



Inside this edition

- Exemptions to Private Companies under Companies Act, 2013
- Exemptions to Government Companies under Companies Act, 2013
- Exemption to section 8 Companies under Companies Act, 2013

& more...

Exemptions to Companies under Companies Act, 2013



Ministry of Corporate Affairs ('MCA') has issued four notifications, all dated 05 June 2015, and thereby granted several exemptions to Private companies, Section 8 Companies, Government Companies and Nidhis. These notifications are issued under section 462 of the Companies Act, 2013 ('the Act').

Exemptions to Private Companies

Following are the exemptions, modifications made to provisions related to Private Companies:

- **Non applicability of Section 2(76)(viii) to Related Party Transactions under sec 188**

Section 2(76)(viii) states that "Related Party, with reference to Company, means any Company which is- (a) a Holding, Subsidiary or an Associate Company of such Company; or (b) a Subsidiary of the Holding Company to which it is also a Subsidiary."

As per the notification the above clause will not be applicable to Related Party Transactions for the purpose of Section 188.

- **Provisions of Section 43 and 47 not to apply if mentioned in memorandum and articles**

Section 43 deals with kinds of Share Capital and Section 47 deals with Voting Rights.

As per the notification provisions of section 43 and 47 related to kinds of share capital and voting rights, the memorandum and article will prevail over the sections.

- **Relaxation on period of notice under Section 62(1)(a)(i) and 62(2)**

As per the earlier provision "the offer for Right issue of shares shall be open for minimum 15 days not exceeding 30 days and the notice shall be dispatched before 3 days of the open date of issue." The period can now be relaxed if 90% of the members of the private company have given their consents in writing or in electronic mode.

- **Ordinary resolution under Section 62(1)(b) for issue of shares under Employee's Stock Option**

As per the earlier provision, special resolution was required to be passed by the company for further issue of shares to employees under a scheme of Employee's Stock Option. The same has been substituted with ordinary resolution.

- **Section 67**

Section 67 of the Act deals with Restrictions on purchase by Company or giving of loans by it for purchase of its shares. As per MCA's notification this Section shall not apply to Private Companies:-

- (i) in whose share capital no other body corporate has invested any money;
- (ii) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice its paid up share capital or fifty crore rupees, whichever is lower; and

(iii) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.

- **Section 73(2)- Clauses (a) to (e)**

The Section 73 deals with the prohibition on acceptance of deposits from public. The Clauses (a) to (e) of Section 73(2) shall not apply to a private company which accepts from its members monies not exceeding one hundred percent of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.

- **Section 101 to 107 and 109**

Section 101 to 107 and 109 deals with the notice and general meetings of the company.

As per the MCA notification the provisions of Section 101 to 107 and Section 109 shall apply unless otherwise specified in respective sections of the article of the Company.

- **Section 117(3)(g)**

Earlier as per the requirement Section 117(3)(g) of the Act, copy of board resolutions for certain resolutions passed were required to be filed with ROC in Form MGT 14.

As per the MCA notification now such resolutions mentioned in sec 117(3) are not required to be filed with ROC.

- **Section 141(3)(g)**

Earlier the provisions of Section 141(3)(g) of the Companies Act, 2013 restricted the number of audits to twenty companies. As per the amendment the following shall not be covered in the limit of 20 companies:

- (i) One person companies
- (ii) Dormant companies
- (iii) Small companies
- (iv) Private companies having paid up capital of less than Rs 100 crores

- **Section 160**

Private companies have been exempted vide this notification, from the applicability of Section 160 related to “Right of persons other than retiring Directors to stand for Directorship.

- **Section 162**

Section 162 which deals with Appointment of Directors to be voted individually, has been excluded from applicability to private companies.

- **Section 180**

Section 180 deals with restrictions on powers of Board.

As per the MCA notification provisions of the section shall not apply to the Private Companies. Therefore, now there is no need to pass “Special Resolution” for the purposes of passing of Resolution mentioned under Section 180.



- **Section 184(2)**

As per the provisions of Section 184 (2), the interested directors of private company may now participate in such meeting of the Board after disclosure of his interest, wherein contract or arrangement or proposed contract or arrangement entered into or to be entered into is discussed.

- **Section 185**

Section 185 as per the Act deals with the Loan to Directors.

As per the notification section 185 for loan to Directors shall not apply to the following Private Companies:-

- i) In whose share capital no other body corporate has invested any money; and
- ii) If the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and
- iii) Such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.

- **Section 188(1)**

As per the MCA notification Restriction on Voting Right In General Meeting vide second proviso to sec 188(1) in the case of related party transaction is now not applicable to private companies. Thus, now even if, member is related then also he can vote on such resolution required to be pass u/s 188 in GM.

- **Section 196(4) and Section 196(5)**

Section 196 deals with Appointment of Managing director, Director, Whole- Time Director or Manager.

As per the MCA notification, now there is no need to Pass Resolution in General Meeting for approval of appointment of Managerial Personnel. Managerial Personnel can be appointed in Private Limited Company without following:

1. Shareholder's Ratification in not required.
2. Schedule V not applicable.
3. MR-1 not required to be filed
4. T&C of appointment, remuneration not mandatory to be mentioned in resolution.

Exemptions to Government Companies

- As per the amendment the clause (a) of section 4(1) states that the memorandum of a Company shall state the name of the Company with the last word "Limited".
- The conditions specified in section 56 which deals with transfer and transmission of securities with respect to stamping and execution of Govt. bonds is no longer applicable to a Government Company.
- As per section 89, no declaration form is required to be filed in respect of beneficial interest held in shares of a Government Companies.
- As per section 90, no need to appoint competent person to investigate beneficial ownership for Government Companies.



- As per the modification made in section 96, Government Companies can hold Annual General Meeting with Central Government approval outside the city, village where the registered office of the Company is situated.
- Section 123 deals with declaration of dividend. Following are the modifications made to said section:
 - (a) Section 123(1) shall not apply to 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) Exemption provided under section 123(4) states that the Government Companies in which entire share capital is held by the Central Government or any State Government and one or more State Government shall need not deposit amount of deposit amount of dividend including interim dividend in a separate scheduled bank account within 5 days of declaration of such deposit.
- Central Government has exempted the requirement of section 129 i.e. financial statement to the extent of application of AS-17 (Segment Reporting) to the Companies engaged in defence production.
- Board of Directors of Government Company shall not be required to submit a report on Co.'s policy on directors appointment and remuneration including criteria for



determining qualification, positive attributes, independence of director and other matters at its AGM.

- If the directors are evaluated by Ministry or department of Central Government which is administratively in charge of the Company or by the State Government as per its own evaluation methodology, the provisions of section 134(3)(p) of CA 2013 shall not be applicable.
- Section 149(1)(b) has been omitted. Now the Government Company can appoint more than 15 directors without passing special resolution.
- As per the modification made to section 149(6)(a), to be qualified as an Independent Director the director must be opined by the “Ministry or Department of Central Government/State Government which is administratively in charge of the Company” that he is a person of integrity and possess relevant expertise and experience.
- As per the modification made to section 149(6), a director can be appointed as an independent director even if he has pecuniary relationship with such companies, its holding, subsidiary or associate company, or their promoters or directors.
- As per the modification made to section 152(5), if appointment of a director is made by the Central Government the consent of director can be filed beyond 30 days and no such explanatory statement need to be attached with such appointment.
- The provisions of section 152(6) and 152(7) related to period of office of rotational director and provision for retirement is no longer applicable to (a) Government Companies 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.

- As per the exemption, the provision of section 160 of sending 14 days prior notice along with depositing money of Rs. 1 lac etc are not required for application of fresh candidature as director to Government Company in which entire paid up share capital held by Central Government/State Government or Central Government and one or more State Government or a wholly owned subsidiary of Government Company.
- As per the exemption to the section 162, the requirement of single resolution for appointment of each director or where more than one directors are appointed by single resolution without a vote against such motion is not required for application of fresh candidature as director to Government Company in which entire paid up share capital held by Central Government/State Government or Central Government and one or more State Government or a wholly owned subsidiary of Government Company.
- As per exemption to section 163 Government Company in which entire paid up share capital held by Central Government/State Government or Central Government and one or more State Government or a wholly owned subsidiary of Government Company shall not required to appoint directors through principle of proportional representation.
- The provision of section 164(2) related to disqualification for appointment of director shall not apply to Government Company.
- Provisions of section 170 and section 171 shall not apply Government Company in which entire paid up share capital held by Central

Government/State Government or Central Government and one or more State Government. They are not required to keep at its registered office a register containing details of securities held by its directors and key managerial personnel in the company or its holding, subsidiary, fellow subsidiaries or associates companies.

- As per the modification made to section 177(4) clause (i), now the Audit Committee of Government Companies will only recommend remuneration of auditors and will define the terms of their appointment.
- As per the modification made to section 178 subsection (2), (3) & (4) power of Nomination and Remuneration Committee is now restricted only to appointment of senior management personnel and other employee.
- As per the modification made to section 185, Government Companies can now give loan to its directors and person in whom such director is interested and can give guarantee or provide security in respect of loan taken by such person with prior approval of Ministry or Department of Central Government which is administratively in charge of Company or State Government as the case may be.
- As per the modification made to section 186, Government Companies engaged in defence production and Government Companies other than listed companies can give any amount of loan or guarantee or security to any person or body corporate and can acquire securities of any other body corporate if



such company obtains prior approval of Ministry or Department of Central Government which is administratively in charge of Company or State Government as the case may be.

- The first and second proviso to subsection (1) of section 188 Shall not apply to –
 - (a) Government company in respect of contracts or arrangements entered into by it with any other Government Company;
 - (b) Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.
- As per the exemption, provisions related to section 196 subsection (2), (3) &(5) shall not apply to Government Companies.
 - (a) Government Company can appoint or reappoint a whole time director or managing director or manager for a term exceeding 5 years at a time;
 - (b) Also approval of Board and shareholders at next AGM for terms and condition of appointment, remuneration is no longer required.
- The provisions of section 197 shall not apply to Government Companies. Thus, Government Companies can give any amount of remuneration to its directors even if there is loss or inadequate profit.



- The provision of sub section (1), (2), (3) & (4) of section 203 will not apply to Managing Director or Chief Executive officer or Manager and in their absence a Whole Time Director of Government Company.
- As per the modification made to section 439(2), Court will take cognizance of offence which is alleged to have been committed by a company or any other officer thereof if complaint is made in writing by a person authorized by Central Government.

Exemptions to Section 8 Companies under Companies Act, 2013

- Section 2(24) which defines Company Secretary, is now not applicable to section 8 Company.
- The requirement of minimum paid up capital is now not applicable to section 8 Company.
- In section 96(2) after the proviso an additional provision is inserted which states that the Board of Directors may decide time, day and place of AGM before hand if they are directed in General Meeting.
- The provisions of section 101(1) in respect of notice for general meeting have been modified to enable such companies to save time and resources in sending notices. The notice for general meeting and financial statements may be circulated at notice of 14 days instead of 21 days.
- The provisions of section 118 in respect of minutes of meeting shall not apply to such companies except that minutes may be recorded within thirty days of the conclusion of every meeting in case of companies where the articles of association provide for confirmation of minutes by circulation.

- The provisions of section 136(1) in respect of right of member to copies of audited financial statements have been modified. Now the documents referred to in section 136(1) i.e. copy of financial statements, auditors report etc. may be sent to members not less than fourteen days before the date of general meeting instead of twenty one days.
- The requirement related to number of directors and permission of shareholders for having director beyond 15 shall not apply.
- The provisions in respect of appointment of independent directors (IDs) and Nomination and Remuneration Committee will not be applicable to such companies.
- The provisions of section 150 in respect of manner of selection of independent directors and maintenance of databank of independent directors shall not apply.
- As per the provisions of section 152(5) the requirement related to justification in explanatory statement for appointment of independent director shall not apply.
- The provisions of section 160 in respect of right of persons other than retiring directors to stand for directorship shall not apply to companies whose articles provide for election of directors by ballot.
- Section 165 deals with number of directorships, As per modification in subsection (1) section 8 companies shall not be counted for the purpose of counting the directorships.
- As per the modification under the provisions of section 173(1), Section 8 companies are allowed to hold board meetings once in six months instead of four meetings in a year, as prescribed for other companies.

- The provisions of section 174(1) in respect of quorum of meeting of Board have been modified to enable such companies to the extent that the quorum for the board meeting shall be either eight members or $\frac{1}{4}$ th of its total strength whichever is less provided the quorum shall not be less than two members in any case.
- As per the modified provisions of section 177(2), the audit committees of such companies need not have Independent Directors.
- As per the modified provisions of section 179 following matter i.e. to borrow monies, to invest funds of the company, to grant loan or give guarantee or provide security in respect of loans, may be decided by the board by circulation instead of at a meeting.
- As per the modified provisions of section 184(2) in respect of disclosure of directors interest shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of contracts and arrangement exceed one lakh rupees.
- As per the modified provisions of section 189 in respect of register of contacts or arrangements in which directors are interested, shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of contracts and arrangement exceed one lakh rupees.

Exemptions to Nidhis under Companies Act, 2013

- In case of Nidhis, provisions relating to serving of documents to members and payment of dividend have been modified



to provide more flexibility to such companies.

- Provisions relating to private placement have been partially relaxed for such companies.
- These companies have also been exempted from the requirements of section 62 which relates to further issue of share capital.
- The notice amount of Rs. 1 lakh provided under section 160 has been reduced to Rs. 10,000 for these companies.
- Provisions of section 185 in respect of loans to directors have been relaxed for these companies with the condition that loan is given to a director or his relative in his capacity as member and the disclosure is made in the accounts.

VERENDRA KALRA & CO

CHARTERED ACCOUNTANTS

CONTACT DETAILS:

Head Office

75/7 Rajpur Road, Dehradun

T +91.135.2743283, 2747084, 2742026

F +91.135.2740186

E info@vkalra.com

W www.vkalra.com

Branch Office

80/28 Malviya Nagar, New Delhi

E info@vkalra.com

W www.vkalra.com

For any further assistance contact our team at

kmt@vkalra.com

© 2015 Verendra Kalra & Co. All rights reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not a substitute for detailed research or the exercise of professional judgment. Neither VKC nor any member can accept any responsibility for loss occasioned to any person acting or refraining from actions as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

