



**Exemptions to Private Companies & Section 8 Companies**  
June 2017

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## PART A – Exemptions to Private Limited Companies

Central Government is empowered under Section 462 of Companies Act, 2013 (“the Act”) to make suitable and appropriate amendments to the Act. Central Government has accordingly amended the earlier MCA Notification No. G.S.R. 464(E) dated the 5th June, 2015 through a new Notification No. G.S.R. 583(E) dated 13th June 2017 to provide further exemption for private limited companies. However, it is important to note that these exemptions are not applicable to a private company which is a subsidiary of a public company, as such a company would be deemed to be a public company by virtue of the definition provided in Section 2(71) of the Act.

### Gist of Exemptions provided in June 2015

- Section 2(76) (viii), regarding related party shall not apply to a private company and therefore relaxation had been provided with respect to Section 188 related compliances.
- A Private Company may accept from its members deposits up to 100% of aggregate of the paid-up share capital and free reserves without fulfilling conditions (a) to (e) of Section 73(2) of the Act.
- A Private Company can provide loans to directors, upon satisfaction of certain conditions.
- Requirement of Filing Board Resolutions passed under Section 179(3) is dispensed off.
- Interested Director can participate in Board Meetings.
- Employees Stock Option Scheme could be passed by ordinary resolution instead of special resolution.
- Section 180, in regard to restriction on Board Powers is not applicable to Private Limited Company.
- Article of Association of Private Limited Company prevails over certain provisions of the Act.
- Procedural norms for nominating person for Directorship liberalized
- Appointment of Directors by a single resolution allowed.
- Limit of 20 audits by an Auditor will not be applicable for One Person Company, Dormant Company, Small Company and Private Limited Company having paid up Share Capital of less than INR 100 Crore
- Flexible Appointment and Remuneration for Managing Director, Whole Time Director and Manager.
- Section 43 and Section 47 regarding kinds of share capital is not applicable to the Private Limited Company.

### Gist of Exemptions provided in June 2017

Following exemptions have been provided to a Private Limited Company being a start-up and Dormant Company, One Person Company and Small Company:

- No requirement to prepare cash flow statement.
- In the earlier notification dated 5th June 2015, certain exemptions from the deposit rules had been provided. Further to that notification, additional exemptions have been granted towards acceptance of deposits by Private Company, upon satisfaction of any of the following conditions:

## Exemptions to Private Companies & Section 8 Companies

- Accepts monies from its members, not exceeding 100% of aggregate paid up capital, free reserve and securities premium.
- Is a Start-up Company for 5 years from date of incorporation.
- Fulfils the following conditions:
  - Not an associate or subsidiary company of any other company
  - Borrowings from Banks and Financial Institutions or any body corporate is less than twice of paid up capital or INR 50 Crores, whichever is lower
  - Not defaulted in repayment of such borrowings as on date of acceptance of deposit.
- Every Private Company which is Small Company shall prepare the annual return containing the particulars of aggregate remuneration drawn by directors.
- 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 director of the company.
- Reporting on Adequacy of Internal Financial Controls System in audit report shall not apply to Private Company:
  - Which is a One-Person Company or small company; or
  - Which has turnover of less than INR 50 Crores as per latest audited financial statement; or
  - Which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year of less than INR 25 Crores.
- If the One Person Company, Small Company, Dormant Company or a Private Company (if such private company is a start-up) conducts the meeting of Board of Directors once in every half year and there is gap of not less than 90 days in both meetings, the said companies shall be deemed to have complied with the provisions of Companies Act, 2013.
- It further provides that an interested director may also be counted for the purpose of quorum in such meeting after disclosure of his interest pursuant to section 184

The above stated exemptions will be applicable to such companies which have not defaulted in filing its Financial Statements or Annual Return under Section 137 and Section 92 of the Act respectively.

### PART B – Exemptions to Section 8 Companies

Under the Companies Act, 1956, Companies registered under Section 25 (Section 8 of Companies Act, 2013), have been provided certain exemptions from the provisions of the Act. These Companies are incorporated for charity and not to earn profit. Companies Act, 2013, withdrew the exemptions provided to such companies. However, Central Government had provided certain exemptions vide Notification No. G.S.R.466 (E) dated 5th June 2015, with amendments to the said notification vide Notification No. G.S.R. 584 (E) dated 13th June 2017.

#### Gist of Exemptions

- Any person can be appointed as Company Secretary even if it does not fall within the meaning of Company Secretary under Section 2(24) of the Companies Act 2013.
- The requirement of minimum paid up capital has been withdrawn
- Shareholders can exercise the power to call AGM. The time, date and place of AGM can be decided by Shareholders.
- General Meetings can now be conducted with notice of 14 clear days instead of 21 days as prescribed earlier.
- Recording of minutes of General Meetings, Board Meeting and other resolutions has been withdrawn. However, the minutes of meetings may be recorded within 30 days of conclusion of the meeting in cases where the company's articles provide for confirmation by way of circulation of minutes.
- Consequent to amendment in Section 101(1) for AGM, a Section 8 company can send a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting to its members not less than 14 before the date of the meeting.
- Minimum of 3 directors in case of Public Limited Company and 2 Directors in Private Company and 1 in case of One Person Company is prescribed currently. The maximum limit of 15 directors and appointment of more than 15 directors by passing special resolution has been withdrawn.
- Conditions requiring and governing appointment of independent directors have also been waived.
- Consequent to the relief granted whereby requirement of appointment of independent directors has been done away with, the requirement of audit committee to have majority as independent directors is also removed
- If the Articles of the company provide for the election of directors by way of Ballot, then the entire provisions of Section 160 will not be applicable. In other cases, Section 160 will continue to apply.
- The bar on taking up directorship in more than 20 companies has been relaxed.
- The requirement of holding first meeting within 30 days of incorporation is no longer required. A meeting of the directors is still required to be conducted once every 6 months.
- The quorum requirement for Board meetings shall be either 8 members or 25% of total strength whichever is less. However, the quorum shall not be less than 2 members.
- Requirement of constitution of nomination and remuneration committee and related compliances under Section 178 has been removed.

- The Board has been empowered by way of modification of Section 179 to take decisions pertaining to borrowing, investments and granting of loans and advances by way of circulation as compared to making such decisions by calling a meeting of the Board.
- The Director of a Section 8 company, being an interested director, is required to disclose his interest in a transaction, arrangement or contract and abstain from participating in the relevant Board Meeting only if the value of such transaction exceeds INR 1 Lakh.
- Consequent to amendment in Section 184(2), compliance requirement relating to this section also has been amended. The details to be entered in the register arise only in case of interested contract or arrangement where the value of transaction exceeds INR 1 Lakh.
- Section 8 Company can provide loans for funding Industrial Research and Development Projects in furtherance of its objects, at rate of interest lower than the prevailing yield of one year, 5 year or 10 year Government Security. The condition for such grant/ loan is that the 26% of Share Capital of Section 8 Company is held by Central Government or one or more State Government or both.

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