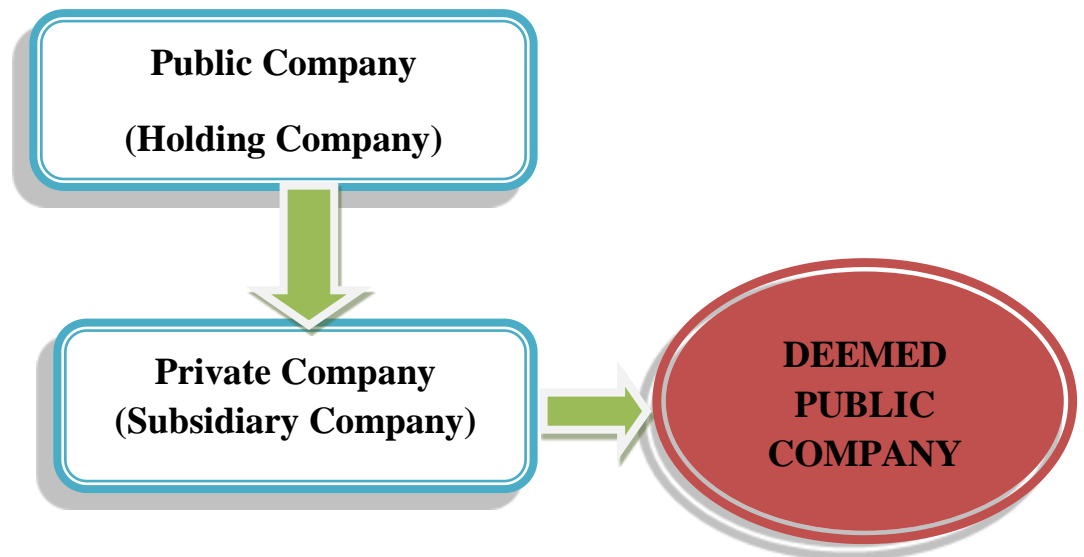


DEEMED PUBLIC COMPANY
AS PER THE COMPANIES ACT, 2013 (“the Act”)

➤ **DEFINITION:**

There is no specific definition given in the Act for a Deemed Public Company. However, proviso to the definition of Public Company under section 2 (71) of the Act reads that “a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles”.

Accordingly certain Private Companies, will be treated as Public Companies which are commonly known as ‘**Deemed Public Company**’, even when such subsidiary company continues to retain provisions in its articles to be a private company”



➤ **EXPLANATION:**

- When a private company becomes a subsidiary of a public company under Section 2(71) of Company Act 2013, it shall cease to be entitled to the privileges and exemptions conferred on private companies by or under the Act, and the Act shall apply to the company as if it were not a private company. The private company becomes deemed public limited company immediately upon, becoming subsidiary of a public Company.
- Such change in status of the company is by operation of law and not upon on the discretion of the company.

- The company may retain its registered corporate shell as of a private company but will be subject to the provisions of public company. There is nothing in the law mandating the company to change its incorporeal status.

➤ **DEEMING PROVISION UNDER COMPANIES ACT, 1956 V/S THE COMPANIES ACT, 2013:**

Section 43A of the Companies Act, 1956 had provided specifically instances when a private limited company will become a deemed public limited company.

Similarly Section 4 (7) also was providing that a private limited company, being a subsidiary of a body corporate incorporated outside India, which if incorporated in India would be a public company within the meaning of the act, shall be deemed for the purpose of this act to be subsidiary of the public company, if the entire share capital in that private limited company is not held by that body corporate, whether alone or together with one or more other body corporate incorporated outside India.

However, the Act has no such provisions like what was there in the Companies Act, 1956.

➤ **RESTRICTIONS ON DEEMED PUBLIC COMPANY:**

Such deemed public company need to comply with all provisions as if it is a public limited company. However, it may retain provisions in its Article of Association as mentioned u/s 2(68) of the Act, like:

- i. Restricts the right to ***transfer*** its shares;
- ii. Limits the number of its ***members to 200 and***
- iii. Prohibits any ***invitation to the public*** to subscribe for any securities of the company.

Further, such deemed public company is not required to increase the number of its members upto minimum Seven (7) as required for public limited company, however it is required to increase the number of Directors up to minimum Three(3).

➤ **FOLLOWING ARE THE PROVISIONS APPLICABLE TO DEEMED PUBLIC COMPANY [including amendments made under the Companies Amendment Act, 2017 (CAA 2017)]**

Deemed public company is governed like a public limited company although it retains the provisions of its Articles of Association as if it is a private limited company.

Section No.	Subject of Section	Particulars of Sections	Provisions applicable to Deemed Public Company
2 (40)	Financial Statement	<p>“Financial Statement” in relation to a company, includes—</p> <p>(i) a B/S as at the end of the FY;</p> <p>(ii) a P/L, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the FY;</p> <p>(iii) CFS for the FY;</p> <p>(iv) a statement of changes in equity, if applicable; and</p> <p>(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv).</p>	As a private company, if it was not required to include the Cash Flow Statement in its financial statements, now it shall be applicable on becoming a deemed public company.
Section 43 and 47	Kinds of Share Capital and Voting Rights	Private company are exempt from the provisions of section 43 and 47 of the Act, by altering its Articles of Association it is free to issue any kinds of shares and it can have shares with differential voting right.	However a deemed public company can not issue any kinds of shares even if it has the provisions in its Articles of Association.
2 (76) (viii) read with Section 188	Related Party (RP)/ Related Party Transaction (RPT)	<p>(viii) Any Body Corporate which is-</p> <p>(a) a holding, subsidiary or an associate company of such company;</p> <p>(b) a subsidiary of a holding company to which it is also a subsidiary; or</p> <p>(c) an investigation company or the venture of the company.</p> <p>Under the CAA 2017, third proviso is added in section 188 (1), which says that in the general meeting of the company for obtaining prior approval of any transactions with related party, exceeding the limits prescribed in section 188, if 90% or more numbers are relatives of promoters or are related parties, then they can vote on such transaction..</p>	<p>The provisions of Section 2(76) (viii) was exempted for definition of RP and all RPT with those RP also does not require compliances of Section 188.</p> <p>Upon becoming a deemed public company exemption of section 2 (76) (viii) won't be available .</p>

62(1) (a) (i) and 62 (2)	Further issue of share	<p>The offer of shares on right issue basis shall be made by notice specifying the number of shares offered and limiting a time not being less than 15 days and not exceeding 30 days from the date of offer within which the offer, if not accepted shall be deemed to have been declined and the notice of offer for right issue of share shall be dispatched through registered post or speed post or through electronic mode to all members at least 3 days before the opening of the issue .</p> <p>For a private company, the time limit of keeping the offer of shares on right issue basis open for minimum 15 days and maximum 30 days and dispatch of Notice for such offer of shares before minimum three (3) days from the date of opening the issue, both provisions were not applicable if 90% of the number of members agree in writing or in electronic mode.</p>	However now on becoming deemed public company the above exemptions shall not be available and hence a deemed public company need to keep offer of shares on right issue basis open for minimum 15 days to maximum 30 days and also need to despatch offer to its members before 3 days from the date of opening of the issue .
62(1) (b)	Further issue of share capital (ESOP)	<p>Company may issue shares to its employees under a scheme of employees stock option, by passing Special Resolution.</p> <p>For a private limited company, an ordinary resolution for issue of shares under ESOP suffice.</p>	However now as a deemed public company it requires to pass a special resolution.
67	Restrictions on purchase by company or giving of loans by it for purchase of its share	No company can purchase its shares except in terms of this Actor can provide loan, guarantee or security or any financial assistance directly or indirectly to any person for purchase of its own shares or shares of its holding company.	However now as a deemed public company, the provisions of section 67 shall be applicable to it.

		<p>A private company may be exempted from the provisions of section 67 if following 3 conditions are met with.</p> <p>1) In whose share capital no other body corporate has invested any money;</p> <p>2) If the borrowings of such company from banks or FI or anybody corporate is less than twice its paid up share capital or 50 crores, whichever is lower ; and</p> <p>3) there is no default in repayment of such borrowing subsisting.</p>	
73	Prohibition on Acceptance of Deposits from Public	<p>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 RBI, 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.</p> <p>As per of Section 73(2) acceptance of deposit from members by a private company is not required to comply with the conditions of clause (a) to-(e) of Section 73(2).</p>	<p>However now as a deemed public company, the conditions of clause (a) to (e) of Section 73(2) to accept deposits from its members shall be applicable.</p>
92(1) (g)	Annual Return	<p>Every Company shall prepare Annual Return (MGT-7) containing the particulars as they stood on the close of financial year including remuneration of directors and key managerial personnel.</p> <p>In case of Small Private Companies, according to exemption notification dated June 13, 2017, it was allowed to</p>	<p>As a deemed public Company, it has to disclose remuneration drawn by directors and key managerial personnel individually.</p>

		disclose the aggregate remuneration paid to all its Directors.	
92 (1)	Annual Return	In relation to One Person Company, Small Company and Private Company (if such Private Company is a start-up), the Annual Return shall be signed by the Company Secretary, or where there is no Company Secretary by the Directors of the Company.	In case of Deemed public Company (even for start up) the Annual Return is required to be signed by a Director and the Company Secretary or where there is no company Secretary of the Company ,by a Company Secretary in practice.
101 to 107 and 109	Notice of meeting, Statement to be annexed to notice, Quorum for meeting, Chairman of meeting, Proxies, Restrictions on voting rights, Voting by show of hands and Demand of Poll	Section 101 to 107 and 109 shall apply to private company unless otherwise specified in respective sections or the articles of the company provide otherwise.	Provision of Section 101 to 107 and 109 with respect to Notice of general meeting, statement to be annexed with such notice, quorum for general meeting etc will now be applicable to deemed public company even if Article of Association of such Company provides for liberal compliances.
117(3) (g) and 179 (3)	Resolutions and agreements to be filed	Private Company is not required to file Resolutions passed or certain Agreements made detailed as below as per the provisions of section 179 (3) in Form MGT-14 with ROC after the exemption notification dated June 05, 2015 mentioned as under:	A deemed public company is required to comply with the provisions of Section 117 (3) (g) and is also required to file the Resolutions passed or Agreements made as per the provisions of section 179 (3) in Form MGT-14

		<p>(a) to make calls on shareholders in respect of money unpaid on their shares;</p> <p>(b) to authorise buy-back of securities under section 68;</p> <p>(c) to issue securities, including debentures, whether in or outside India;</p> <p>(d) to borrow monies;</p> <p>(e) to invest the funds of the company;</p> <p>(f) to grant loans or give guarantee or provide security in respect of loans;</p> <p>(g) to approve financial statement and the Board's report;</p> <p>(h) to diversify the business of the company;</p> <p>(i) to approve amalgamation, merger or reconstruction;</p> <p>(j) to take over a company or acquire a controlling or substantial stake in another company;</p> <p>(k) any other matter which may be prescribed</p> <p>* After CAA 2017, now the resolutions for section 180 is not required to file with RoC under section 117 as the same is Special Resolution , which otherwise also required to be filed with RoC in Form MGT 14 .</p> <p>The penalty for delay filing and any violation of section 117 is amended under CAA 2017</p>	with ROC.
138	Internal Audit	As per the provisions of section 138 read with Rule 13 (b) of Companies (Accounts) Rule 2014, the following class of companies are required to appoint an Internal Auditor, who shall either be chartered accountant or a cost accountant, or such other professional as may be decided by the Board:	For a deemed public company, for appointment of internal auditors, if it falls under the criteria mentioned for unlisted public company, as per Rule 13 (b) of Companies (Accounts) Rule 2014, will be applicable, as if it is an unlisted public company,

		<p>(a) Every listed company;</p> <p>(b) Every unlisted public company having,</p> <p style="padding-left: 20px;">(i) paid up share capital of Rs.50 crore or more during preceding FY; or (ii) turnover of Rs.200 crore or more during the preceding FY; or (iii) outstanding loans or borrowings from banks or public financial institutions exceeding Rs.100 crore or more at any point of time during the preceding FY; or (iv) outstanding deposits of Rs. 25 crore or more during the preceding FY; and</p> <p>(c) Every private company having,</p> <p style="padding-left: 20px;">(i) turnover of Rs.200 crore or more during the preceding FY; or (ii) outstanding loans or borrowings from banks or public financial institutions exceeding Rs.100 crore or more at any point of time during the preceding FY</p>	
139 (2)	Appointment of Auditor- (Rotation of Auditor)	<p>As per Rule 5 of the Companies (Audit and Auditors) Rules, 2014, No listed company or</p> <p style="padding-left: 20px;">a. unlisted public companies having paid up share capital of Rs 10 crore or more; or</p> <p style="padding-left: 20px;">b. private limited companies having paid up share capital of Rs50 crore or more; or</p> <p style="padding-left: 20px;">c. unlisted company having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public</p>	For a deemed public company, Rotation of Auditors will be applicable if the threshold limits prescribed under Rule 5(a) or (c) of the Companies (Audit and Auditors) Rules, 2014,.

		<p style="text-align: center;">deposits of Rs. 50 crores or more.</p> <p>shall appoint or re-appoint—</p> <p>(i) an individual as auditor for more than One term of five (5) consecutive years; and</p> <p>(ii) an audit firm as auditor for more than Two terms of five (5) consecutive years.</p>	
141 (3) (g)	Eligibility, qualifications and disqualifications of Auditors	<p>A person shall not be eligible for appointment or reappointment as an Auditor of a company, if at the date of such appointment or reappointment, he is Auditor of more than 20 companies.</p> <p>However, as per Notification no. GSR 464(E) dated 5th June 2015, in case of a private Company being one person companies, dormant companies, small companies and private companies having paid-up share capital less than Rs. 100 crore, shall not be counted for above ceiling limit of 20 companies.</p> <p>As per CAA 2017, a person is not eligible to be appointed as an Auditor if he is directly or indirectly, renders any service referred to in section 144 to the company or its holding company or subsidiary company</p>	A deemed public company will be counted for the total number of appointments of Auditors under section 141 (3)(g) of the Act
143 (3) (i)	Powers and Duties of Auditors and Auditing Standards-	<p>The Auditor's Report shall state whether the Company has adequate internal financial controls system in place and the operating effectiveness of such control.</p> <p>Requirement of Internal Financial Controls with reference to financial statement disclosure in Auditor's Report</p>	For a deemed public company, disclosure in Auditor's Report with respect to Internal Financial Controls will be required as per section 143 (3) (i).

		<p>is not applicable to a private company:</p> <ul style="list-style-type: none"> i) which is a one person Company or a small Company; or ii) which has turnover less than Rs.50 Crore as per latest audited financials statement and which has aggregate borrowings from banks/ financial institution/ body corporate at any point of time during the financial year less than Rs.25 Cr. <p>As per CAA 2017, Auditors has right to access to the records of its subsidiaries and associate companies and the auditor is required to disclose in the audit report about internal financial control with reference to financial statement instead of internal financial control system.</p>	
143 (11)	CARO 2016	<p>Reporting under Companies (Auditor's Report) Order 2016 ("CARO 2016") is not applicable to certain class of companies including private company-</p> <ul style="list-style-type: none"> (1) which is not holding or subsidiary company of a public company, and (2) A private company having a paid up capital and reserve and surplus not more than Rs. 1 crore as on the B/S date, and (3) A private company which does not have total borrowing exceeding Rs. 1 crore from any bank and Financial Institution at any point of time during the FY, and (4) A private company which does not have total revenue exceeding Rs. 10 crore during the FY. 	<p>For a deemed public company, the provisions of section 143 (11) relating Reporting under CARO 2016 will be applicable.</p>

149 (1)	Company to have Board of Directors	<p>Second proviso to section 149 (1) read with Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014, requires appointment of atleast one Woman Director in following class of Companies:</p> <ul style="list-style-type: none"> (i) Every listed company; (ii) Every other public company having – <ul style="list-style-type: none"> a) paid-up share capital of Rs. 100 crore or more; or b) turnover of Rs. 300 crore or more. <p>* CAA 2017 has substituted section 149 (3) wrt Resident Director.</p>	For a deemed public company, the provisions relating to appointment of Woman Director will be applicable, if it exceeds the threshold limit of paid up share capital or turnover.
149 (4)	Independent Director	<p>As per Section 149 (4) read with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, Every listed public company and every other public company fulfilling following criteria shall have atleast 1/3rd of the total number of directors as independent directors:</p> <ul style="list-style-type: none"> (i) having paid-up share capital of Rs. 10 Crore or more; or (ii) having turnover of Rs. 100 Crore or more; or (iii) having aggregate outstanding loan, debentures and deposits exceeding Rs. 50 Crore. <p>The CAA 2017 has amended provisions with reference to pecuniary relation of Independent Director with the company.</p>	For a deemed public company, the provisions relating to appointment of Independent Director will be applicable, as if it is a public company and exceeds the threshold limit of paid up capital, turnover and outstanding loans, debentures and deposits.

160	Right of person other than retiring directors to stand for directorship	<p>A person who is not a retiring director shall be eligible for appointment as a director at any general meeting, provided a member nominates him at least 14 days, before the meeting, if a written notice signifying his candidature as a director is left at the Registered Office of the Company along with a sum of Rs 1 Lac or such higher amount as deposit. (Refundable on successful appointment).</p> <p>However, as per exemption notification no. GSR 464(E) dated 5th June 2015 Private company is exempted from requirement of proposal of candidature and depositing Rs. 1 Lacs for such candidature for appointment of a non-retiring director.</p> <p>As per CAA 2017 , requirement of deposit of Rs.1 Lac is not required in case of appointment of an Independent Director or any director recommended by NRC (Nomination and Remuneration Committee) or if there is no NRC, then by the Board of Directors of the Company.</p>	Exemption for a private limited company will not be applicable to a deemed public company and it has to comply with the provisions of section 160 of the Act as if it is a public limited company.
162	Appointment of directors to be voted individually	<p>At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved, unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.</p> <p>However as per exemption notification no. GSR 464 (E) dated June 05, 2015, a private limited company may choose to appoint two or more Directors by a single resolution.</p>	A deemed public company, will loose such exemption which is available to a private limited company and if it requires to appoint any person as director at a general meeting, it shall require resolution separately for each person.

174 (3)	Quorum for the Meeting of Board	<p>Where at any time the number of interested directors exceeds or is equal to 2/3rd of the total strength of the Board , 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.</p> <p>However as per exemption notification no. GSR 464 (E) dated June 13, 2017, in case of a private company , even interested director is counted for the valid quorum , after disclosure of his interest.</p>	A deemed public company, will loose the exemption available to a private limited company and any interested director shall not be counted for quorum of such deemed public company.
177(1)	Audit Committee	<p>As per section 177(1) read with Rule 6 of the Companies (Meetings of Board and its power) Rules, 2014, the Board of Directors of every listed public company and following class of Companies shall constitute an Audit Committee:</p> <p>(i) all public companies having paid up share capital of Rs.10 crore or more, or,</p> <p>(ii) all public companies having turnover of Rs. 100 crore or more, or</p> <p>(iii)all public companies, having in aggregate, outstanding loans, debentures, and deposit exceeding Rs. 50 crore or more.</p> <p>*As per CAA 2017, in section 177 (4) (iv) following proviso has been inserted "Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:</p>	For a deemed public company, the provisions relating to constitution of Audit Committee will be applicable, if the deemed public company exceeds the threshold limits mentioned in Rule 6 of the Companies (Meetings of Board and its power) Rules, 2014.

		<p>Provided also that in case any transaction involving any amount not exceeding Rs.1 Crore is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:</p> <p>Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.</p>	
177 (9) Rule 7	Vigil Mechanism	<p>As per section 177(9) read with Rule 7 of the Companies (Meetings of Board and its power) Rules, 2014, every listed company or following companies, shall establish a vigil mechanism for directors and employees to report genuine concerns or grievances-</p> <ul style="list-style-type: none"> a) Company which accept deposits from the public; b) Companies which have borrowed money from banks and public financial institutions in excess of Rs. 50 crore. 	<p>For a deemed public company, the provisions of Vigil Mechanism will be applicable. If it exceeds the threshold limits prescribed under Rule 7 of the Companies (Meetings of Board and its power) Rules, 2014.</p>

180	Restrictions on power of Boards	<p>The Board of Directors of a company shall exercise following powers only with prior approval of shareholders by Special Resolution:</p> <ol style="list-style-type: none"> a. To sell, lease or dispose-off Undertaking or substantial the whole of Undertaking; b. To invest otherwise in trust securities; c. To borrow money in excess of paid-up capital, free reserve and securities premium; (*CAA 2017 amended section 180 (1) (c) and added securities premium also) d. To give time to director for repayment of debt. <p>However as per Notification no. GSR 464 (E) dated June 13, 2017, in case of a private company, restriction of the powers of the Board as per section 180 is not applicable .</p>	A deemed public company is required to comply with the provision of section 180 and is required to pass special resolution and file it with RoC in Form MGT 14 .
184 (2)	Disclosure of interest by director	<p>Every director , who is interested (directly or indirectly) in any transaction with following parties shall disclose his interest at the meeting and he shall not participate in such meeting.</p> <ol style="list-style-type: none"> a) with body corporate in which Director(s) of the Company or in association with any other director , holds more than 2% shareholding of that body corporate or is a Promoter/ Manager/ CEO of that body corporate ; b) with a firm or other entity in which Director is Partner/ Owner or Member. 	For a deemed public company exemption available to private limited company is not applicable and hence any Directors who is interested in any transaction with his related parties shall not participate in the meeting

		<p>The director is required to submit to the company fresh MBP-1 whenever there is change in his interest ,from the earlier given MBP-1.</p> <p>However as per exemption notification no. GSR 464 (E) dated June 13, 2017, in case of a private company, an interested director can participate in the meeting for such transaction after disclosure of his interest pursuant to section 184.</p> <p>Under CAA 2017, the lower limit of penalty of Rs.50,000/- is removed so now the Directors who fails to comply with the provisions of section 184(1) or (2) shall be punishable with imprisonment for a term of one year or with fine which may extend to Rs. 1 Lac or with both.</p> <p>CAA 2017 has also amended by way of substitution in section 184 (5) (b) of the Act, which reads that exemption of this section is applicable to any contract or arrangement between two companies or body corporate where any of the director singly or together with any other director holds or hold not more than 2% of the paid up share capital in the other company or body corporate</p>	
185	Loan to Directors	<p>As per CA 2013, prior to amendment made under the Companies Amendment act 2017 (CAA 2017), No Company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or given any guarantee or provide any security in connection with any loan taken by-</p>	<p>However as a deemed public company, the provisions of Section 185 was applicable to it.</p> <p>After the CAA 2017, section 185 is completely substituted and is applicable to all companies</p>

		<p>(a) any directors of company, or of a company which its holding company or any partner or relative of such director, or</p> <p>(b) any firm in which any such director or relative is a partner.</p> <p>Private company are exempted from the provisions of section 185 if following three conditions are met by such private limited company.</p> <p>(a) in whose share capital no other body corporate has invested any money;</p> <p>(b) if the borrowing of such company from banks or financial institution or anybody corporate is less than twice of its paid up share capital or Rs.50 crore , whichever is lower; and</p> <p>(c) such a company has no default in repayments of such borrowings subsisting at the time of making transactions.</p> <p>*After the CAA 2017, section 185 is completely substituted and is applicable to all companies</p>	
196 (4)&(5)	Appointment of Managing Director, Whole-time Director or Manager	A MD, WTD or Manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board at their meeting, which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government, in case such appointment is at variance to the conditions specified in part I of Schedule V .	For a deemed public company, such provisions will be applicable as if it is a public company.

		<p>In case of a private company the provisions of Section 196 (4) &(5) shall not apply vide Notification no. GSR 464 (E) dated 5th June 2015.</p> <p>CAA 2017 has amended Section 149(3) by inserting second proviso which reads that any person who has attained the age of 70 years may be appointed as managing director or whole time director or manager, if the special resolution for his appointment or reappointment is not passed but the votes cast in favour of the motion exceed the votes, cast against the motion and an application is made by Board to Central Government (CG) mentioning that the appointment of such person is most beneficial to the company, and if CG is satisfied , then such person can be appointed as managing director or whole time director or manager .</p>	
203	Appointment of Key Managerial Personnel	<p>As per Section 203 read with Rule 8 and 8A of the Companies (Appointment and Remuneration of Managerial Person) Rules , 2014 following class of companies are required to appoint Key Managerial Personals:</p> <p><u>Rule (8) Appointment of KMP:</u> Every listed Company and every other public company having a paid-up share capital of Rs. 10 crore or more.</p> <p><u>Rule (8A) Appointment of Company Secretaries (CS) in Companies not cover under rule 8:</u> A company other than a company covered under rule 8, which has a paid up share capital of Rs. 5 crore or more shall have a whole-time Company Secretary .</p>	For a deemed public company, the provisions relating to appointment of KMP will be applicable as if it is a public company and if the threshold limit provided under Rule 8 and 8A of the Companies (Appointment and Remuneration of Managerial Person) Rules, 2014 .

		Key Managerial Personals includes (i) Managing Director, or Chief Executive Officer or manager and in their absence, a whole-time director; (ii) Company Secretary; and (iii) Chief Financial Officer	
204 read with rule 9	Secretarial Audit for Bigger Companies	As per Section 204 read with Rule 9 of the Companies (Appointment and Remuneration of Managerial Person) Rules 2014, the following companies shall have Secretarial Audit Report, given by a Practising Company Secretary, annexed with the Board's Report under Section 134 (3) in Form MR-3 . (1) Every listed company or (2) Every public company having - i) paid-up share capital of Rs. 50 crore or more; or ii) a turnover of Rs. 250 crore or more.	As a deemed public company, the provisions of Secretarial Audit will be applicable, as if it is a public company, if it exceeds the threshold limit mentioned in Rule 9 of the Companies (Appointment and Remuneration of Managerial Person) Rules 2014.

➤ **ACTION UPON BECOMING A DEEMED PUBLIC COMPANY:**

Immediately on becoming a deemed public company, following actions are required to be taken by such company :



1. The company can retain in its name "Private Limited" and can also retain its Articles of Association as it is, although all the provisions of the Act which is applicable to public company shall be applicable to such deemed public company.
2. It is required to increase the number of Directors to minimum three (3).
3. It is required to ensure all provisions of formation of any committee if it meets with the criteria.
4. It is also required to check related parties as per definition of section 2 (76) of the Act, as now the exemptions to a private limited company is not available to such deemed public company.
5. It shall not without sufficient cause refuse to register the transfer of securities within a period of 30 days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of 60 days of such refusal or where no intimation has been received from the

- company, within 90 days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.
6. Ensure retirement of Directors provisions under section 152 of the Act.
 7. Inform its Directors about the status of the company as deemed public company so that as per section 165 he should count the company directorship as public company for counting minimum 20 companies .
 8. As per section 197 the overall remuneration should not exceed 11% of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits: Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V.
 9. Interested Directors can not participate or vote in the Board meeting.
 10. Appointment of any managerial personnel shall be subject to the approval of Shareholders.
 11. Any notice for proposing candidature of any person to be appointed as Director (who is not a retiring director) to be given by him or any member along with a cheque of Rs.1 Lac .
 12. Auditors shall be liable to retire by rotation.
 13. It cannot take loan from relatives of its Director and if it takes it will be considered as Deposits, for which it has to comply with the provision of section 73.
 14. The Offer Letter for Right Issue of shares to be sent before minimum 3 days from the date of opening of issue and to keep the same open for minimum 15 to maximum 30 days.

***Disclaimer :** This legal update is not intended to be any form of solicitation or advertising. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate thereafter. No person should act on such information without appropriate professional advice based on the circumstances of a particular situation. This update is intended for sharing of knowledge purpose only.*

**Amita Desai & Co.
Company Secretaries**

Mumbai Off:

1005, Solaris Hubtown ,
Off Western Express Highway
East End of Andheri Flyover,
Andheri (East), Mumbai-400 069, India

Landline: + 91-22-2684-5920/21
Fax: + 91-22-6678-7499
Mobile : + 91-982-017-7691