

**Sec. 71 and Rules Made thereunder: Debenture Redemption Reserve & Maintenance of SLR at 15% etc**

Sub-section 4 of Section 71 provides that where debentures are issued by a company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

**Representation:**

Privately placed debentures issued by non-banking finance companies were exempted from creation of debenture redemption reserve vide Circular No.6/3/2001-CL.V of the Ministry of Corporate Affairs dated 18<sup>th</sup> April 2002. This exemption may kindly be incorporated/restored in Rule 4.16 by exempting NBFCs registered with RBI from the provisions of this Rule.

**Sec 186. Loan and investment by Company**

**REPRESENTATION 1: Loans given by/guarantees/securities provided by / investments made by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is asset financing/granting of loans, may be exempted from the provisions of this Section.**

**RATIONALE**

1. The Operations of such non-banking Finance Companies are fully monitored by Reserve Bank of India.
2. The limit upto which an NBFCs can lend is governed by various prudential norms such as Capital Adequacy Ratio, Per Party exposure limites, etc stipulated and closely monitored by RBI.
3. The limits laid down in Section 186 (2 ) ( c) are very small for an NBFC and therefore, unless exempted, they will have to abide by the following impractical course of action almost every year:

- a. They will have to seek the approval of Shareholders by Special Resolution for the limits of their lending/investment. Such Special Resolutions require details of the intended loans to be incorporated in the Explanatory Statement which is impossible (parties' names, asset on which to finance, details and tenor or loans etc cannot be predicted in advance)
- b. They will have to disclose in the financial statement the full particulars of the loans given including the names of the recipients, the purpose for which they have utilized the loans etc.

If the Ministry feels that there is no need to give a separate exemption as the intention of the legislation to grant exemption to NBFCs is already covered in Section 186 (11) (a) by the words "a company engaged in the business of financing of companies", **a suitable clarification may be given.**

**REPRESENTATION 2: Loans given to non-corporates are also governed by the Section which may not be the intention of the legislature. This may be clarified.**

#### RATIONALE

The Section corresponds to Sec 372A of the erstwhile Companies Act 1956 and therefore, it should only regulate inter-corporate loans and not all loans; this intention is also made clear by Rule 12.11 (1) which talks of aggregation of all loans/investments/guarantee etc to "corporates"

**REPRESENTATION 3: The Various exemptions available in the erstwhile Sec 372A of the Companies Act 1956 may be restored by Rules since they have been withdrawn. (private companies which are not subsidiaries of public companies, Loans to/investment in wholly owned subsidiaries, investment in Right Shares by corporates, private company transactions etc. )**

RATIONALE: The general day to day transactions of borrowing and investments by the corporate sector would be hampered by the absence of these exemptions.