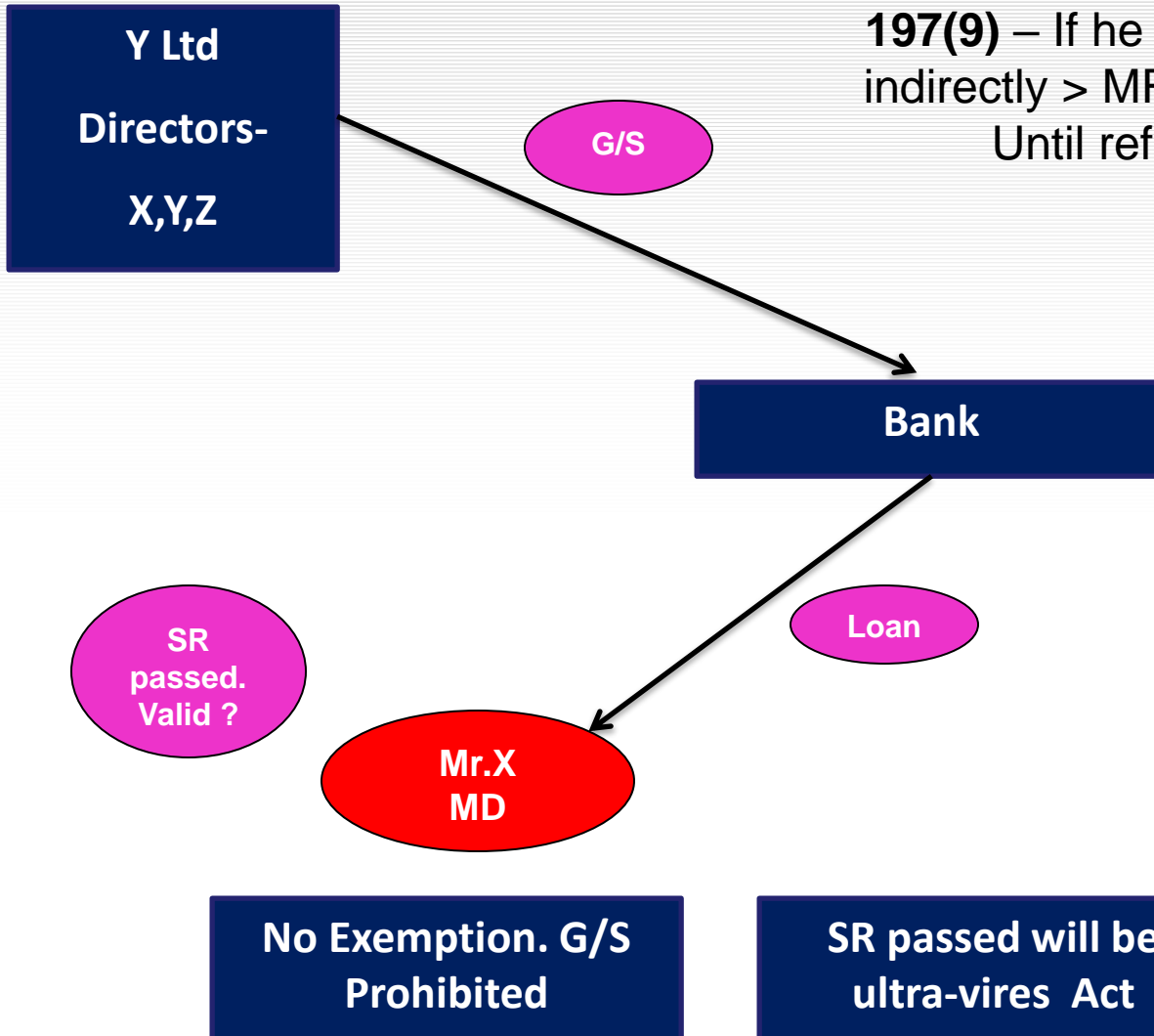
(b) if the borrowings of such a company from banks/FI/BC is

<2 times PUC or 50 Crores- WIL

(c) such a company has **no default in repayment** of such borrowings subsisting at the time of making transactions under this section.

Lacuna – MD Provisions

197(9) – If he receives money directly or indirectly > MR ,then refund to company.
Until refund , hold it in trust !



Loans to Directors – Section 185

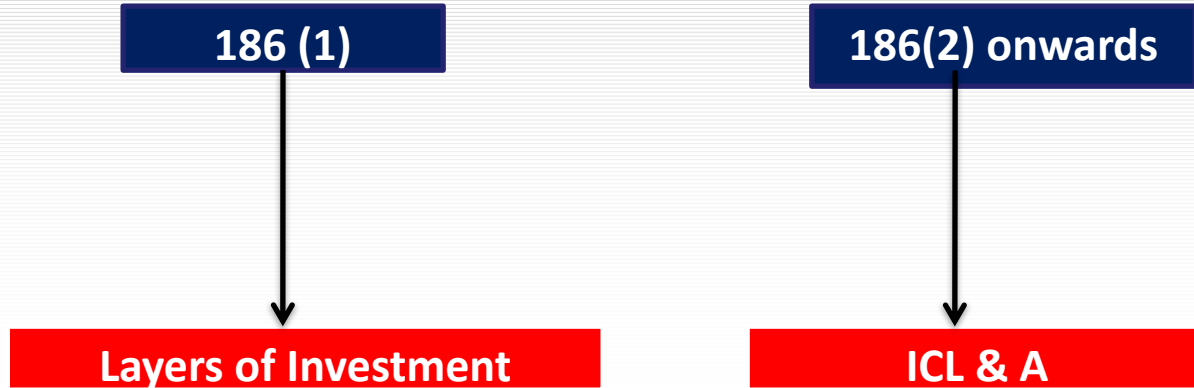
Implications and issues

- ✓ 1. Loans to Directors and others - banned - no powers even for CG.
 - ✓ 2. Ordinary course of business - refers to only 'finance and investment companies'
 - ✓ 3. Company also punishable.
 - ✓ 4. Only company and director/interested party liable
 - ✓ 5. Repayment of loan - no reduction in imprisonment.
 - ✓ 6. Violation of this section - no vacation of office of director.
 - ✓ 7. What about repayment of loan to the company? How does punishment serve the purpose?
 - ✓ 8. Section could have defined 'loan' for conceptual clarity - to distinguish from advance, deposit, debt. .. etc.
-
- ✓ **Subsequent applicability of Sec 185**
 - ✓ If the manager, secretary or employees are subsequently appointed as Directors this section will not apply since, the applicability of this section has to be seen on transaction date.



INTER-CORPORATE LOANS AND ADVANCES – SEC 186

Section 186 break-up



Section	Companies (Amendment) Act 2017
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Section 90 – Significant Beneficial ownership of shares

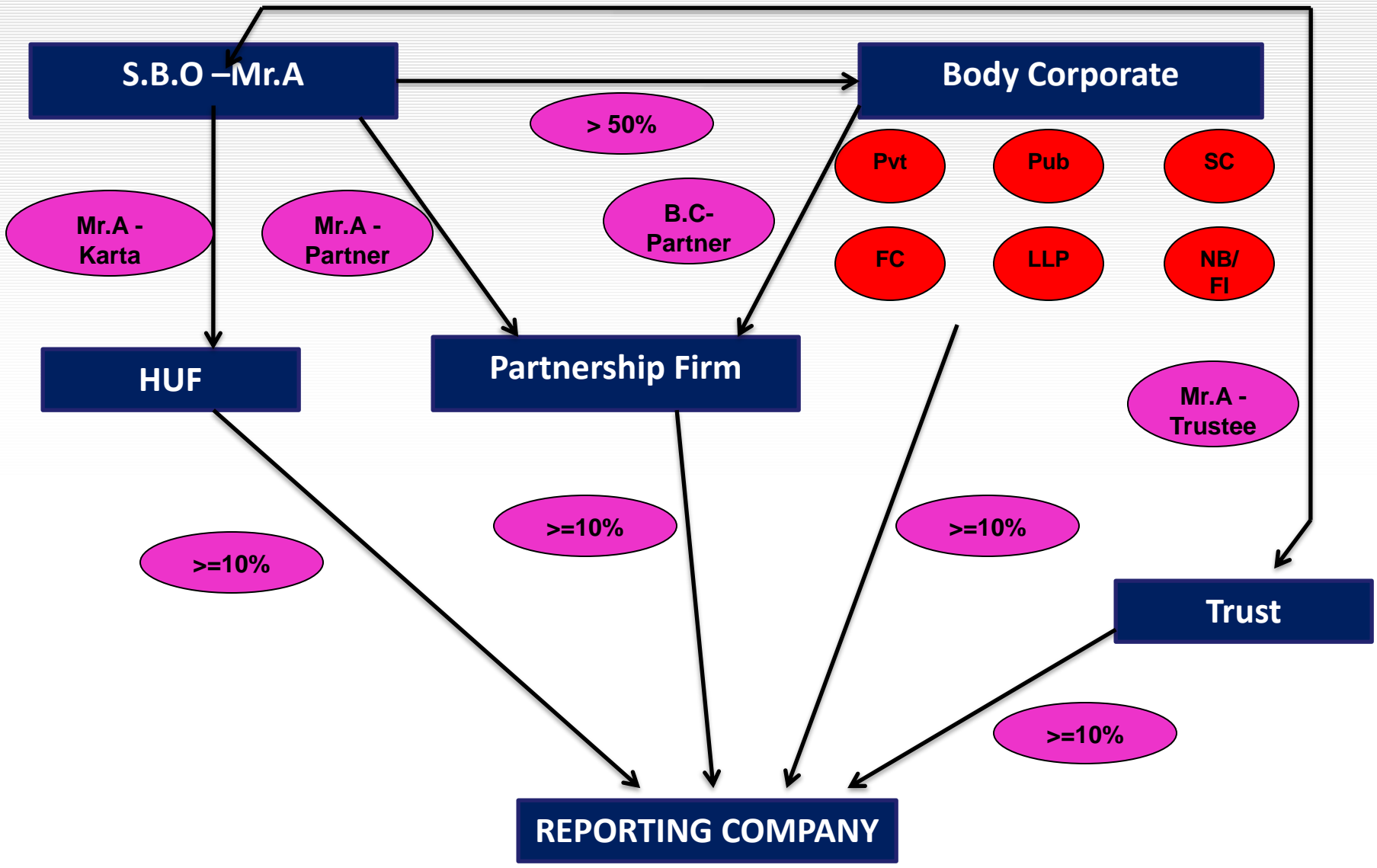
Basic Terms to understand the Concept

FIRST CHECK: *SBO is should be Natural Person*

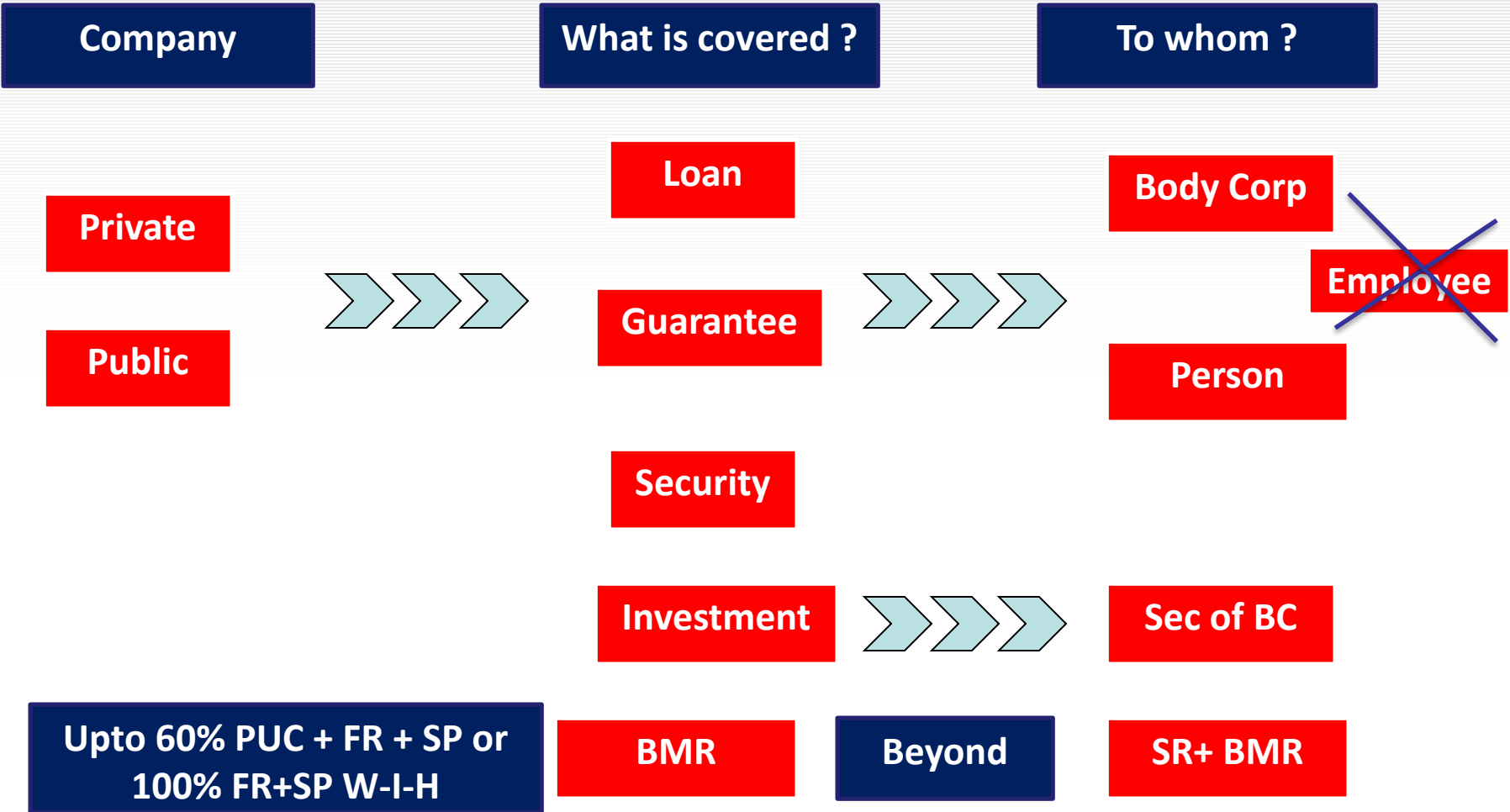
SECOND CHECK: *Such person holds at least 10% of shares/ voting right / Dividend / control etc. (Indirect along with direct holding)*

THIRD CHECK: *There should be Indirect Holding*

INDIRECT HOLDING



Section 186 break-up



Loan and investment by company Sec 186

1.No company shall directly or indirectly

- ✓ give any loan to any person or other body corporate;
- ✓ give any guarantee or provide security in connection with a loan to any other body corporate or person; and
- ✓ acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more.

2. Where the giving of any loan or guarantee or providing any security or the acquisition exceeds the limits specified, prior special resolution passed at a general meeting shall be necessary.

Loan and investment by company Sec 186

Summary of sub section 1 and 2

- ✓ 1. The Board of directors may give loan, guarantee, security or invest, upto 60% of its paid-up share capital, free reserves and securities premium or 100% of its free reserves and securities premium, whichever is more.
- ✓ 2. Where, a company exceeds the aforesaid limits, prior special resolution will be required to be passed in a general meeting.
- ✓ 3. Receiver - Body corporate - in case of investments, the giver should be a company; the receiver can be body corporate or person. Thus, Body corporate covers companies, statutory corporations and body corporate.

Loan and investment by company Sec 186

Indirectly

- ✓ 1. The word 'indirectly' refers to any person who holds the securities in trust or for its benefit or on its account or as a nominee of the investing company
- ✓ 2. Loan **does not** include debentures and deposits
- ✓ 3. Under the previous act, loans included debentures or deposits made by one company to another. The same stands omitted in the new Act.
- ✓ Inter corporate debentures **NOT to be considered as loans**

Loan and investment by company Sec 186

Indirectly

- ✓ Inter corporate deposits are not deposits as per Rule 2(1)(vi) of Companies(Acceptance of Deposits) Rules. Hence **it may be entered in the calculation of 60%/100% limits, but as a loan**
- ✓ Inter-corporate advances for supply of goods ? Are they loans ?

Corporate advances which are genuinely given for the purposes of trade which are subject to adjustments against future supplies are not to be bracketed as loans under S.186 provided it is set off within 365 days.

However, if “trade advance” route is abused to rope in payments which are intended covertly to be provided as “loans” – then 186

Loan and investment by company Sec 186

Scope of guarantees / securities covered

- ✓ 1. The company giving a guarantee or security to a person/Body corporate to enable them to give a loan to any person/Body corporate will attract the section.
- ✓ 2. Sec 186 is not attracted if guarantee or security given does not involve lending and borrowing of money.
- ✓ 3. Thus 186 will not attract,
 - performance guarantees,
 - guarantees against advance for supply of goods.
- ✓ 4. Acquisition of Securities of Body Corporate
- ✓ 5. Securities can be acquired through subscription, purchase or otherwise

Loan and investment by company Sec 186

6. Securities under SCRA includes:

- Shares, scrip's, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in any incorporated company or other body corporate.
- Derivative
- Units or another instrument issued by any collective investment scheme to the investors in such schemes.
- Government securities.
- Security receipt as defined in the Securitization Act, 2002.
- Such other instruments as may be declared by the Central Government to be securities.
- Rights or interest in securities.

7. Sec 186 will not apply to investments in mutual funds run by trusts, which are not bodies corporate.

8. Investment made in Govt securities, though covered in "securities" are not issued by a body corporate - sec 186 will not apply.

9. Loans and investments in securities of a foreign company will attract sec 186.

Loan and investment by company Sec 186

Free reserves 2(43)

Free reserves means those reserves which, as per the latest audited Balance Sheet are free for distribution as dividend

Free reserves thus includes

- ✓ - Profit and Loss Account credit balance
- ✓ - General reserves
- ✓ - Dividend equalization reserve
- ✓ - **Securities premium account**

Free reserves does not include

- ✓ - Capital redemption reserve
- ✓ - Sinking fund.
- ✓ - Provision for taxation
- ✓ - Fixed assets revaluation reserve
- ✓ - Capital reserves.
- ✓ - Share application money

Loan and investment by company Sec 186

Paid-up share capital

- ✓ - Both equity and preference share capital will be taken into account.
- ✓ - Paid-up share capital also should be computed as per the latest audited Balance Sheet.
- ✓ 3. Share application money has been expressly excluded from the definition of free reserves; also does not form part of paid up share capital.

Section 8 companies

- ✓ 1. Section 8 companies not having share capital, see 186, can be computed in relation to free reserves alone. - DCA clarification

Loan and investment by company Sec 186

Calculation of problems - ABCD principle

- ✓ 1. $A = 60\%/100\%$ Board limit.
- ✓ 2. $B =$ Loans, Guarantees, Securities and Investments already made.
- ✓ 3. $C = A - B =$ Further Loans, Guarantees, Securities and Investments, Board itself can make.
- ✓ 4. $D =$ Proposal.
 - ✓ a. If $D < C$, Board itself can approve
 - ✓ b. If $D > C$, Prior Special resolution required.

Disclosure in financial statements

- ✓ The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and 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.

Loan and investment by company Sec 186

Board meeting & Unanimous approval

- ✓ 1. 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 institution concerned where any term loan is subsisting, is obtained:
- ✓ 2. The resolution is to be passed at a meeting of the Board with consent of all the directors present. **G.Sec yield of 1 year, 3 year, 5 year, 10 year to be maintained**
- ✓ 3. Such unanimous consent at the Board meeting will apply in both the cases
 - Within 60%/100% limits and
 - Beyond the above limits

Loan and investment by company Sec 186

- ✓ 4. However, prior approval of a public financial institution shall not be required where the aggregate of the loan/investments/guarantee/security so far made, together with the proposal does not exceed the Board limits (60%/100%) and there is no default in repayment of loan installments or payment of interest thereon as per the terms and conditions of such loan to the public financial Institution.

- ✓ 5. No company registered under section 12 of the SEBI Act, 1992 and also covered under such class of companies notified by CG in consultation with SEBI, shall take any inter-corporate loan or deposits, in excess of the limits prescribed under the regulations applicable to such company, pursuant to which it has obtained certificate of registration from SEBI

Loan and investment by company Sec 186

LGSI Limits	Default from PFI	Approvals
Less than 60/100 %	Yes	Prior PFI + BMR+ Unanimous
Less than 60/100 %	No	No PFI + BMR + Unanimous
More than 60/100 %	Yes	Prior PFI + Prior SR + BMR + Unanimous + MGT 14
More than 60/100 %	No	Prior PFI + Prior SR + BMR + Unanimous + MGT 14

Loan and investment by company Sec 186

Case where special resolution not required

- ✓ 1. Special resolution shall not be required where the loan or guarantee or security is given by the company to its Wholly owned subsidiary or a Joint venture company or for investments by the company to its Wholly owned subsidiary.
- ✓ 2. However such details shall be disclosed in financial statements of the company

Rate of interest

- ✓ 1. No loan shall be given under this section 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.

Loan and investment by company Sec 186

Default in repayment of deposits

- ✓ No company which is in default of 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.

Register of Loans etc.

- ✓ 1. Every company giving loan or giving guarantee or providing security or making an acquisition shall, from the date of its registration, maintain a register in **Form No. MBP 2** and enter the particulars specified therein. Entries in the register shall be made chronologically in respect of each such transaction within 7 days.
- ✓ 2. The register shall be kept at the registered office and shall be preserved permanently and shall be kept in the custody of the company secretary or any authorised person.

Loan and investment by company Sec 186

- ✓ 3. Entries in the register shall be authenticated by the Company Secretary or by any other person authorized by the Board for the purpose.
- ✓ 4. The register can be maintained manually or in electronic mode.
- ✓ 5. The register shall be kept at the registered office of the company and shall be open to inspection at such office; and extracts from the register may be furnished to any member on payment of Rs. 10/- for each page.

Non-applicability of the section

This section will not apply to a loan, guarantee given or security provided by

- ✓ 1. a banking company or
- ✓ 2. an insurance company or
- ✓ 3. a housing finance company in the ordinary course of its business or

Loan and investment by company Sec 186

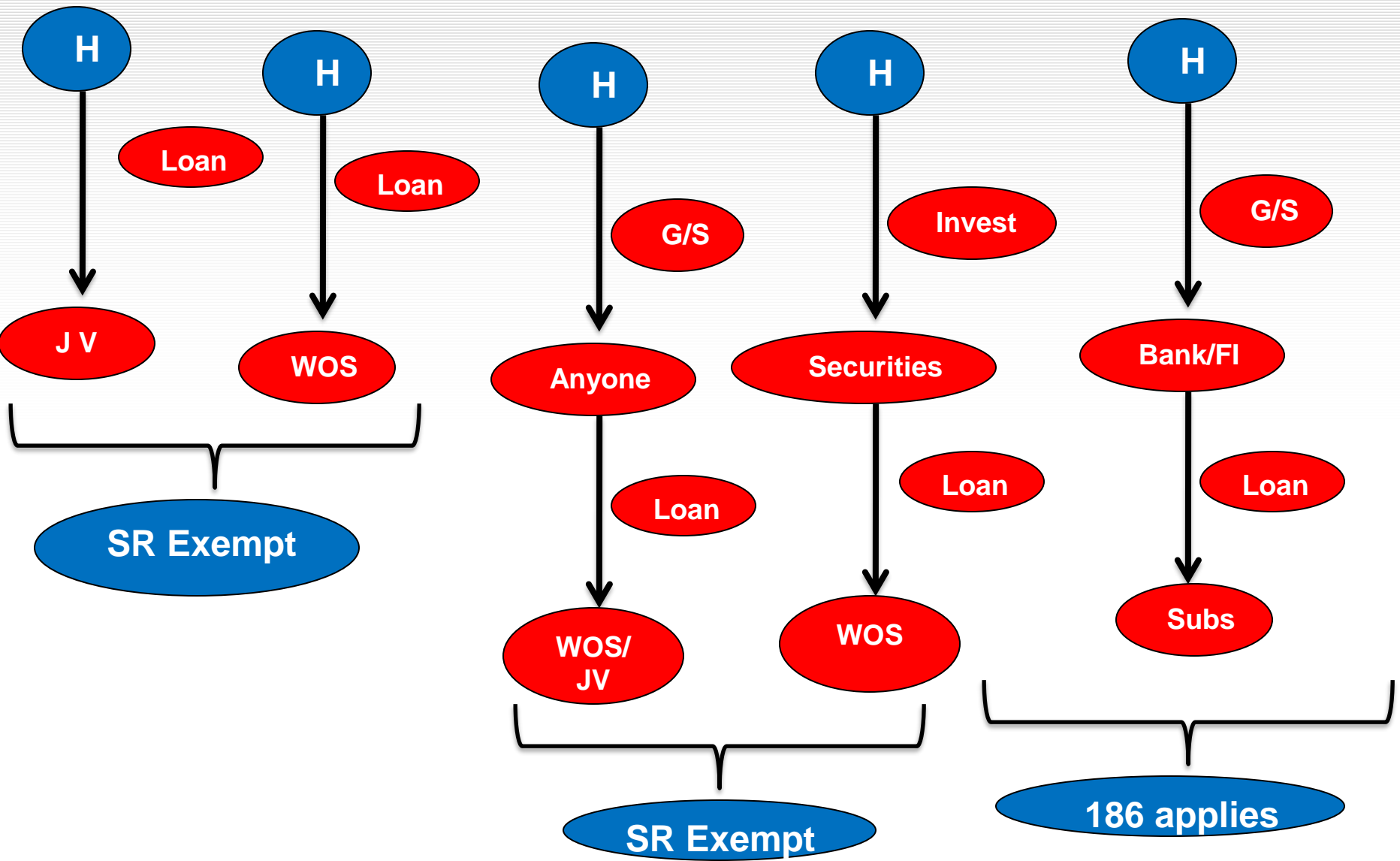
4. a company engaged in the business of financing of companies (NBFC company registered with RBI) or
5. of providing infrastructural facilities;
6. to any acquisition -
 - ✓ - made by an NBFC company registered with RBI whose principal business is acquisition of securities, in respect of its investment and lending activities;
 - ✓ - made by a company whose principal business is the acquisition of securities;
 - ✓ - of right shares allotted under section 62.

Exemption to subsidiary company/joint ventures – conditions thereof: As per Rule 11(1) of the Companies (Meetings of Board and Its Powers) Rules, 2014:

- ✓ Where a **loan or guarantee** is given or where a **security** has been provided by a company to its:
 - (i) wholly owned subsidiary company, or
 - (ii) a joint venture company, or
- ✓ Where an **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.

Significant Amendments

Companies (Amendment) Act 2017



Loan and investment by company Sec 186

Exemptions - some issues

- ✓ In case of rights issue, the rule shall be, once exempted, always exempted. The exempted investments are to be excluded from calculation in considering the limits (excluded from the B figure itself)

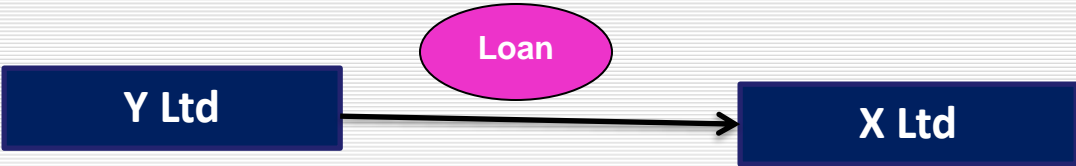
Postal ballot

- ✓ Postal Ballot is mandatory for passing special resolution in the case of a listed company for transacting any business in excess of the ceiling limits of 60%/100% as specified.

Power to make inter corporate loans and investments cannot be delegated

- ✓ 1. Section 179(3) authorizes the Board to delegate the power to make loans and investments.
- ✓ 2. However, under section 186, the power to make inter corporate loans and investments cannot be delegated by a public company

186 SR Limit



SC	100L
FR	100L
Unsec Crs	30L

60% of 200L
=120L
Or 100L
W-i-h

Beyond 120L = SR

Proposed loan = 210 Lakhs

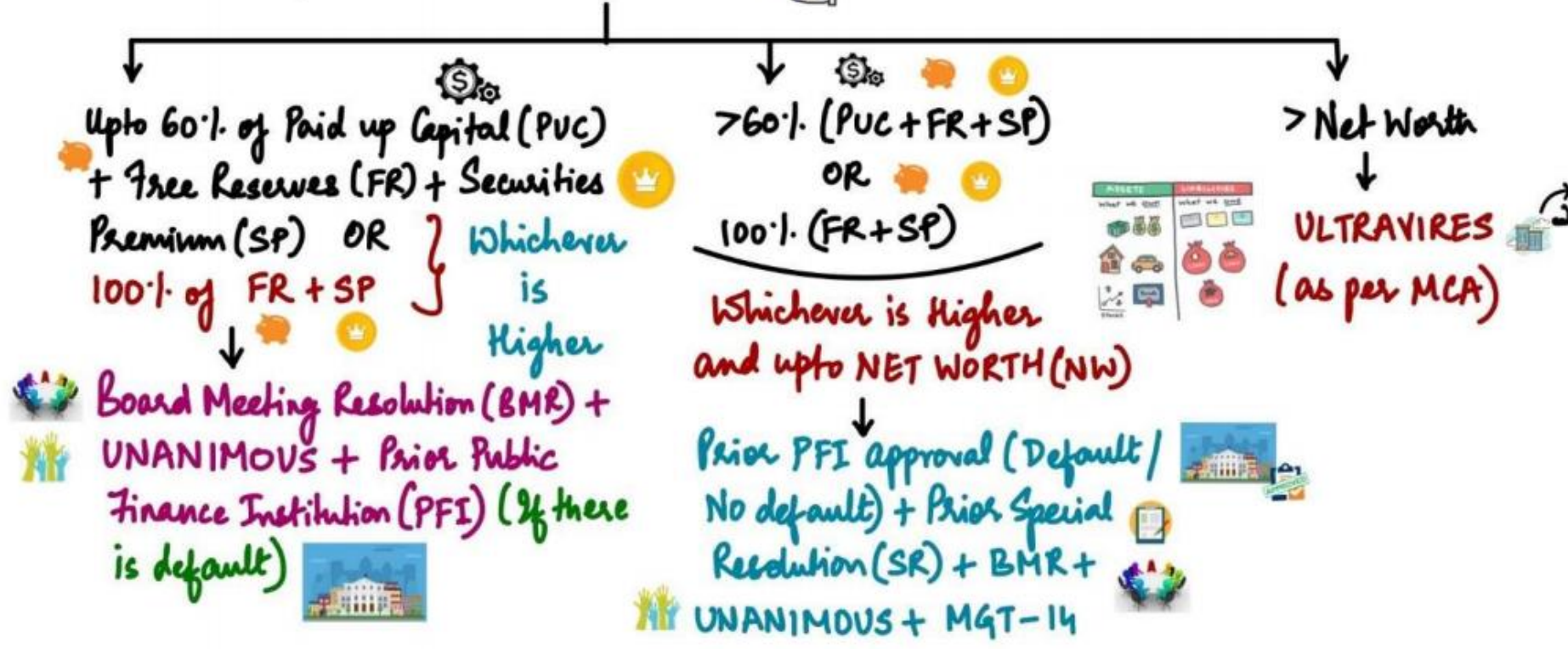
Would passing SR be valid ?

Loan and investment by company Sec 186

Department clarification

- ✓ 1. Special resolution, for loans/investment much beyond the net worth should not be passed by the companies.
- ✓ 2. Thus borrowed funds cannot be used for inter corporate loans and investments.
- ✓ 3. The explanatory statement should indicate, the specific securities in which it is proposed to invest. En-block approval should normally be avoided.
- ✓ 4. Thus company wise, investment wise, separate resolution must be passed.

LENDING LIMITS - SECTION 186



Loan and investment by company Sec 186

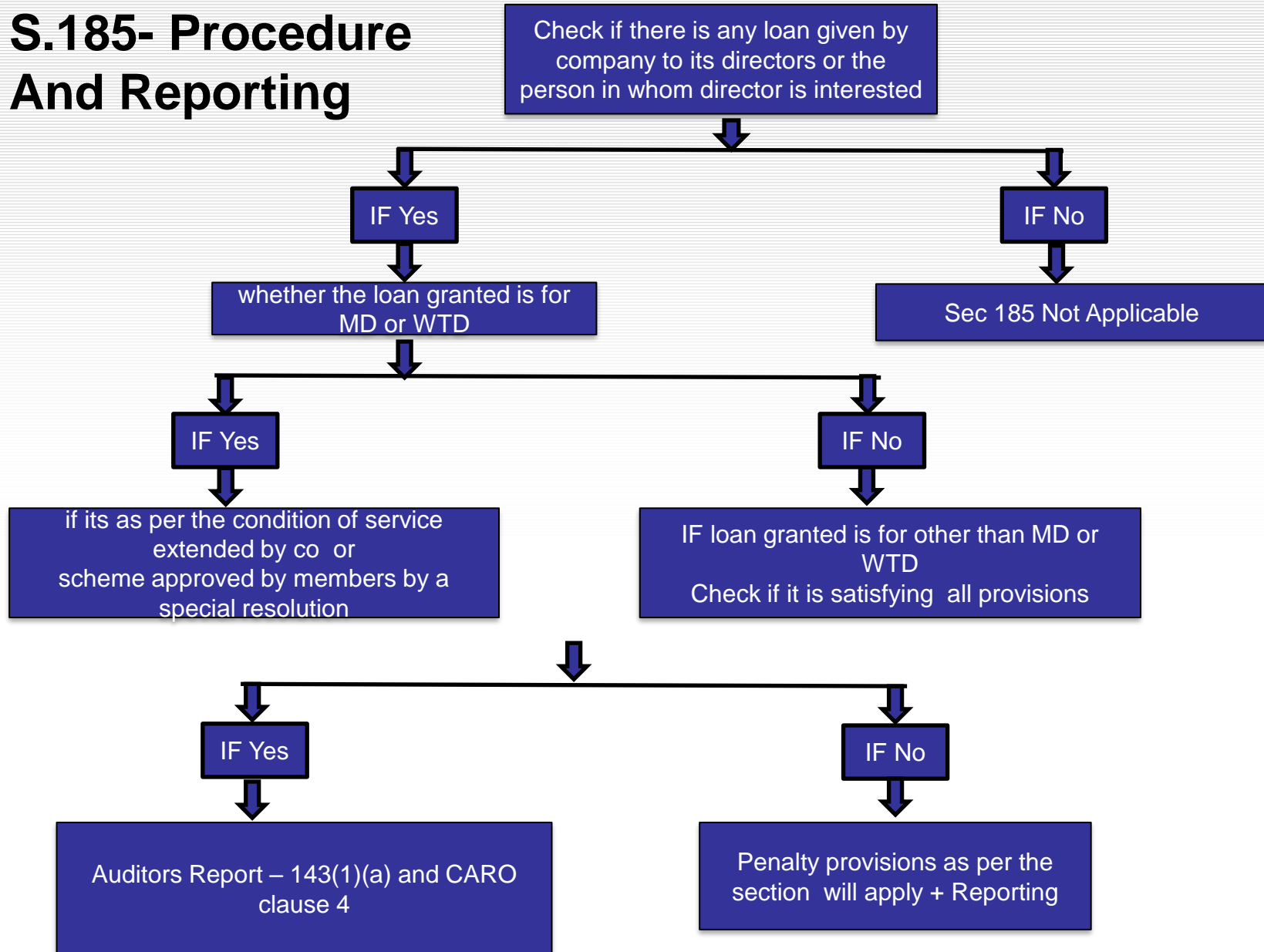
Section 186 - Procedure

- ✓ 1. Matter to be considered at Board level.
- ✓ 2. Resolution at the meeting of the Board.
- ✓ 3. Unanimous approval of all the directors.
- ✓ 4. Convening of EGM.
- ✓ 5. Notice to specify the necessary details.
- ✓ 6. Postal ballot for listed companies.
- ✓ 7. Approval by special resolution.
- ✓ 8. Filing of special resolution with ROC.
- ✓ 9. Inform stock exchanges as per listing agreement.
- ✓ 10. Rate of interest not less than Govt securities rate.
- ✓ 11. Approval of financial institutions.
- ✓ 12. No default in repayment of deposits.
- ✓ 13. Maintenance of Register
- ✓ 14. Financial statements must specify details.



Audit Procedures and Reporting – S.185 and S.186

S.185- Procedure And Reporting



S.185 Procedures and Reporting

143(1)(a)

(a) whether **loans and advances made** by the company on the basis of **security have been properly secured** and whether the terms on which they have been made are **prejudicial to the interests of the company or its members**

Reporting Requirements

- This clause applies to loans and advances given by the company during the financial year under audit, whether they are outstanding on the date of the Balance Sheet or not.
- Distinction is obviously intended to be made between “loans and advances” and “deposits”
- “Security” for this purpose would include any movable or immovable property, whether belonging to the borrower or not, of which either physical possession or over which a legally effective charge is given to lender.
- Applies to all loans and advances made on the **basis of security / charge, whether movable or immovable, whether or not belonging to the borrower.**

Reporting Requirements

- Company's right to enforce such right shall be examined in detail.

Type of Security	Documents to be verified
Shares and debentures	Duly transferred in the name of the Company
Government securities, and other securities, documents of title which are transferable by endorsement and delivery, e.g. Bills of Lading, and Railway Receipts	Duly endorsed
Immovable property	Registered mortgage deed Or Equitable mortgage (as appropriate)

Reporting Requirements

Life Insurance Policy	Assignment in favor of lender, duly registered with the Insurance company
Pledge	Appropriate record of goods held
Hypothecation of goods	Deed of hypothecation

S.186 Disclosure and Reporting

Disclosure – Board's Report

134(3)(g) particulars of loans, guarantees or investments under section 186;

MBP-2

Loan and investment by company Sec 186

FORM MBP.2

Register of loans, guarantee, security and acquisition made by the company

[Pursuant to section 186(9) & rule 12(1)]

Nature of transaction (whether loan/guarantee/security/acquisition)	Date of making loan/acquisition/giving guarantee/providing security	Name and address of the person or body corporate to whom it is made or given or whose securities have been acquired (Listed/Unlisted entities)	Amount of loan/security/acquisition/guarantee	Time period for which it is made/given
(1)	(2)	(3)	(4)	(5)

Loan and investment by company Sec 186

Purpose of loan/acquisition/guarantee/security	% of loan/acquisition/exposure on guarantee/security provided to the paid up capital, free reserves and securities premium account and % of free reserves and securities premium	Date of passing Board resolution	Date of passing special resolution, if required	For loans	
				Rate of interest	Date of maturity
(6)	(7)	(8)	(9)	(10)	(11)
For acquisitions					

Number and kind of securities	Nominal value and paid up value	Cost of acquisition (in case of securities how the purchased price was arrived at)	Date of selling of investment	Selling price (how the price was arrived at)	Signatures and Remarks
(12)	(13)	(14)	(15)	(16)	(17)

Signature:

MD/Director/Secretary/Whole time Director

Place:

Date:

Clause 3 – CARO 2020 ADDITIONS

Whether during the year the company has provided loans or provided advances in the nature of loans, or stood guarantee, or provided security to any other entity [not applicable to companies whose principal business is to give loans], if so, indicate-

- (A) **the aggregate amount during the year**, and **balance outstanding at the balance sheet date** with respect to such loans or advances and guarantees or security to subsidiaries, joint ventures and associates.
- (B) the aggregate amount during the year, and balance outstanding at the balance sheet date with respect to such loans or advances and guarantees or security to parties **other than** subsidiaries, joint ventures and associates

Clause 3 – CARO 2020 GUIDANCE NOTE

(m) The auditor may report under this clause in the following format:

	Guarantees	Security	Loans	Advances in nature of loans
Aggregate amount granted/ provided during the year				
- Subsidiaries - Joint Ventures - Associates - Others				
Balance outstanding as at balance sheet date in respect of above cases - Subsidiaries - Joint Ventures - Associates - Others				

Clause 3 – CARO 2020 ADDITIONS

Whether any loan or advance in the nature of loan granted which has fallen due during the year, **has been renewed or extended or fresh loans granted to settle the overdues of existing loans given to the same parties**; If so, specify the aggregate amount of such dues renewed or extended or settled by fresh loans and the percentage of the aggregate to the total loans or advances in the nature of loans granted during the year. [Not applicable to companies whose principal business is to give loans];

Clause 3 – CARO 2020 GUIDANCE NOTE

(f) Suggested format for reporting under this clause:

	All Parties	Promoters	Related Parties
Aggregate amount of loans/ advances in nature of loans - Repayable on demand (A) - Agreement does not specify any terms or period of repayment (B)			
Total (A+B)			
Percentage of loans/ advances in nature of loans to the total loans			

CARO 2020 Guidance Note

- i. Loans granted + Loans renewed during the year
- ii. Auditor is required to disclose the requisite information in his report in respect of all 189 parties ***irrespective of the period to which such loan relates***
- iii. All kind of loans whether long term or short term, whether given in cash or in kind
- iv. Get acquainted with S.184 + 188+ 189
- v. The auditor may also consider verifying returns filed or certificates obtained by the management in this regard.
- vi. Not just outstanding loans, but also loans **squared up during the year** to be considered

CARO 2020 Guidance Note

(a) whether the **terms and conditions** of the grant of such loans are **not prejudicial** to the company's interest;

i. Covers the loans **granted during the year** and also all loans having opening balances.

ii. Check loan agreements

iii. The “terms and conditions” would primarily include

- rate of interest,
- security,
- period of repayment
- restrictive covenants, if any.

CARO 2020 Guidance Note

iv. Due consideration to the other factors connected with the loan, including its

- ✓ ability to lend,
- ✓ terms of its borrowings,
- ✓ borrower's financial standing,
- ✓ Credit rating, if available,
- ✓ the nature of the security,
- ✓ rate of interest

v. For the purpose of reporting under this clause ***the auditor may consider clause (7) of Section 186 of the Act*** wherein it is specified that no loan, covered under this section, shall be given at a rate of interest lower than the prevailing yield of one year, 3 year, five year or ten year government security close to the tenor of the loan, to the extent applicable

CARO 2020 Guidance Note

- vi. Audit enquiry ***u/s 143(1) (a) also applicable***
- vii. Further, the auditor may also come across a situation where the company has a ***policy of providing loans at concessional rates of interest to its employees*** and such a loan has been given to a relative of the director who is also an employee of the company.

In such a case also, the auditor would be required to examine and comment whether loan is prejudicial to the interests of the company. It may, however, be noted that normally such terms as per the policy followed by the company ***cannot be said to be prejudicial to the interest of the company if other employees of the company also receive the loan on the same terms***

CARO 2020 Guidance Note

viii.

The following is an example of an unfavourable comment by the auditor under this clause:

“According to the information and explanations given to us and based on the audit procedures conducted by us, we are of the opinion that the terms and conditions of loans granted by the company to two parties covered in the register maintained under section 189 of the Companies Act, 2013, (total loan amount granted Rs ---- and balance outstanding as at balance sheet date Rs -----) are prejudicial to the company’s interest on account of the fact that the loans have been granted at an interest rate of X% per annum which is significantly lower than the cost of funds to the company and also lower than the prevailing yield of government security close to the tenor of the loan”

CARO 2020 Reporting

Clause 3

- ✓ (a) whether the **terms and conditions** of the grant of such loans are **not prejudicial** to the company's interest;
- ✓ (b) whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments or receipts are **regular**;
- ✓ (c) if the amount is overdue, state the total amount **overdue for more than ninety days**, and whether **reasonable steps** have been taken by the company for recovery of the principal and interest;

CARO 2020 Guidance Note

(b) whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments or receipts are **regular;**

- i. Check agreement for schedule of repayment including interest. If no agreement, report accordingly
- ii. “Regular” – received whenever due
- iii. Non-stipulation of schedule of repayment of principal & payment of Interest - the auditor should state the fact and may report that he is unable to make specific comment on the regularity of repayment of principal & payment of interest, in such cases.

CARO 2020 Guidance Note

(c) if the amount is overdue, state the total amount **overdue for more than ninety days**, and whether **reasonable steps** have been taken by the company for recovery of the principal and interest;

- i. Compare agreement with actual repayment made to arrive at 90 days
- ii. It is not necessary that steps to be taken must necessarily be legal steps.
- iii. Depending upon the circumstances, **issue of reminders or the sending of an advocate's or solicitor's notice, may amount to "reasonable steps" even though no legal action is taken.**

CARO 2016 Guidance Note – 23-04-2016

(c) if the amount is overdue, state the total amount **overdue for more than ninety days**, and whether **reasonable steps** have been taken by the company for recovery of the principal and interest;

iv. Reporting of such cases may be made incorporating following details:

- ✓ No. of Cases
- ✓ Principal Amount Overdue
- ✓ Interest Overdue
- ✓ Total Overdue
- ✓ Remarks, if any (specify whether reasonable steps have been taken by the Company for recovery of principal amount and interest)

S.185 and 186 Disclosure and Reporting

CARO – Reporting : Clause 4

In respect of loans, investments, guarantees, and security whether provisions of section 185 and 186 of the Companies Act, 2013 have been complied with.

If not, provide the details thereof. [Paragraph 3(iv)]

S.185 and 186 Disclosure and Reporting

➤ Section 185 Compliance – Guidance Note on CARO

- (i) Obtain from the management the **details** of the directors or any other person in whom the director is interested + MBP-1 + S.189 Register

- (ii) Obtain and check the details of the transactions carried out with such persons, including of any guarantee given and security provided

- (iii) Further examine the details to find out whether any of the transaction is attracting the provisions of section 185 of the Act

S.185 and 186 Disclosure and Reporting

Section 185 Compliance – Guidance Note on CARO

(iv) In case of transactions that are covered under the **exceptions as provided under section 185**, the auditor should obtain the necessary evidence in support of such exception.

(v) The auditor should report the **nature of non-compliance**, the maximum amount outstanding during the year and the amount outstanding as at the balance sheet date in respect of

(i) the Directors; and

(ii) persons in whom directors are interested (specify the relationship with the Director concerned).

S.185 and 186 Disclosure and Reporting

Section 186 Compliance – Guidance Note on CARO

- i. Obtain details of LGSI** – During the year and opening balance
- ii. 60/100% limit – Whether BMR and/or SR is passed
- iii. Register as per MBP-2
- iv. For 186(2) exempted companies, restriction with regard to the investment through more than two layers of investment companies **would be applicable**. The auditor may ensure compliance accordingly.

[186(11) – Nothing contained in this sub-section, except sub-section 1 ,shall apply to.....]

S.185 and 186 Disclosure and Reporting

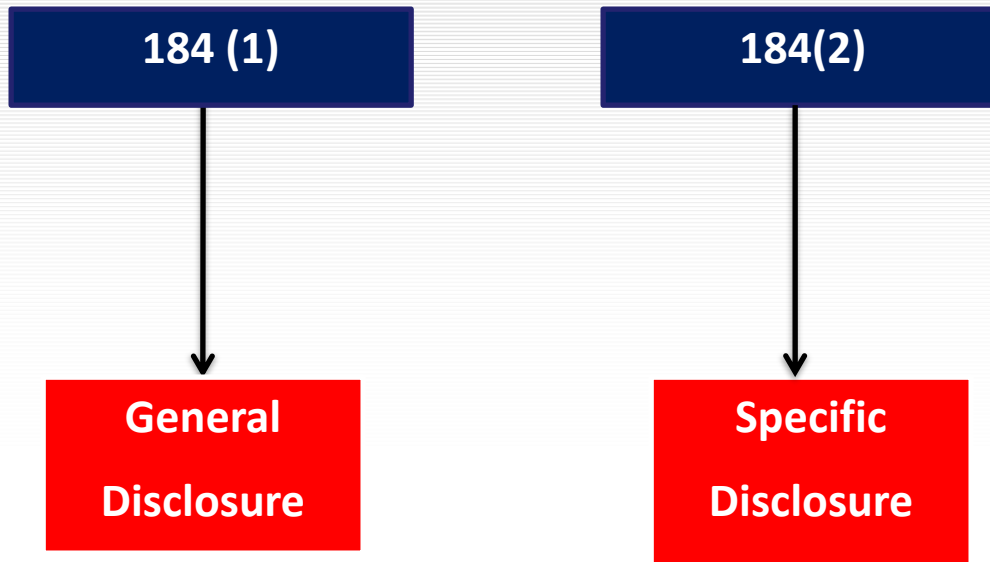
Non-compliance may be reported incorporating following details:-

S.No.	Non-compliance of Section 186			Remarks, if any	
		Name of Company/ Party	Amount Involved		Balance as at Balance Sheet Date
1.	Investment through more than two layers of investment companies				
2.	Loan given or guarantee given or security provided or acquisition of securities exceeding the limits without prior approval by means of a special resolution				
3.	Loan given at rate of interest lower than prescribed				
4.	Any other default				

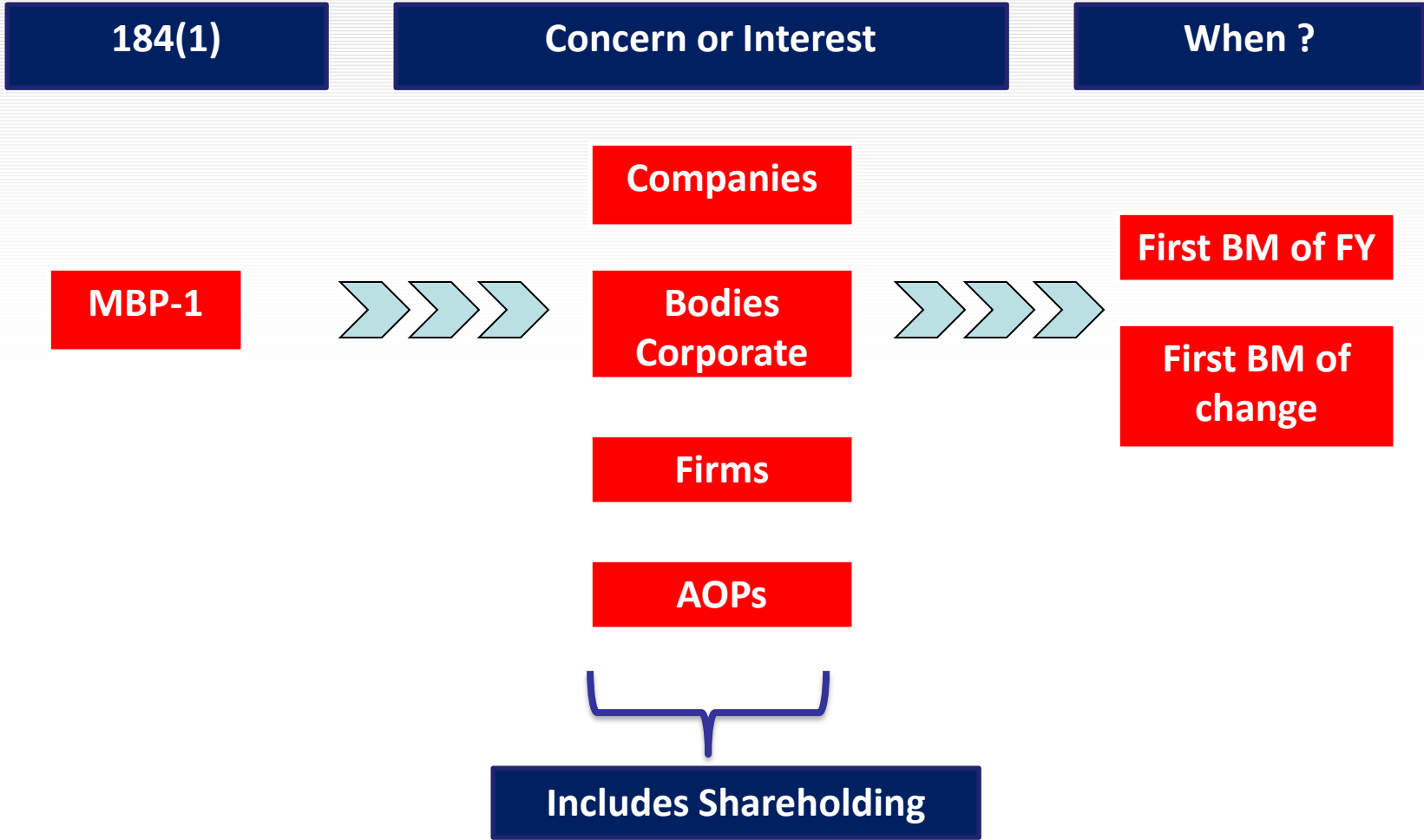


DISCLOSURE OF INTEREST – SEC 184

Section 184 break-up



Section 184(1) – General Disclosure



Disclosure of Interest – Section 184

FORM MBP.1

Notice of interest by director

[Pursuant to section 184 (1) and rule 9(1)]

To
The Board of Directors
..... Limited

Dear Sir(s)

I,, son/daughter/spouse of, resident of, being a director in the company hereby give notice of my interest or concern in the following company or companies, bodies corporate, firms or other association of individuals:-

I.

SI No.	Names of the Companies/ bodies corporate/firms/ association of individuals	Nature of interest or concern/Change in interest or concern	Shareholding	Date on which interest or concern arose/changed

Signature:

MD/Director/Secretary/Whole time Director

Place:

Date:

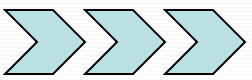
Section 184(2) – Specific Disclosure

184(2)

Nature of Concern or Interest

When ?

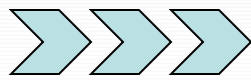
- Contract
- Arrangement
- Proposed Contract
- Proposed Arrangement



Bodies Corporate in which Dir hold >2%

Bodies Corporate in which Dir is a promoter/ CEO

Firm/Other in which Dir is a partner, owner, member



BM where its discussed

Next BM if he becomes interested later

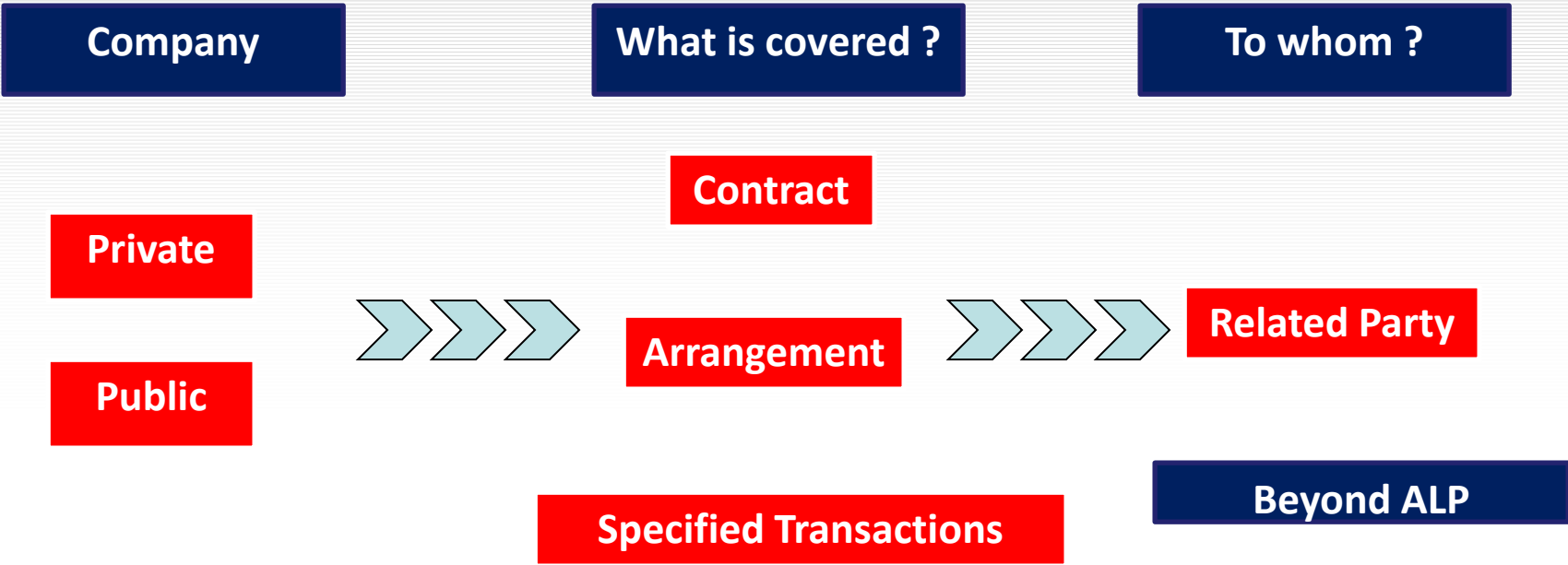


RELATED PARTY TRANSACTIONS SEC 188

Related Party Transactions – Sec188

✓ Except with the consent of the Board of Directors given by a resolution at a Board Meeting and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with **a related party** with respect to **specified transactions**

Section 188 break-up



Related Party Transactions – Sec188

Related Party” – 2(76)

- a director or his relative;
- a key managerial personnel or his relative;

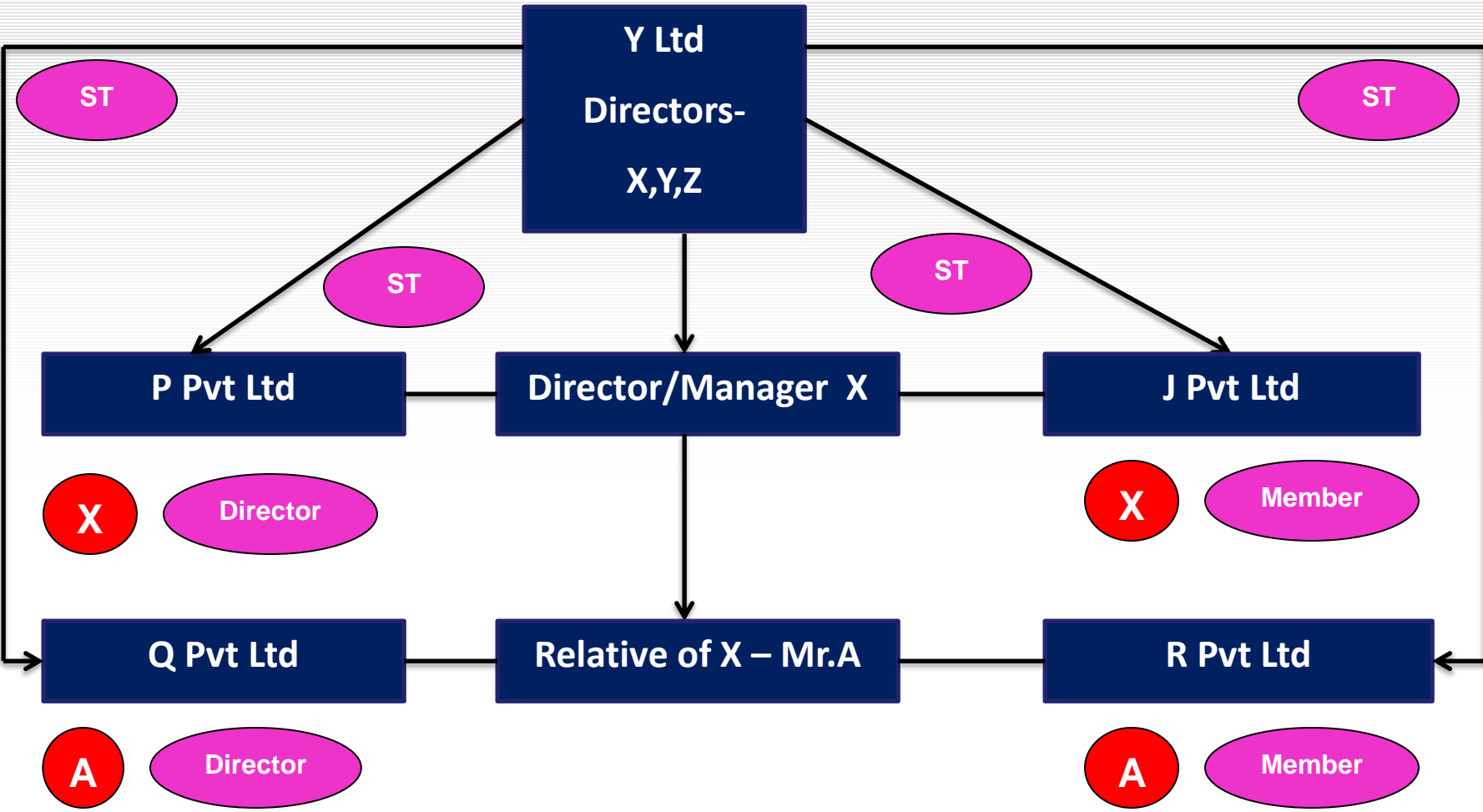
“key managerial personnel” means-

1. CEO or the MD ,or the Manager;
2. Company secretary;
3. Whole-time director;
4. Chief Financial Officer; and
5. such other officer as may be prescribed

Related Party Transactions – Sec188

- a firm, in which a director, manager or his relative is a partner;
- a private company in which a director or manager **or his relative** is a member or director; **[ROD order]**
- a public company in which a director or manager is a director **AND** holds along with his relatives, more than 2% of its paid-up share capital; **[ROD order]**
- 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

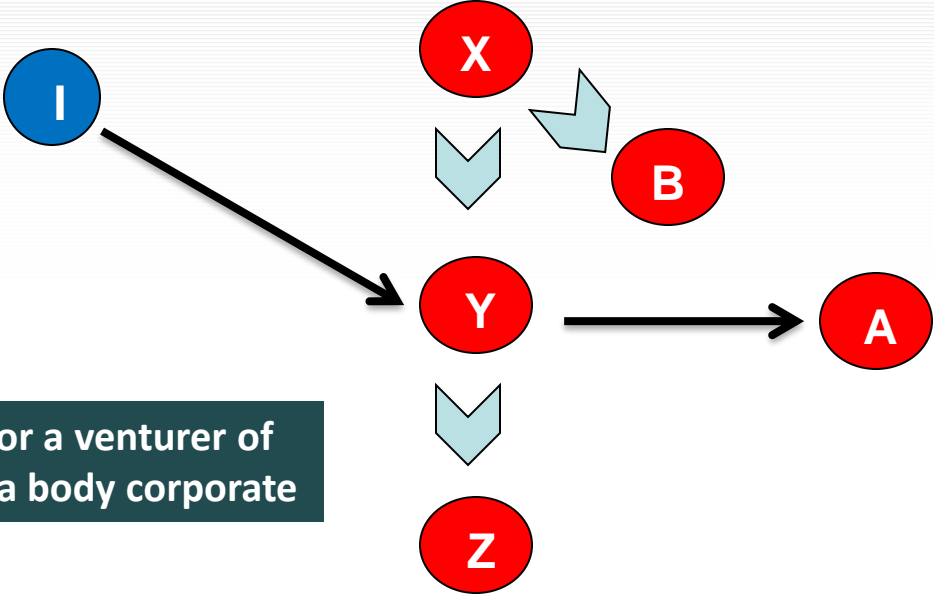
any Private company in which such dir/mgr of relative is a dir or member



Related Party Transactions – Sec188

- any person on whose advice, directions or instructions a director or manager is accustomed to act
- Provided that nothing shall apply in the above 2 cases to the advice, directions or instructions given in a professional capacity;
- any company which is-
 - a holding, subsidiary or an **associate** company of such company; or
 - a subsidiary of a holding company to which it is also a subsidiary;
- such other person as may be prescribed;

Section 2(76)- Definition of 'Related Party'



Investing company or a venturer of the company – “I” is a body corporate

Related Party Transactions – Sec188

Associate Company

1. “associate company”, in relation to another company, means a company in which
 - that other company has a **significant influence**,
 - but which is not a subsidiary company of the company having such influence and
 - includes a joint venture company.
2. Explanation - For the purposes of this clause,
“significant influence” means control of at least 20% of total share capital, or of business decisions under an agreement;

Related Party Transactions – Sec 188

What are the transactions covered in Sec 188?

- ✓ sale, purchase or supply of any goods or materials;
- ✓ selling or otherwise disposing of, or buying, property of any kind;
- ✓ leasing of property of any kind;
- ✓ availing or rendering of any services;
- ✓ appointment of any agent for purchase or sale of goods, materials, services or property;

Related Party Transactions – Sec 188

What are the transactions covered in Sec 188?

- ✓ - such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
- ✓ - underwriting the subscription of any securities or derivatives thereof, of the company:

Particulars	a+e	b+e	c	d+e	f	g
All cases						
T.V amounting to						
Resolution						

Related Party Transactions – Sec 188

Sale, purchase or supply of any goods or materials either directly or through agents

- ✓ The word 'goods or materials' covered in this section includes capital goods.
- ✓ All cases Board approval at Board Meeting.
- ✓ **Prior Ordinary Resolution** for Transaction value exceeding 10% the turnover of the company or ~~100 crore,~~
~~**whichever is lower**~~
[shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year]

Related Party Transactions – Sec 188

Selling or disposing of, or buying property of any kind either directly or through agents

- ✓ The word 'goods or materials' covered in this section includes selling or disposing of, or buying property of any kind either directly or through agents
- ✓ Property includes immovable property.
- ✓ It could also cover intellectual property rights - patents, trademarks, copyrights, software, brands etc.
- ✓ All cases Board approval at Board Meeting.
- ✓ Prior Ordinary Resolution for,
Transaction value exceeding
10% the Net-worth of the company or
~~100 crore,~~
~~whichever is lower~~
- ✓ [shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year]

Related Party Transactions – Sec 188

Leasing of property of any kind

- ✓ Leasing could include franchise
- ✓ All cases Board approval at Board Meeting.
- ✓ Prior Ordinary Resolution for transaction value exceeding
 - 10% of Net worth of the company or
 - 10% of turnover of the company or
 - ~~-100 Crore,~~

whichever is lower

[shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year]

Related Party Transactions – Sec 188

Availing or rendering of any services either directly or through agents

- ✓ Services could mean business and commercial services.
- ✓ Professional services were exempted in section 297 of Companies Act, 1956 through MCA clarification.
- ✓ All cases Board approval at Board Meeting.
- ✓ Prior Ordinary Resolution for Transaction value exceeding 10% of turnover of the company or ~~50 crore~~
~~whichever is lower~~ [shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year]

Related Party Transactions – Sec 188

Underwriting the subscription of any securities or derivatives thereof, of the company

- ✓ - All cases Board approval at Board Meeting.
- ✓ - Prior Ordinary Resolution required if the remuneration exceeds 1 % of Networth of the Previous Financial Year.

Related Party Transactions – Sec 188

such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company

“office or place of profit” means any office or place-

- ✓ - where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration **over and above the remuneration** to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;
- ✓ - where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company **anything by way of remuneration**, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

Related Party Transactions – Sec 188

- ✓ All cases Board approval at Board Meeting.
- ✓ Prior Ordinary resolution required if the monthly remuneration exceed Rs 2,50,000.
- ✓ In the Ravinder Kumar Singhal case, it was held that, perquisites accruing on monthly basis should be included and not total yearly earning. So annual payments like bonus, leave encashment, reimbursement of medical expenses are not to be included.

Related Party Transactions – Sec 188

✓ Exemptions under sec 188

- ✓ 1. This section will not apply to any transactions entered into by the company in its ordinary course of business and transactions which are on arm's length basis.
- ✓ 2. “Arm's length transaction” means a transaction between two related parties that is conducted as if they were unrelated, **so that there is no conflict of interest.**
- ✓ 3. S.92F Income Tax Act - "arm's length price" means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions

Related Party Transactions – Sec 188

Ordinary course of business ?

ICAI Guidance Note

Standard on Auditing (SA) 550 Related Parties (Paragraph A25) has listed certain examples of transactions outside the entity's normal course of business:

- (i) **Complex equity transactions**, such as corporate restructurings or acquisitions
- (ii) **Transactions with offshore entities** in jurisdictions with weak corporate laws
- (iii) The leasing of premises or **the rendering of management services** by the entity to another party **if no consideration is exchanged**
- (iv) Sales transactions with **unusually large discounts** or returns
- (v) Transactions with circular arrangements, for example, **sales with a commitment to repurchase**

Related Party Transactions – Sec 188

Ordinary course of business ?

Indicators based on which one may consider following aspects while performing evaluation of ‘ordinary course of business’:

- (ii) Whether the transaction is covered in the objects of the company as envisaged in the **Memorandum of Association**;
- (ii) Whether a transaction is usual or unusual, both from the company and its line of business perspective;
- (iii) Frequency: If a transaction is happening **quite frequently** over a period of time, it is more likely to be treated as an ordinary course of business. However, the inverse does not necessarily hold true;
- (iv) Whether transaction is taking place at arm’s length;
- (v) Business purpose of the transaction;
- (vi) Whether transaction is done on **similar basis with other third parties**; and
- (vii) Size and volume of transaction.

Related Party Transactions – Sec 188

✓ Exemptions under sec 188

✓ First and second proviso shall not apply to --

(a) a Government company in respect of contracts or arrangements entered into by it with any other Government company;

[Example – BHEL with Bank of India]

(b) a Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), 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 entering into such contract or arrangement.

[Example – Airports Authority of India and Cement Corporation of India]

vide Notification F No 1/2/2014-CL.V dated 5th June 2015.

Compliance Action Point

Interested Director + Related Party

Section	Details	Notification as on 05/06/2015
184	Interested director of ALL companies cannot vote on a proposed contract	Interested director may participate in such meeting after disclosure of his interest
188 2 nd proviso	No member can vote in a Special Resolution if he is a related party to the proposed contract	Only 2 nd proviso to 188(1) N.A



Audit Procedures and Reporting – S.188 and S.184

Related Party Transactions – Sec 188

Procedure under Sec 188

- ✓ 1. The consent of the board shall be required for all specified transactions with “related party.”
- ✓ 2. Such consent shall be accorded only by passing a resolution at the Board meeting and not by circulation.
- ✓ 3. The **notice** of the Board meeting at which the resolution is proposed to be moved shall disclose-
 - ✓ - name of the related party and nature of relationship;
 - ✓ - nature, duration of the contract and particulars of the contract or arrangement;
 - ✓ - material terms of the contract or arrangement including the value, if any;
- any advance paid or received for the contract or arrangement, if any; and
 - ✓ - Manner of determining the pricing and commercial terms, both included as part of contract and not considered as part of contract.
 - ✓ - Whether all factors relevant to the contract have been considered, if not, details of factors not considered with the rationale of not considering those factors.
 - ✓ - any other information relevant or important for the Board to take a decision on the proposed transaction.

Related Party Transactions – Sec 188

- ✓ 4. Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement.

- ✓ 5. The explanatory statement to the notice of a general meeting shall contain the following particulars:
 - name of the related party;
 - name of the director/KMP who is related;
 - nature of relationship;
 - nature, material terms, monetary value and particulars of the contract or arrangement;
 - any other information relevant/important for the members to take a decision

Related Party Transactions – Sec 188

- ✓ 7. In case of wholly owned subsidiary, **the special resolution passed by the holding company shall be sufficient for the purpose** of entering into the transactions between wholly owned subsidiary and holding company.
- ✓ 8. Every contract or arrangement entered into under subsection (1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.
- ✓ 9. The interested director in the related party transaction under section 188 shall disclose his interest in the Board Meeting as specified in section 184 and shall also not participate in such meeting as specified in section 184.

Disclosure of Interest – Section 184

Register of contracts in which directors are interested - sec 189

- ✓ 1. Every company shall maintain one or more registers in Form No. **MBP 4**, and shall enter therein:
 - company or companies or bodies corporate, firms or other association of individuals, in which any director has any concern or interest, as mentioned under section 184(1) and such holding is more than 2%.
 - contracts or arrangements with a body corporate or firm or other entity as mentioned under section 184(2), in which any director is, directly or indirectly, concerned or interested; and
 - contracts or arrangements with a related party with respect to transactions to which section 188 applies;

Disclosure of Interest and RPT

FORM MBP.4

Register of contracts with related party and contracts and Bodies etc. in which directors are interested

[Pursuant to section 189(1) and rule 16(1)]

A. Contracts or agreements with any related party under section 188 or in which any director is concerned or interested under sub-section (2) of section 184

Date of contract/ arrangement	Name of the party with which contract is entered into	Name of the interested director	Relation with director/ company/ Nature of concern or interest	Principal terms and conditions	Whether the transaction is at arm's length basis
(1)	(2)	(3)	(4)	(5)	(6)

Date of approval at the meeting of the Board	Details of voting on such resolution				Date of the next meeting at which register was placed for signature
	No. of Directors present in the meeting	Directors voting in favour	Directors voting against	Directors remaining neutral	
(7)	(8)	(9)	(10)	(ii)	(12)

Disclosure of Interest and RPT

Reference of specific items - (a) to (g) under sub-section (1) of section 188	Amount of contract or arrangement	Date of share holders approval if any	Signature	Remarks, if any	
(13)	(14)	(15)	(16)	(17)	

B. Name of the bodies corporate, firms or other association of individuals as mentioned under sub-section (1) of section 184, in which any director is having any concern or interest

Names of the Companies/bodies corporate/firms/association of individuals	Name of the interested director or	Nature of interest or concern/ Change in interest or concern	Shareholding (if any)	Date on which interest or concern arose/changed

Signature:

MD / Director / Secretary / Whole time Director

Place:

Date:

RPT – AOC-4 Pursuant to S.137

Segment IV: DISCLOSURE ABOUT RELATED PARTY TRANSACTIONS

Disclosure of particulars of contracts/arrangements entered into by the company with related parties referred to in sub-section (1) of section 188 of the Companies Act, 2013 including certain arm's length transactions under third proviso thereto

1. Number of contracts or arrangements or transactions not at arm's length basis

Name(s) of the related party	Nature of relationship	Nature of contracts/ arrangements/ transactions

Duration of the contracts / arrangements/ transactions	Date of approval by the Board	Amount paid as advances, if any	Date on which the special resolution was passed in general meeting as required under first proviso to section 188

2. Number of material contracts or arrangement or transactions at arm's length basis

Name(s) of the related party	Nature of relationship	Nature of contracts/ arrangements/ transactions

Duration of the contracts / arrangements/ transactions	Date of approval by the Board	Amount paid as advances, if any

Clause 3 – CARO 2020 ADDITIONS

Whether the Company has granted any loans or advances in the nature of loans either repayable on demand or without specifying any terms or period of repayment; **if so, specify the aggregate amount, percentage thereof to the total loans granted, aggregate amount of loans granted to Promoters, related parties as defined in 2(76)**

CARO 2016 Reporting – S.188 and S.184

Clause 13

Whether all transactions with the related parties are in compliance **with sections 177 and 188** of Companies Act, 2013 where applicable and the details have been disclosed in the Financial Statements etc., as required by the applicable accounting standards;

CARO 2020 Guidance Note

i. The auditor should obtain **written representations** from management and, where appropriate, those charged with governance that:

- ✓ (i) They have **disclosed to the auditor the identity** of the entity's related parties and all the related party relationships and transactions of which they are aware; and
- ✓ (ii) They have **appropriately accounted for and disclosed** such relationships and transactions in accordance with the requirements of the framework

CARO 2020 Guidance Note

ii. MBP 1 + Completeness of Mgt Information

iii. Review his *previous years working papers* to identify 188 parties mentioned in 189 register

iv. Review *entity's procedures* of identifying 188 parties

v. Circumstances in which it may be appropriate to obtain written representations from those charged with governance include:

(i) When they have approved specific related party transactions that

- ✓ a) materially affect the financial statements, or
- ✓ b) involve management.

(ii) When they have made specific oral representations to the auditor on details of certain related party transactions

Related Party Transactions – Sec 188

COMPANIES AMENDMENT ACT 2017

Nothing contained in the second proviso shall apply to a company in **which ninety percent or more members**, in number, are relatives of promoters or are related parties

Fundamental difference between 177 and 188

In 177 – all transactions – whether ordinary business or not – whether arms length or not require approval.

Topic

Companies (Amendment) Bill 2017

Audit Committee New provisions

1

- Related Party Transactions to be approved by Audit committee or Board of Directors

2

- If Director enters into a transaction with company for less than a crore and doesn't take approval from the committee within 3 months, transaction is Voidable + Director has to indemnify.
- More than 1 crore – Prior approval of Audit Committee

CARO 2020 Guidance Note

188 vs LODR

- ✓ **Related party definition – linked to 2(76) for seeking authorisation and IND-AS 24 for accounting**
- ✓ **Related party transaction – wide amplitude – “transfer of resources, services or obligations regardless of whether a price is charged”**
- ✓ **Material RPT – Transactions > 10% annual consolidated turnover**
- ✓ **w.e.f April 1 2019 – Payments to RP for brand usage or royalty – material – if value > 2% of consolidated turnover**
- ✓ **All RPs can either abstain or vote negatively**

CARO 2020 Guidance Note

vi. Follow SA 550

vii.

Based on the procedures performed by the auditor, if auditor comes across any non-compliance, then, it should be duly reported. The following particulars may be incorporated:

Nature of the related party relationship and the underlying transaction	Amount involved (Rs.)	Remarks (<i>details of non-compliance may be given</i>)



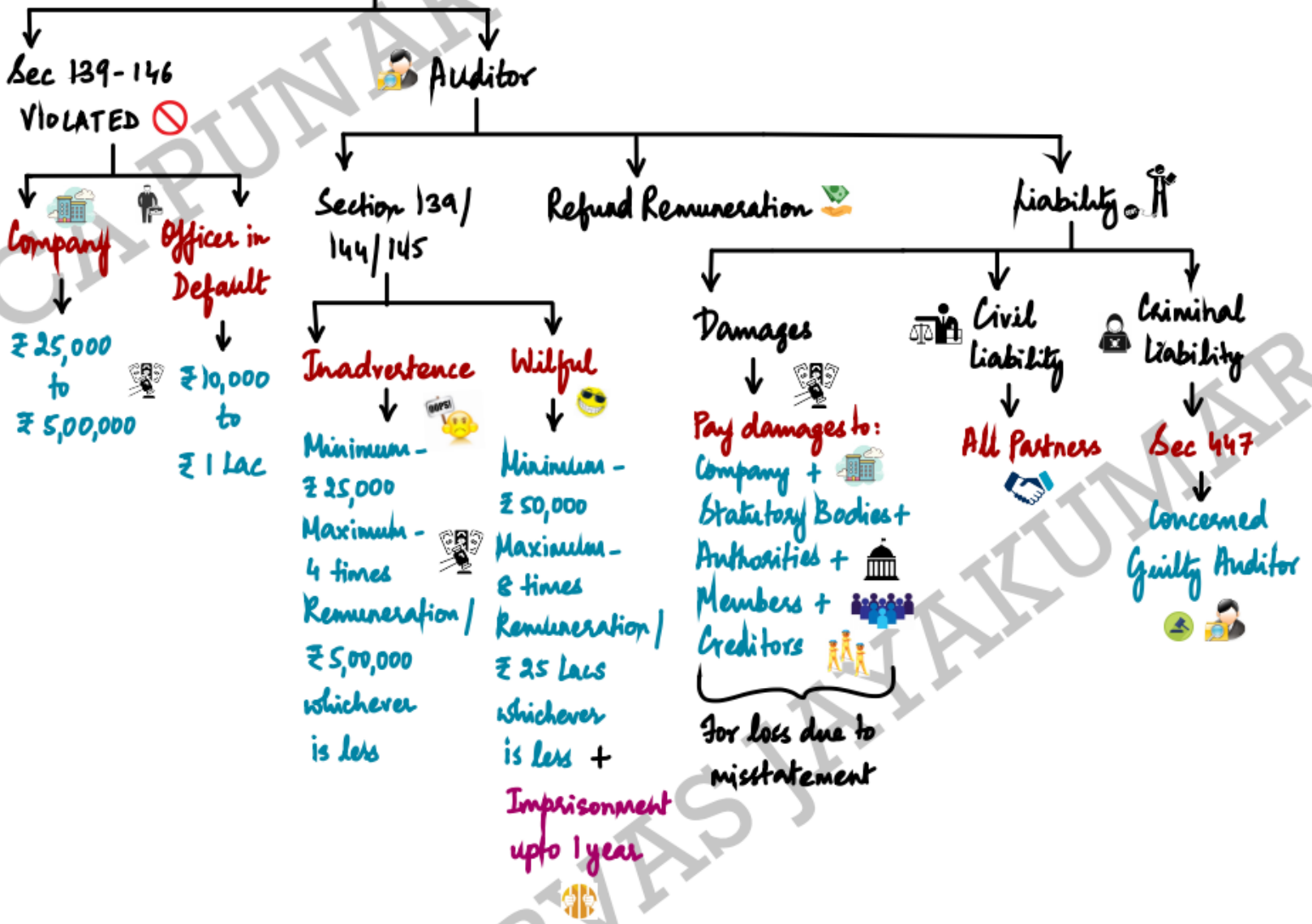
Discussion Item 2 Penal Provisions

Comprehensive Penal Provision Chart

Particulars	S.185	S.186	S.184	S.188
Penalised	Company Director Other person	Company Every OID	Director	Director
Company	5L-25L	25K-5L	-	-
Director/OID	Upto 6M/ 5L-25L/ Both	25K-1L AND Upto 2 years	Penalty – 1 lakh 21-12-20	a. Indemnify the company for loss b. Listed- Penalty of 25 lakh c. Other- Penalty of 5 lakh
Contract	Not affected	Not affected	Voidable at the option of SH	Voidable at the option of BOD/SH
Relaxation	No ppn redn	No ppn redn	No	No
Compounding	Yes	No	N.A	N.A
Disqualification	No	No	No	164(1)(g) Last 5 years
Vacation of Office	No	No	167(1)(c) and (d)	167(1)(a)

Comprehensive Penal Provision Chart

SECTION 147: Punishment for Contravention





DEPOSITS

CARO – Clause 5

What are Deposits ? – Section 2(31) r/w Rules

any receipt of money by way of deposit	CG/SG/Local authority
any receipt of money by way of loan	Foreign Govts/Banks/BC/Export Credit agencies
any receipt of money in any form	Loan/facility from banking Company/Institution/SBI
Share application money or advance towards allotment of securities pending allotment – If not refunded within 15 days after 60 days	Loan from PFI
Adjustment of above to some other debt – Not a refund	Inter-Corporate Loans and Advances
Secured Bonds or Debentures- Second Charge	Share application money or advance towards allotment of securities pending allotment – Upto 60 days+15 days
amount received from an erstwhile Director	Secured Bonds or Debentures- First Charge
	amount received from a person who, at the time of the receipt of the amount, was a director or RELATIVE of the company

CARO – Clause 5

What are Deposits ?

Non-Interest bearing security deposit from employee under a contract of employment NOT exceeding his annual salary

Amount received in the ordinary course of business
-as an advance for the supply of goods - to be appropriated within 365 days
- as security deposit for the performance of the contract

Amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation by FI

Ultra vires act w.r.t amount received in the ordinary course of business

Advance for the supply of goods not appropriated within 365 days

TABLE LIST OF PERSONS TO WHOM COMPANY CAN ACCEPT OR CAN'T

	Loans from	Conditions, if any:
1.)	Shareholder:	Member: Yes, can accept, but subject to the condition specified in deposit Rules
2.)	Director/Relatives of Director	Yes, can accept, but the director/relative will give a Declaration in writing that money is not given out of borrowed funds and company will disclose it in the Board's report.

Significant Amendments

Deposits

3.)	Employee	Yes, can accept up to the employee's annual salary (there should be a contract of employment with the company) in the nature of non- interest bearing security deposit.
4.)	Any other Individual	Can't accept because it is prohibited by the definition of Private Company.
5.)	Proprietorship Firm ;	Can't accept because it can't be director, Member or relative of Director.

Mandatory reporting of Deposits

6.)	HUF	Can't accept because it can't be director, Member or relative of Director.
7.)	Partnership Firm	Can't accept because it can't be director, Member or relative of Director.
8.)	Any Company	Yes, can accept, but also comply with Sec 179(3) wherein the conditions

Significant Amendments

Deposits

9.)	Banks	Yes, can accept
10.)	Trust	Yes, can accept, but loan received should be non-interest bearing.
11.)	Outside India	Yes, can accept, but subject to the provisions of the Foreign Exchange Management Act, 1999 and rules and regulations made there under.
12.)	Govt. organization (eg. SIDBI)	Yes, can accept

Mandatory reporting of Deposits

Rule - 3 , Companies (Acceptance of Deposits) Rules, 2014

(3) No company referred to in sub-section (2) of section 73 shall accept or renew any deposit from its members, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds ^{1a}*[thirty five per cent]*, of the aggregate of the ²*[paid-up share capital, free reserves and securities premium account]* of the company:

Mandatory reporting of Deposits

Provided further that the maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies, namely:—

(i) a private company which is a start-up, for ^{2b}[ten years] from the date of its incorporation;

(ii) a private company which fulfils all of the following conditions, namely:—

(a) which is not an associate or a subsidiary company of any other company;

(b) the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is less ; and

(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:

Provided also that all the companies accepting deposits shall file the details of monies so accepted to the Registrar in Form DPT-3.]

Mandatory reporting of Deposits

Rule - 16 , Companies (Acceptance of Deposits) Rules, 2014

Return of deposits to be filed with the Registrar

16. Every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3 along with the fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company.

¹[Explanation.- *It is hereby clarified that Form DPT-3 shall be used for filing return of deposit or particulars of transaction not considered as deposit or both by every company other than Government company.*]



THANK YOU FOR YOUR PATIENCE

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- Punarvas cleared the much sought after Chartered Accountancy course in 2012 in his first attempt
- **He has worked on several large corporate clients like Infosys, MetLife, ING etc and has also handled litigation at various appellate levels for a large number of clients**
- He is a consultant for Corporate law and Insolvency and Bankruptcy code in Bangalore and member of the Board of Studies for graduate and post-graduate courses at Mlac Autonomous college , Bangalore
- **He has co-founded Thynkfynn Solutions LLP – A consultancy firm with a group of Chartered Accountants, Company Secretaries, Lawyers specialising in Corporate law, Insolvency, Audit and tax, valuation and certification, risk advisory, fraud analysis, Investment and wealth management, Core business advisory, global mobility services**
- Faculty at the Bangalore Branch, Ernakulam and Mangalore branch of Institute of Chartered Accountants of India for Mercantile Law, Corporate Law and Auditing at the CPT, IPCC and Final levels. **He has taught over 25000 CA students**
- **Regular Guest Speaker for ICAI CPE seminars on Corporate Law at the Bangalore, Ernakulam , Kollam,Thrissur and Mangalore branches of The Institute of Chartered Accountants of India**
- A nature enthusiast, Punarvas loves driving, travelling, mountain biking, indulges in wildlife photography and has co-authored a coffee table book about his father’s experiences in the jungles of the Indian Sub-continent titled “Life in the Jungle.. Memoirs of a Forester” which was successfully released recently