General Circular No 03/2014

No.1/12/2013-CL.V
Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhawan,
Dr. R.P. Road, New Delhi-110001.
Dated : **14/2/2014**

To
All Regional Directors,
All Registrar of Companies,
All Stakeholders.

Subject: Clarification with regard to Section 185 of the Companies Act, 2013.

Sir,

This Ministry has received number of representations on the applicability of Section 185 of the Companies Act, 2013 with reference to loans made, guarantee given or security provided under Section 372A of the Companies Act, 1956. The issue has been examined with reference to applicability of Section 372A of the Companies Act, 1956 vis-à-vis Section 185 of the Companies Act, 2013. Section 372A of the Companies Act, 1956, specifically exempts any loans made, any guarantee given or security provided or any investment made by a holding company to its wholly owned subsidiary. Whereas, Section 185 of the Companies Act, 2013 prohibits guarantee given or any security provided by a holding company in respect of any loan taken by its subsidiary company except in the ordinary course of business.

2. In order to maintain harmony with regard to applicability of Section 372A of the Companies Act, 1956 till the same is repealed and Section 185 of the Companies Act, 2013 is notified, it is hereby clarified that any guarantee given or security provided by a holding company in respect of loans made by a bank or financial institution to its subsidiary company, exemption as provided in clause (d) of sub-section (8) of Section 372A of the Companies Act, 1956 shall be applicable till Section 186 of the Companies Act, 2013 is notified. This clarification will, however, be applicable to cases where loans so obtained are exclusively utilized by the subsidiary for its principal business activities.

Yours faithfully,

(K.M.S. Narayanan)
Assistant Director (Policy)
Phone No. 23387263

Copy to: Guard File.