

# The MCA clarifies applicability of lending norms on loans and/or advances to employees

12 March 2015



## First Notes on:

Financial Reporting

**Corporate law updates**

Regulatory and other information

Disclosures

## Sector:

**All**

Banking and Insurance

Information, Communication, Entertainment

Consumer and Industrial Markets

Infrastructure and Government

## Relevant to:

**All**

Audit committee

CFO

Others

## Transition:

**Immediately**

Within the next 3 months

Post 3 months but within 6 months

Post 6 months

## Background

The Ministry of Corporate Affairs (MCA) has been issuing various amendments and clarifications to the Companies Act, 2013 (the Act) and the corresponding Rules to remove hardships faced by companies while implementing certain provisions of the Act. The MCA has received a number of references seeking clarification on the applicability of section 185 and 186 of the Act relating to grant of loans and/or advances by companies to their employees.

This issue of First Notes summarises the important aspects arising from the general circular issued by the MCA on 10 March 2015.

## Present requirements

Section 186(2) of the Act provides that 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 per cent, of its paid up share capital, free reserves and securities premium account or 100 per cent of its free reserves and securities premium account, whichever is more.

Additionally, section 186(7) of the Act states that no loan should be given at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year government security closest to the tenor of the loan.

Considering the wide scope of the term 'any person' the MCA has received a number of references seeking clarification on the applicability of section 185 and 186 of the Act relating to grant of loans and advances by companies to their employees. Also certain companies, in practice, grant loan and/or advances to their employees either at subsidised rates of interest or at no interest.

## Clarification by the MCA

The MCA has clarified that loans and/or advances made by the companies to their employees, other than the managing or whole time directors (which is governed by section 185 of the Act) would not be governed by the requirements of section 186 of the Act if:

- such loans and/or advances to employees are in accordance with the conditions of service applicable to employees, and
- are also in accordance with the remuneration policy, in cases where such policy is required to be formulated.

### Our comments

- The MCA clarification seeks to remove the ambiguity with regard to applicability of section 186 of the Act on the loans and/or advances given to employees other than the managing or whole time directors and provides relief to the cases where loans and/or advances have been granted to employees either at subsidised rates of interest or at no interest.
- This clarification is expected to smoothen lending by companies to the above employees subject to the prescribed safeguards.

### The bottom line

The clarification is a clear reflection of the fact that MCA continues to consider the practical challenges faced by corporates in India while implementing the Act to make the law more pragmatic and yet achieve its objectives.



**Ahmedabad**

Commerce House V, 9th Floor 902  
& 903, Near Vodafone House  
Corporate Road, Prahaladnagar  
Ahmedabad 380 051  
Tel: +91 79 4040 2200  
Fax: +91 79 4040 2244

**Hyderabad**

8-2-618/2  
Reliance Humsafar, 4th Floor  
Road No.11, Banjara Hills  
Hyderabad 500 034  
Tel: +91 40 3046 5000  
Fax: +91 40 3046 5299

**Bengaluru**

Maruthi Info-Tech Centre  
11-12/1, Inner Ring Road  
Koramangala, Bengaluru 560 071  
Tel: +91 80 3980 6000  
Fax: +91 80 3980 6999

**Kochi**

Syama Business Center  
3rd Floor, NH By Pass Road,  
Vytilla, Kochi – 682019  
Tel: +91 484 302 7000  
Fax: +91 484 302 7001

**Chandigarh**

SCO 22-23 (1st Floor)  
Sector 8C, Madhya Marg  
Chandigarh 160 009  
Tel: +91 172 393 5777/781  
Fax: +91 172 393 5780

**Kolkata**

Unit No. 603 – 604, 6th Floor, Tower - 1,  
Godrej Waterside, Sector – V,  
Salt Lake, Kolkata - 700 091  
Tel: +91 33 44034000  
Fax: +91 33 44034199

**Chennai**

No.10, Mahatma Gandhi Road  
Nungambakkam  
Chennai 600 034  
Tel: +91 44 3914 5000  
Fax: +91 44 3914 5999

**Mumbai**

Lodha Excelus, Apollo Mills  
N. M. Joshi Marg  
Mahalaxmi, Mumbai 400 011  
Tel: +91 22 3989 6000  
Fax: +91 22 3983 6000

**Delhi**

Building No.10, 8th Floor  
DLF Cyber City, Phase II  
Gurgaon, Haryana 122 002  
Tel: +91 124 307 4000  
Fax: +91 124 254 9101

**Pune**

703, Godrej Castlemaine  
Bund Garden  
Pune 411 001  
Tel: +91 20 3058 5764/65  
Fax: +91 20 3058 5775

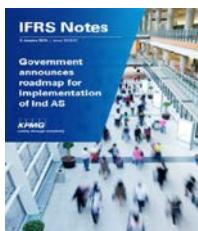
## Introducing KPMG in India IFRS Institute



KPMG in India is pleased to re-launch IFRS Institute - a web-based platform, which seeks to act as a one-stop site for information and updates on IFRS implementation in India.

The website provides information and resources to help board and audit committee members, executives, management, stakeholders and government representatives gain insight and access thought leadership publications on the evolving global financial reporting framework.

## IFRS Notes



### IFRS convergence – a reality now! MCA notifies Ind AS standards and implementation roadmap

This issue of our IFRS Notes provides a high level analysis of the much awaited Indian Accounting Standards (Ind AS) that are converged with International Financial Reporting Standards (IFRS), which was finally notified by the Ministry of Corporate Affairs on 16 February 2015.

The notification of these IFRS converged standards fills up significant gaps that exist in the current accounting guidance, and India can now claim to have financial reporting standards that are contemporary and virtually on par with the best global standards. This will in turn improve India's place in global rankings on corporate governance and transparency in financial reporting.

With the notification of 39 Ind AS standards together with the implementation roadmap, coupled with the progress made on finalising the Income Computation and Disclosure Standards (ICDS), the government has potentially addressed several hurdles which possibly led to deferment of Ind AS implementation in 2011.

Companies should make an impact assessment and engage with all stakeholders, both internal and external, to deal with their respective areas of impact and ensure a smooth transition.

## Missed an issue of Accounting and Auditing Update or First Notes?



### February 2015

The February 2015 edition of the Accounting and Auditing Update captures the recent notification by the Ministry of Corporate Affairs on the timeline for adoption of Indian Accounting Standards (Ind AS) in India and release of the 39 Ind AS. We have provided an overview of the revised drafts ICDS (2015) that will help determine taxable income.

This month we discussed some of the issues faced by the Not for Profit Organisations and assess sector specific accounting, tax and regulatory requirements. As is the case each month, we cover key regulatory developments during the recent past and also highlighted the salient aspects of the recently issued exposure draft on the 'frequently asked questions' on the provisions of the Corporate Social Responsibility by the Institute of Chartered Accountants of India.



### The MCA provides transitional relief in the norms relating to the consolidated financial statements

While the Companies Act, 2013 (the Act) has been largely operationalised from 1 April 2014, the Ministry of Corporate Affairs (MCA) has been issuing various amendments and clarifications to the Act and the corresponding Rules to ease the implementation of the Act.

The Act, vide section 129(3), prescribes the requirements for preparation of the consolidated financial statements (CFS). Through a notification issued on 16 January 2015, the MCA has provided transitional relief to companies that have one or more subsidiaries incorporated outside India from preparation of CFS.

Our First Notes explains the amendment issued by the MCA.

## Upcoming Events



### KPMG in India is pleased to present Voices on Reporting – ICAI guidance note on Reporting on Fraud

A monthly series of knowledge sharing calls to discuss current and emerging issues relating to financial reporting.

In this month's call to be held on 18 March 2015 between 04:00 – 05:00 PM, we will aim to provide an overview on the requirements of section 143(12) of the Companies Act, 2013 relating to reporting on fraud by the auditors and will also discuss key requirements of the recently issued guidance note on Reporting of Fraud under section 143(12) of the Companies Act, 2013 by the Institute of Chartered Accountants of India (ICAI). Details are available on [www.kpmg.com/in](http://www.kpmg.com/in).

**Feedback/Queries can be sent to [aaupdate@kpmg.com](mailto:aaupdate@kpmg.com)**

**Back issues are available to download from: [www.kpmg.com/in](http://www.kpmg.com/in)**

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