

**Comparison char between Section 185 of Companies Act, 2013**  
**and**  
**Section 295 of Companies Act, 1956.**

S.no.	Section 185 of Companies Act, 2013	Section 295 of Companies Act, 1956
1	This section applies to all companies including private companies.	As per sub- section (2), this section is not applicable to private company.
2	Definition of Relative – the list of people that qualify as relatives under the Companies Act and these Rules is far shorter than what the 1956 Act	The relative include a long list as provided under schedule (IA)  The below mentioned relatives are not included: Daughter's son Daughter's son's wife. Daughter's daughter. Daughter's daughter's husband Brother's wife. Sister's husband.
3.	This section applies to directly or indirectly making any loan to or giving any guarantee or providing any security in connection with a loan by a public or private company both.  Which means a company shall not give loan to any director through intermediaries.	This section applies to directly making any loan to or giving any guarantee or providing any security in connection with a loan by a public company.  This section has not mentioned word indirectly which make the scope of section quite narrower as compare to section 185.
4.	The section starts with “save as otherwise provided under the act” which implies that provision of this section will have an overriding effect or we could say that other section has to be complied in accordance with provision of this section. However, the entire act does not contain any other provision regulating giving of loan to director or any other person in which such director is interested.	Section starts as “ save as otherwise provided in sub- section (2), which means that no company can give loan or provide security or give any guarantee in accordance under sub- section (1) unless the approval of Central government has been obtained, however sub- section (1) to be read with sub- section (2), which prevail over the applicability of section 295.
5.	This section is a charging section, whereas the operational provisions of this section are provided under section	This section is restrictive in nature as it provides that no company can directly give any loan to or give any guarantee or provide any security in

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	186 as loan and investment by company. Section 186 mentioned procedure for how loan and investment to be given by the company.	connection with a loan by a public company as well as contain a procedure under sub- section (1).
6	<p>Exemption</p> <p>This section does not apply to:  Loan to Managing Director or whole-time directors as a part of the conditions of service extended by the company to all its employees or pursuant to any scheme approved by members by special resolution.</p> <p>Company in the ordinary course of business provides loan or give guarantees or securities for the directors due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.</p>	<p>Exemption</p> <p>(a) any loan made, guarantee given or security provided -  (i) by a private company unless it is a subsidiary of a public company, or  (ii) by a banking company ;  2[(b) any loan made by a holding company to its subsidiary company;  (c) any guarantee given or security provided by a holding company in respect of any loan made to its subsidiary company.</p>
	<p>The penalties and fines are very hefty as can be seen in section 185(2) as given below.</p> <p>If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or</p>	<p>Section 295 provides penalty in two parts as :  Section 295 (4) provides that every person who is knowingly a party to any contravention of sub-section (1), including in particular any person to whom the loan is made or who has taken the loan in respect of which the guarantee is given or the security is provided, shall be punishable either with fine which may extend to Rs. 5000/- or with a simple imprisonment for a term which may extend to 6 months; provided that where any such loan, or any loan in connection with which any such guarantee or security has been given or provided by the lending company, has been repaid in full, no punishment by way of imprisonment shall be imposed under sub-section (4); and where the loan has been repaid in part, the maximum</p>

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	<p>with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both</p>	<p>punishment which may be imposed by way of imprisonment shall be proportionately reduced.</p> <p>Further, according to sub-section (5), all persons who are knowingly parties to any contravention of this section shall be liable, jointly or severally, to the lending company for the repayment of the loan or for making good the sum which the lending company may have been called upon to pay in virtue of the guarantee given or the security provided by such company.</p>
	<p><b>Whether loan to Wholly Owned Subsidiary exempt?</b>  The wholly owned subsidiary company would fall under section 185 if any two companies i.e the holding and subsidiary company ( in form of private company) have common directors or  Any director of the holding company is a member in subsidiary.  To save itself from the applicability of section 185, these companies have to see that it shall not fall in any of the two situations.</p>	<p>Whether loan to Wholly Owned Subsidiary exempt?  Any loan made by a holding company to its subsidiary company is exempted.</p>
	<p>Whether advance is also prohibited under the section?   The word ‘Loan’ is not defined in the Act. Hence we can take the general meaning. According to Black’s Law Dictionary ‘loan’ means a lending; delivery by one party to and receipt by another party of a sum of money upon agreement, express or implied, to repay it with or without interest.</p>	<p>Whether advance is also prohibited under the section?   Section 295 is also not applicable to advance extended by company.  Section 296 provides that section 295 shall apply to any transaction represented by book debt which was from its inception in the nature of a loan or an advance.</p>

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	<p>Hence essential requirements of a loan are the advance of money upon the understanding that it shall be returned, and it may or may not carry interest. Section is not applicable for all types of advances. Section is also applicable to loan represented by book debt.</p> <p>Whereas the advances are granted for business purposes which regulate by section 188 of the act.</p>	
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