

EXEMPTION DATED 13TH JUNE, 2017 UNDER COMPANIES ACT, 2013

Ministry of Corporate Affairs (MCA) notification No GSR 464(E), GSR 463(E) and GSR 466(E) dated 05th June, 2015 had granted exemption to certain class of Companies namely Private Company, Section 8 Company, Government Company and Nidhi Company. In furtherance via notification dated 13th June 2017 MCA has amended the exemption granted to Private Company, Section 8 Company and Government Company.

➤ **FOR PRIVATE COMPANIES:**

START UPS:

The concept of **Start-up Company** has been introduced in Private Company exemption notification dated 13th June, 2017. Start-up Company means a Private Company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognized as start-up in accordance with the notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.

Start-up (as defined by Ministry of Commerce and Industry):

An entity shall be considered as a Start up:

- a) if it is incorporated as a **Private Limited Company** (as defined in the Companies Act, 2013) or registered as a **Partnership Firm** (registered under section 59 of the Partnership Act, 1932) or a **Limited Liability Partnership** (under the Limited Liability Partnership Act, 2008) in India; and
- b) up to **7 years** from the date of its incorporation/registration; however, in the case of Startups in the biotechnology sector, the period shall be up to **10 years** from the date of its incorporation/ registration; and
- c) if its turnover for any of the financial years since incorporation/registration has not exceeded **₹ 25 Crores**; and
- d) if it is working towards **innovation, development or improvement of products or processes or services**, or if it is a scalable business model with a high potential of **employment generation or wealth creation**.

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Provided that any such entity formed by splitting up or reconstruction of a business already in existence shall not be considered a 'Startup'.

AMENDED / INSERTED EXEMPTION VIDE NOTIFICATION 13TH JUNE, 2017 FOR PRIVATE COMPANIES

| Sr No | Chapter/ Section of the Act | Particulars | Exemption/ Relaxation |
|-------|---|--|--|
| 1 | Chapter I, Proviso of Clause (40) of Section 2 [Financial Statements] | The financial statement, with respect to One Person Company, small Company, dormant Company, may not include the cash flow statement; | The financial statement, with respect to One Person Company, small Company <u>and Private Company (if such Private Company is a start-up) may not include the cash flow statement.</u> |
| 2 | Chapter V, clause (a) to (e) of sub-section (2) of Section 73 [Conditions for accepting Deposits from Members] | Private Company are permitted to accept deposits from its members not exceeding 100% of aggregate of paid up share capital and free reserves, and such Company shall file details of monies accepted to the RoC in such manner prescribed. | Provisions clause a-e of sub-section 2 of Section 73 shall not apply to Private Company: A) <u>which accepts from its members monies not exceeding 100% of aggregate of paid up share capital, free reserves and security premium; or</u> B) <u>which is a start-up Company, for 5 years from the date of its incorporation; or</u> C) which fulfils the following conditions, namely: a) <u>which is not an associate or a subsidiary of such other Company;</u> |

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| | | | <p>b) <u>if the borrowing of such Company from banks/Financial Institution/ any Body Corporate is less than twice to its paid up share capital or ₹50 Cr rupees, whichever is lower;</u></p> <p>c) <u>such a Company has not defaulted in the repayment of such borrowing subsisting at the time of accepting deposits</u></p> <p>Provided that the Company referred to in clause A/B/C shall file the details of monies accepted to RoC in such manner specified.</p> |
| 3 | Chapter VII, clause (g) of sub-section (1) of Section 92 [Annual Return] | Every Company shall prepare Annual Return (MGT-7) containing the particulars as they stood on the close of financial year: (g) remuneration of directors and key managerial personnel | In case of Private Companies which are Small Companies may disclose the aggregate remuneration paid to all its Directors. |
| 4 | Chapter VII, proviso to sub-section (1) of Section 92 | In relation to One Person Company and Small Company, the Annual Return shall be signed by Company Secretary, or where there is no Company Secretary, by the director of the Company | In relation to One Person Company, small Company and <u>Private Company (if such Private Company is start-up)</u> , the annual return shall be signed by the Company Secretary, or where there is no Company Secretary by the Director of the |

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| 5 | Chapter X, clause (i) of sub section (3) of Section 143 [Powers and Duties of Auditors] | The Auditor's Report shall state whether the Company has adequate internal financial controls system in place and the operating effectiveness of such control | Requirement of <u>Internal Financial Controls</u> disclosure in Auditor's Report shall not apply to Private Company: i) <u>which is a one person Company or a small Company</u> ; or ii) <u>which has turnover less than ₹50 Cr as per latest audited financials statement or which has aggregate borrowings from banks/ financial institution/ body corporate at any point of time during the financial year less than ₹25 Cr.</u> |
| 6 | Chapter XII sub-section (5) of Section 173 [Meeting of Board] | A one person Company, small Company and dormant Company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half year of a calendar year and the gap between the 2 meetings is not less than 90 days. | A one person Company, small Company, dormant Company <u>and Private Company (if such Private Company is a start-up) shall</u> be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half year of a calendar year and the gap between the 2 meetings is not less than 90 days. |
| 7 | Chapter XII, sub-section (3) of Section 174 | Where at any time the number of interested directors exceeds or is equal to $\frac{2}{3}^{\text{rd}}$ of the total strength | <u>The interested director shall be counted towards quorum in such meeting after</u> |

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| | [Quorum of Board Meeting] | of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time. | <u>disclosure of his interest pursuant to section 184.</u> |
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➤ **FOR SECTION 8 COMPANIES:**

Amended / Inserted exemption vide notification 13th June, 2017 for Section 8 Companies:

| Sr No | Chapter/ Section of the Act | Particulars | Exemption/ Relaxation |
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| 1 | Clause (b) and first proviso to sub-section (1) of Section 149 [Maximum number of Directors] | Earlier entire section 149(1) of the Act, 2013 along with first proviso to the said section was not applicable to a section 8 Company. | i. Section 8 Company, without any special resolution can appoint more than 15 directors. ii. <u>Section 8 Company need to comply with the minimum requirement with reference to number of directors</u> |
| 2 | Sub-section (7) of Section 186 [Loans and Investments by Company] | No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year , three year, five year or ten year Government Security closest to the tenor of the loan. | Provisions of sub-section (7) of Section 186 will not apply to a Company in which <u>26% or more of the paid-up share capital is held by Central Government or one or more State Governments or both</u> , in respect of loans provided by such Company for <u>funding Industrial Research and Development projects</u> in furtherance of its objects as stated in its memorandum of association |

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➤ **FOR GOVERNMENT COMPANIES:**

Amended / Inserted exemption vide notification 13th June, 2017 for Government Companies:

| Sr No | Chapter/ Section of the Act | Particulars | Exemption/ Relaxation |
|-------|--|--|--|
| 1 | Chapter VII, sub-section (2) of Section 96 [AGM] | Every AGM shall be called during business hours, that is, between 9 a.m. and 6 a.m. on any day that is not a National Holiday and shall be held either at the registered office of the Company or at some other place within the city, town or village in which the registered office of the Company is situated. | Every AGM shall be called during business hours, that is, between 9 a.m. and 6 a.m. on any day that is not a National Holiday and shall be held either at the registered office of the Company or at some other place within the city, town or village in which the registered office of the Company is situated <u>or such other place as the Central Government may approve in this behalf.</u> |
| 2 | Chapter XI, sub-sections (6) and (7) of Section 152 [Retirement by rotation and Casual vacancy] | The provisions relating to retire by rotation and filling of casual vacancy will not apply to : a) a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; b) a subsidiary of a Government Company , referred to in (a) above, in which the entire paid up share capital is held by that Government Company. | The provisions relating to retire by rotation and filling of casual vacancy will not apply to : a) a Government Company, which is <u>not a listed Company, in which not less than 51% of paid up share capital</u> is held by the Central Government , or by any State Government or Governments or by the Central Government and one or more State Governments; b) a subsidiary of a Government Company, referred to in (a) above. |

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| 3 | Chapter XV, Section 230 to 232 [Compromise/ Arrangement/ Merger/ Amalgamation] | Section 230 to 232 provides for compromising and making arrangement with creditors and members, power of tribunal to enforce compromise or arrangement and merger and amalgamation of Companies | The <u>word tribunal is substituted with Central Government</u> under the provisions of Section 230-232. |
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The newly inserted/ amended exemption can be availed only if the aforesaid Companies has not committed default in filing Financial Statements under Section 137 or Annual Return under Section 92 with the Registrar.

Based on the exemption notification dated 13th June, 2017 it can be ascertained that, Government are encouraging Start-up Private Company and providing relaxation from various compliances of Companies Act, 2013. It seems that Government wishes to encourage entrepreneurship by introducing Start-up and providing relevant incentives including taxation reliefs. The primary objective of the exemption notification is to carry on business in a simplified and transparent manner.

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