

An Insight into Inter-Corporate Loans and Investments

Introduction

Inter-corporate loans and investments play a significant role in corporate financial management, enabling companies to utilise surplus funds, support group entities and facilitate business expansion. However, such transactions must be undertaken in compliance with the Companies Act, 2013 (“the Act”), particularly Sections 179 and 186, which govern the powers of the Board of Directors and the restrictions relating to loans, investments, guarantees and security. The webinar on “*An Insight into Inter-Corporate Loans and Investments*” highlighted the practical challenges involved in interpreting these provisions and emphasised the importance of ensuring that corporate actions are not merely completed but are properly authorised and legally compliant.

Powers of the Board under Section 179

Section 179 of the Act lays down the general powers of the Board of Directors and specifies certain matters that must be approved by resolutions passed at meetings of the Board. These include borrowing money, investing company funds, granting loans, providing guarantees and offering security in connection with loans. The webinar highlighted the importance of distinguishing between the Board’s statutory powers and the delegation of authority to committees or officers. While operational authority may be delegated where permitted, such delegation must be properly documented and cannot replace approvals specifically required under the Act. Companies should ensure that Board resolutions clearly define the scope of authority, applicable limits and conditions governing the transaction.

Monetary Limits and Approvals under Section 186

Section 186 regulates loans and investments made by companies, along with guarantees given and security provided in connection with loans. Under Section 186(2), the prescribed monetary limit is determined by taking the higher of 60% of the aggregate of paid-up share capital, free reserves and securities premium account, or 100% of free reserves and securities premium account. Where the aggregate of existing and proposed transactions exceeds the applicable limit, prior approval of shareholders by way of a special resolution is generally required, subject to the statutory exemptions. Accordingly, companies should calculate their available limits before undertaking any transaction and maintain supporting records demonstrating the basis of such calculation.

Board Approval and Shareholders’ Approval

Section 186(5) requires the relevant transaction to be approved by a resolution passed at a meeting of the Board with the consent of all directors present at the meeting. The company must also examine whether prior approval of a public financial institution is required in cases involving an outstanding term loan, having regard to the statutory conditions and exceptions. Where a special resolution is required, the proposed transaction and its financial implications should be adequately explained to shareholders. The webinar emphasised that blanket approvals should not be relied upon without examining the requirements applicable to the

specific transaction. Proper documentation of the recipient, amount, purpose and terms of the proposed loan, investment or guarantee is therefore essential.

Transactions with Wholly Owned Subsidiaries and Joint Ventures

The Act provides certain exemptions in relation to loans, guarantees, security and investments involving wholly owned subsidiaries and joint venture companies. In particular, Rule 11 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides specified exemptions from the special-resolution requirement under Section 186(3), subject to the applicable conditions. However, these exemptions should not be interpreted as a complete exemption from every requirement of Section 186. Companies must continue to assess the applicability of Board approval, statutory registers, financial statement disclosures and other relevant provisions before proceeding with such transactions.

Distinction Between Loans, Investments and Guarantees

The webinar also discussed the importance of identifying the true nature of an inter-corporate transaction. Subscriptions to or acquisitions of securities, including debentures, may constitute investments depending on the nature of the instrument and the applicable legal framework. Similarly, corporate guarantees may create financial exposure even where no immediate outflow of funds occurs. Financial guarantees and performance guarantees may require different treatment depending on their purpose and the underlying obligation. Letters of comfort must also be examined carefully, as their legal effect depends on their wording and surrounding circumstances. Companies should therefore assess the substance of each arrangement rather than relying solely on the terminology used in transaction documents.

Interest Rates and Statutory Registers

Section 186(7) prescribes an interest-rate requirement for loans covered by the provision, with reference to the prevailing yield of the Government Security closest to the tenor of the loan, subject to the applicable statutory provisions and exceptions. The webinar highlighted the need to select the appropriate benchmark and document the basis for determining the interest rate. Further, Section 186(9), read with Rule 12 of the Companies (Meetings of Board and its Powers) Rules, 2014, requires the maintenance of a register in Form MBP-2 containing prescribed particulars of loans, guarantees, security and acquisitions. The register must be updated within the prescribed period, maintained at the registered office and authenticated by the Company Secretary or another person authorised by the Board. The relevant particulars must also be disclosed in the financial statements in accordance with Section 186(4).

Conclusion

Inter-corporate loans and investments are essential instruments for effective financial management and business growth; however, they must be undertaken within the framework of the Companies Act, 2013, particularly Sections 179 and 186. The discussions during the webinar highlighted the importance of understanding statutory limits, obtaining appropriate approvals, maintaining accurate records and ensuring compliance with applicable regulatory requirements. The role of the Company Secretary is particularly significant in facilitating

informed decision-making and ensuring that transactions are properly authorised, documented and disclosed. Ultimately, effective compliance is not merely about fulfilling procedural requirements but about ensuring that every corporate action is undertaken with due diligence, transparency and accountability. As emphasised during the session, the objective should be not merely to complete a transaction, but to ensure that it is rightly undertaken and compliant with the applicable legal framework.

To access the webinar recording visit the YouTube channel:

□ *"Decoding Corporate Laws with Mehta & Mehta"*