



Regulatory Alert Stay Ahead...

Relaxations for Section 8 companies under Company Law

Issue no: RA/11/2017

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Background

Under the Companies Act, 2013, (2013 Act), section 8 companies are limited companies which are licensed by the central government (CG) 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.

A section 8 company may operate, in terms of the CG license, without the addition to its name of the word "Limited", or "Private Limited".

Ministry of Corporate Affairs (MCA) had issued a notification on 5 June 2015 (2015 notification) relaxing certain provisions of 2013 Act to Section 8 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 2013 Act	Earlier exemption for section 8 companies	Revised exemption for section 8 companies
1	Section 149(1) – Requirements regarding number of directors	The requirement of having minimum number of directors and the ceiling on maximum number of directors shall not apply.	It clarifies that limit on maximum number of directors shall not apply to section 8 company. However, requirement for minimum number of directors in section 8 company shall be applicable.
2	Section 186(7) – Interest to be charged on inter-corporate loans	No exemption	Section 8 company in which 26% or more of paid-up share capital is held by the central government or one or more state governments or both, may give interest-free loan for funding industrial R&D projects in furtherance of its objects as stated in its Memorandum of Association.

All the exemptions and privileges granted to a section 8 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 clarify existing exemptions while seeking to improve the governance standards, as privileges and exemptions will be available only to those section 8 companies which have not committed default in filing financial statements and annual return with the ROC.

Source: Notification no. G.S.R 466(E) dated 5 June 2015 issued by MCA read with Notification no. G.S.R 584(E) dated 13 June 2017 issued by MCA.

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