



Regulatory Alert Stay Ahead...

Relaxations for private companies under Company Law

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Background

The term "private company" is defined under section 2(68) of the Companies Act, 2013 Act (2013 Act), as under:-

"Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, –

- (i) restricts the right to transfer its shares;
- (ii) except in case of One Person Company, limits the number of its members to two hundred;

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that –

- (A) persons who are in the employment of the company; and
- (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members;and

- (iii) prohibits any invitation to the public to subscribe for any securities of the company.

Ministry of Corporate Affairs (MCA) had issued a notification on 5 June 2015 (2015 notification) relaxing certain provisions of 2013 Act to private companies.

MCA has now issued a notification dated 13 June 2017 (Amendment notification) amending the 2015 notification.

Key highlights of the changes under the Amendment notification are summarized.

Highlights of the amendment

Sr. No	Subject and section reference of the 2013 Act	Existing exemptions for private companies	Amended exemptions for private companies
1	1 st proviso to Section 2(40) - Preparation of cash flow statement	Preparation of cash flow statement is not required for one-person companies, small companies and dormant companies.	Exemption from preparation of cash flow statement has also been extended to start-up companies – i.e. a private company incorporated under the 2013 Act or the Companies Act, 1956 and recognized as start-up in accordance with the notification issued by Ministry of Commerce and Industry.
2	Section 73(2)(a) to (e) - Prohibition on acceptance of deposits	Private company permitted to accept deposits from its members up to 100% of aggregate of its paid-up share capital and free reserves without obtaining deposit insurance, credit rating, depositing 15% of the deposit maturing in separate bank account etc. However, such private company will have to file a return with the Registrar of Companies (ROC).	Exemption is now available to a private company which:- 1. Accepts deposits from its members up to 100% of aggregate of its paid-up share capital, free reserves and securities premium; or 2. Is a start-up company up to 5 years from the date of its incorporation; or 3. fulfils all of the following conditions:- <ul style="list-style-type: none"> • Is not an associate or a subsidiary company of any other company • Whose borrowings from banks or financial institutions or any body corporate is less than twice its paid up share capital or ₹ 500 million, whichever is lower, and has not defaulted in repayment of such borrowings subsisting at the

			<p>time of accepting deposits</p> <p>Such private company will have to file a return with the ROC.</p>
3	Section 92(1)(g) - Disclosure of remuneration of directors in Annual Return	No exemption	A small company may disclose aggregate remuneration paid to all its directors instead of disclosing directors' remuneration individually.
4	<i>Proviso</i> to Section 92(1) - Signing of annual return	In case of one-person company and small company, director may sign annual return if it does not have a Company Secretary.	Exemption has also been extended to a start-up company.
5	Section 143(3)(i) - Reporting by auditor on internal financial controls in Auditor's Report	No exemption	<p>Auditors of the following private companies need not report on adequacy of internal financial controls:-</p> <ul style="list-style-type: none"> • One person company, or • Small company, or • Company having <ul style="list-style-type: none"> – Turnover (as per latest audited financial statement) less than ₹ 500 million; or – Aggregate borrowings from banks or financial institutions or other body corporate (at any point of time during the financial year) less than ₹ 250 million
6	Section 173(5) - Board meetings	<p>One-person company, small company or dormant company may hold one board meeting in each half of the calendar year and the gap between two board meetings is not less than 90 days.</p> <p>Above requirement and requirement of quorum for board meeting shall not apply to one-person</p>	A start-up company may also hold one board meeting in each half of the calendar year and the gap between two board meetings should not be less than 90 days.

		company in which there is only 1 director on the board.	
7	Section 174(3) - Quorum for the board meeting	No exemption	Interested director may also be counted towards the quorum of the meeting after disclosure of his interest under section 184.

All the exemptions and privileges granted to private company under the 2015 notification as well as the Amendment notification will be available only if such company has not committed default in filing its financial statements and annual return with the Registrar of Companies (ROC).

Conclusion

The Amendment notification seeks to enhance existing exemptions while also seeking to improve the governance standards, as privileges and exemptions will be available only to those private companies which have not committed default in filing financial statements and annual return with the ROC. Extension of privileges to start-up companies will help such start-up companies in ease of doing business.

Source: Notification no. G.S.R 464(E) issued dated 5 June 2015 issued by MCA Notification no. G.S.R 583(E) issued dated 13 June 2017 issued by MCA.

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