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# News Alert\*

MCA Notification dated June 5, 2015



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## EXEMPTIONS TO PRIVATE COMPANY UNDER COMPANIES ACT, 2013

Central Government in exercise of powers conferred under section 462 of the Companies Act 2013 (CA 2013) has placed for public comments on 1<sup>st</sup> July 2014 certain exemptions to be made available to private limited companies. These much awaited exemptions for private limited company has been laid before the Parliament exempting 4 different classes of companies – private companies, Sec 8 companies (NPO) , Government companies and Nidhi companies from compliances under certain sections.

It is imperative to note that many foreign companies operating in India through its subsidiary companies are mostly private limited companies, which will be benefited by the exemption.

The compliances cost for a private limited companies under CA 2013 has increased and the fine and threats of imprisonment under various sections of new CA 2013 has discouraged many foreign investors to do business in India under this kind of entities. We have witnessed that formation of LLP has been increased during last year to save the cost of compliances.

However, this discussion is for the exemptions available now by majorly for Private Limited companies issued vide Published Notifications dated June 5, 2015 of the Ministry of Corporate Affairs(MCA):

### **PRIVATE COMPANIES**

#### **1. Exemption under Section 43 (Kinds of Share Capital) and Section 47 (Voting Rights)**

Unless the Memorandum of Association (MoA) or Articles of Association (AoA) of the private companies provides for the same, the provisions of Section 43 and Section 47 shall not be applicable. Alternatively, where the MoA/AoA of a private company provides exemption from the same, it shall not be applicable.

#### **2. Exemption under Section 62: Further Issue of Share Capital**

- a. Provision with regards Section 62 (1) (a) (i) for the time period of offer ( minimum 15 days to maximum 30 days) and Section 62 (2) with respect to dispatch of Notice three days prior to opening of the issue, in case of rights issue is now not required for a private limited company, if approval of 90% of the members is obtained in writing or in electronic mode
- b. Under section 62(1)(b) further issue of shares under Employee Stock Option Scheme may be done with an ordinary resolution by private limited company and the requirement of special resolution is now omitted.

**3. Exemption under Section 67: Restrictions on purchase by company or giving of loans by it for purchase of its shares.**

Section 67 prohibits purchase of a company's own shares, or on providing of loans against its own shares. However, now the private companies are exempted from the compliance of section 67 subject to the compliance of all the following conditions:

- a. no other body corporate has invested any money in the share capital of the company;
- b. if the borrowings of such a company from banks or financial institutions or any body corporate is less than two times of its paid up share capital or Rs.50 Crore, whichever is lower; and
- c. such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.

**4. Exemption under section 73: Prohibition on acceptance of deposits from public.**

MCA vide the General Circular 05/2015 dated March 30, 2015 granted to private companies relief from clarifying that the amounts taken from directors/directors' relatives and members under the provisions of the old Act will not constitute deposit under Act 2013. The deposits from members were exempted under old CA 1956.

The CA 2013 has provided with huge penalty and imprisonment provisions for any violation in the repayment of deposits pursuant to section 74 by providing it for maximum imprisonment upto 7 years and a fine upto Rs 10 crores and the said offence is non-compoundable.

Now the exemption is granted to private limited company, that Section 73 (2) para (a) to (e) are not applicable to a private company and private companies can accept monies as Deposits from its members an amount not exceeding 100% of the paid up share capital and free reserves of the Company, subject to filing of returns with the Registrar.

**Quote**  
**"Section 73(2)**

A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the following conditions, namely:—

- a. issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;

- b. filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;
- c. depositing such sum which shall not be less than fifteen per cent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;
- d. providing such deposit insurance in such manner and to such extent as may be prescribed;
- e. certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and”

**5. Exemption under Section 101 – 107 and Section 109 ( WRT General Meetings)**

The above referred sections with respect to Notice of Shareholders Meeting, , Explanatory Statement for Notice , Quorum for Shareholders Meeting , Chairman of the Shareholders Meeting, Proxies , Restriction on Voting Rights in Shareholders Meeting and Voting by Show of Hands and Demand for Poll shall not apply to a private limited companies unless specified otherwise in the Articles of the company.

**6. Exemptions under Section 141: Eligibility, Qualifications and Disqualifications of Auditors.**

The limit of 20 on company audits will now exclude all one person companies, dormant companies, small companies and private companies having a paid up share capital of less than Rs. 100 crores.

**7. Exemption under Section 160: Right of Persons other than Retiring Directors to stand for Directorship.**

Right of persons other than retiring directors to stand for directorship under provisions of section 160 shall not apply in case of private companies and accordingly now there is no need of Notice for the candidature of a director along with the deposit of Rs.1 Lac o be given .

**8. Exemption under Section 162: Appointment of Directors to be voted Individually**

Now a private limited company can move the appointment of two or more directors by a single resolution .

**9. Exemptions of Section 179 (3) : Resolutions and Agreements to be Filed (filing Form MGT 14 for Board Resolutions)**

Now private limited companies are exempted to file any resolutions listed u/s 179 (3), however those items need to be transacted in the Board Meeting. The private limited companies also require to file resolutions as per section 117 (3). This will reduce the burden of private limited companies for compliance cost and keeping the transaction as confidential.

**10. Exemption under Section 180:Restrictions on Powers of Board**

Now the Board of private limited companies are free (without any approval of the shareholders by way of special resolution) to (i) sell, lease or dispose of undertaking (ii) invest in otherwise in trust securities any amount of compensation received by out or merger or amalgamation (iii) borrow money more than its paid up share capital and free reserves and (iv) remit or give time to the directors to repayment of any loan / debt.

**11. Exemptions of Section 184 (2) : Participation of interested directors:**

The exemption to private limited companies are given by allowing the interested director to participate in the meeting in which the contract or arrangement is discussed in which the director is directly or indirectly interested. However, the director has to disclose his interest in such contract or arrangement.

**12. Exemptions under Section 185: Loan to Directors, etc.**

A partial exemption has now been granted to private limited companies giving a loan, providing a guarantee or offering a security to any of its Directors, firm , private limited companies or its group, associate or a sister concern. However such exemption can be availed by private limited companies , if it complies with all the following there conditions :

(a) No other body corporate has invested any money in such private limited company;

(b) if the borrowings of private limited company from banks or financial institutions or any body corporate is less than two time of its paid up share capital or Rs.50 crores, whichever is lower; and

(c) such a private limited company has no default In repayment of such borrowings subsisting at the time of making transactions under this section.

### **13. Partial Exemptions under Section 188: Related Party Transactions**

- I. In the definition of Related Party sub clause (viii) of section 2(76) ( as mentioned below) shall not apply to any private limited company. Accordingly now a private limited company can enter into any related party transactions with its holding , subsidiary and fellow subsidiary company (ies).

#### **2(76) Definition of Related Party**

(viii) “Any Company which is-

- (A) a holding, subsidiary or an associate company of such company; or  
(B) a subsidiary of a holding company to which it is also a subsidiary; ”

- II. The Second proviso to sub section (1) of section 188 shall not apply to the private limited company, hence now the member of the private limited company can vote on any resolution of any contract or arrangement, in which he is interested .

The said exemption is not a complete relief to a private limited company for related party transactions (RPT). It still does require either a resolution of Board or Shareholders as the case may be as per threshold limit of any such RPT.

### **14. Exemptions of Section 196: Appointment of Managing Director, Whole Time Director or Manager**

Section 196 (4) and (5) provisions with respect to appointment , terms and conditions of such appointment and the remuneration payable to any Managerial Personnel and validity of actions done by them where appointment is not in accordance with the provisions of the said section, is now not applicable to private companies .

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