



Regulatory Alert Tracking change

Privileges to a
Section 8 company
(companies with
charitable objects
etc.) under the
Companies Act

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Background

Companies Act, 2013 (2013 Act) was brought into force in phases by 1 April 2014, barring certain provisions relating to compromises, arrangements and amalgamations, prevention of oppression and mismanagement, setting up of/exercise of powers by National Company Law Tribunal / National Company Law Appellate Tribunal, Investor Education and Protection Fund, National Financial Reporting Authority, Special Court etc.

After the commencement of the 2013 Act, the Government received representations from various stakeholders expressing practical difficulties by Section 8 companies in complying with some of the requirements laid down in the commenced provisions. Some of the issues raised and suggestions made required amendments to the 2013 Act.

The Government has, on 26 May 2015, notified the Companies (Amendment) Act, 2015 (Amendment Act) thereby amending certain provisions of the 2013 Act.

2013 Act as amended by the Amendment Act empowers MCA – subject to the Parliamentary oversight - to issue one or more notification directing that the provisions of 2013 Act shall not apply or shall apply with specified exceptions, modifications and adaptations to class or classes of companies.

MCA has on 5 June 2015, issued draft notifications relaxing certain provisions of 2013 Act to private companies, Section 8 companies and Government companies. These draft notifications are laid in both the Houses of Parliament as required under 2013 Act.

Key highlights of the draft notification as far as it relates to relaxation to "Section 8 company" are summarized in this Alert.

Section 8 company are companies which are licensed to operate where it:

- a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- b) intends to apply its profits, if any, or other income in promoting its objects; and
- c) intends to prohibit the payment of any dividend to its members,

without the addition to its name of the word "Limited", or "Private Limited".

Highlights of proposed exemptions / privileges available to a Section 8 company under the 2013 Act

Sr. No.	Section reference of 2013 Act	Subject	Exemption / privileges for Section 8 companies
1.	Section 2(68)	Definition of private companies	The requirement of having minimum paid up capital for a section 8 company formed as a private company shall not apply.
2.	Section 2(71)	Definition of public companies	The requirement of having minimum paid up capital for a section 8 company formed as a public company shall not apply.
3.	Section 96(2)	Annual General Meeting	Time, date and place of each annual general meeting shall be decided before hand by the board of directors having regard to the directions, if any, given by the company in its general meeting.
4.	Section 101(1)	Notice of meeting	A general meeting of members can be called by giving not less than clear 14 days' notice (as against 21 days).
5.	Section 118	Minutes	Provisions relating to minutes of proceedings of general meeting, board meeting and other meeting

			and resolutions passed by postal ballot shall not apply to a section 8 company except that minutes may be recorded within 30 days of the conclusion of every meeting if AOA provide for confirmation of minutes by circulation.
6.	Section 136(1)	Right of member to copies of audited financial statement	A copy of financial statements, auditor's report and every other document required under law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting shall be sent to members, trustee of debenture holder and to all other person not less than 14 days (as against 21 days) before the date of the meeting.
7.	Section 149(1) and 1 st proviso of section 149(1)	Company to have Board of Directors	The requirement of having minimum number of directors and the ceiling on maximum number of directors shall not apply.
8.	Section 149(4) to (11), Section 149(12) (i), Section 150, Proviso to Section 152(5)	Company to have Board of Directors	The requirement of appointment of independent directors shall not apply.

9.	Section 160	Right of persons other than retiring directors to stand for directorship	Provisions pertaining to submission of candidature of directorship along with deposit of ₹1,00,000 shall not apply to section 8 companies whose AOA provide for election of directors by ballot.
10.	Section 165(1)	Number of directorships	Restriction for holding office as a director, including any alternate directorship, in not more than 20 companies shall not include directorship in section 8 company.
11.	Section 173(1)	Meetings of Board	The requirement of holding the 1 st meeting of the Board of Directors within 30 days of the date of its incorporation and thereafter holding minimum 4 meetings every year within time gap of not more than 120 days between two consecutive meetings shall not apply. Section 8 company need to hold at least 1 board meeting within every 6 calendar months.
12.	Section 174(1)	Quorum for meetings of Board	Quorum for board meeting shall be either 8 members or 25% of its total strength whichever is less, subject to minimum of 2 (as against 1/3 rd of the total strength or 2 whichever is higher).
13.	Section 177(2)	Audit Committee	Audit committee can be formed without independent directors.
14.	Section 178	Nomination and Remuneration Committee and	Provisions related to Nomination and Remuneration Committee and Stakeholders Relationship Committee shall not apply.

		Stakeholders Relationship Committee	
15.	Section 179	Powers of Board	Board of Directors may exercise following powers by circulation instead of at a board meeting: <ul style="list-style-type: none"> i. borrow monies; ii. invest the funds of the company; and iii. grant loans or give guarantee or provide security in respect of loans.
16.	Section 184(2)	Disclosure of interest by director	Requirement of disclosure of interest by the director and prohibition in participating in Board meeting in which contract or arrangement is discussed wherein he is interested will be applicable only if the transaction is with the related party if the terms and conditions of the contract or arrangement exceeds ₹ 1,00,000.
17.	Section 189	Register of contracts or arrangements in which directors are interested	The requirement of entering into the particulars of contracts or arrangements in the register shall apply only if the transaction is with the related party if the terms and conditions of the contract or arrangement exceeds ₹ 1,00,000.

Conclusion

The draft notification once implemented is likely to minimize procedural compliances for section 8 companies. It will provide enhanced operational freedom to such companies.

This is a step in Government's efforts to ease doing business in India.

The draft notification will be effective on publication of the notification in the Official Gazette after the statutory Parliamentary approval process.

Source: Draft Notification issued by MCA on 5 June 2015

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