

Relaxations/ exemptions to Private Limited Companies

Background

The Ministry of Corporate affairs has, vide notification dated 13 June 2017, partially amended the notification dated 5th June 2015 providing certain relaxations/exemptions to private limited companies. Our earlier alert dated June 2015 related to relaxations/exemptions available to Private Limited Companies is included as Annexure 1 to this article.

Summary of relaxations/exemptions

Particulars	Before Relaxation/ exemption	After Relaxation/ exemption provided on 13 June 2017
Financial Statements	Cash flow statement was not required for One person company (OPC), small company (private company with share capital of less than Rs. 50 lakhs and turnover of less than 2 crores) and dormant company.	Apart from the given categories, exemption is now additionally given to a private company which is a start up company as per notification issued by the DIPP (hereinafter referred to as start up company)
Acceptance of Deposits from its members	<p>Amount received from members (other than directors) was treated as deposit and the company receiving the same was required to satisfy the following conditions:</p> <ul style="list-style-type: none"> • Issue a circular with financial position, credit rating, number of depositors and the amount due towards previous deposits • File a copy of such circular with ROC within 30 days before the date of issue • Deposit an amount not less than 15% of deposits maturing in the current year and the next year in deposit repayment reserve account • Provide deposit insurance and • Certify that the Company has not defaulted in repayment of deposits. • Providing security, if any for the due repayment of the amount of deposit or interest thereon. In case where it is not secured or partially secured, then the same shall be termed as unsecured deposit and shall be so quoted in every circular, form, advertisement or any other document related to invitation or acceptance of deposits. 	<p>The said requirements shall not apply to:-</p> <ol style="list-style-type: none"> a) a Private Company accepting money from members up to 100 percent of the paid up share capital , free reserves <i>and securities premium</i> (or) b) a Private Company which is start-up for 5 years from the date of its incorporation (or) c) a Private Company which satisfies all the following conditions:- (i) which is not an associate or subsidiary of any other company, (ii) if the borrowings from Banks/FI's or any body corporate is less than twice of its paid up share capital or Rs. 50 crores whichever is less, (iii) has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits <p>Details of monies received should be filed with the RoC in the prescribed form. (Italics indicate the amendment made on 13 June 2017, other exemptions were provided on 5 June 2015)</p>

Particulars	Before Relaxation/ exemption	After Relaxation/ exemption provided on 13 June 2017
Remuneration to Directors and KMP	All companies where required to disclose the remuneration drawn by each director and key managerial personnel as part of the annual return in Form MGT-7.	Small companies can disclose the aggregate amount of remuneration drawn by directors.
Signing of Annual return , i.e Form MGT-7	OPC and small companies were required to get the annual return signed by Company secretary or by the director if there is no company secretary (All other companies are required to get it signed by director and company secretary/company secretary in practice)	This exemption has now been extended to private company which is a startup company.
Reporting on ICFR by Auditors	The auditors of all companies where required to report on the adequacy and operating effectiveness of internal financial controls over financial reporting (ICFR).	The auditors of OPC or small company or a private company with turnover of less than 50 crores and which has aggregate borrowings from Banks/FIs or any body corporate amounting to less than Rs. 25 crores are not required to report on adequacy and operating effectiveness of ICFR
Meeting of Board of Directors	OPC, small company and dormant companies were given the relaxation of only one board meeting in each half of a calendar year with the gap between two meetings being not less than 90 days (All other companies are required to have a minimum of 4 Board meetings every year with a gap of not more than 120 days between two meetings).	The said exemption has now been extended to a private company which is a start up company,
Quorum for meeting of Board of Directors	Only non-interested directors shall be counted for the purpose of quorum which shall not be less than two.	Private Limited Companies would be eligible to count even interested directors (after the disclosure of his interest under Section 184) for the purpose of quorum

All the exemptions/relaxations/modifications/adaptations, i.e the ones emanating from the notification dated 5 June 2015 as well as 13 June 2017, shall be applicable to a private company which has not defaulted in filing its financial statements/annual return with the Registrar of Companies ('RoC').

M2K Remarks

The move to provide additional exemptions to private companies including specific exemptions to start-up companies will provide additional relief to such companies from the burden of compliances under Companies' Act and is in line with the efforts of the government towards implementing sustainable steps towards ease of doing business.

Annexure 1 – Exemptions / exceptions/ relaxation of certain corporate law provisions to Private Limited Companies (2015)

Background:

Earlier, certain provisions of the Companies Act, 2013 such as acceptance of deposits from its members, Loan to Directors, remuneration to Managing Director, Whole Time Director etc., approval of board of directors/ shareholders for related party transactions were also applicable to Private Limited Companies. This has resulted in significant difficulties and compliance to the Private Limited Companies.

Recently, the Ministry of Corporate Affairs ('MCA'), vide notification dated 05.06.2015 has relaxed certain provisions of the Companies Act, 2013 to the **Private Limited Companies**. We have summarized below the same.

Particulars	Before Relaxation/ exemption	After Relaxation/ exemption
Definition of Related party and Related Party Transactions	<p>Related Party includes any company which is a holding, subsidiary or an associate company of a company or a subsidiary of a holding company to which it is also a subsidiary.</p> <p>Transaction with aforesaid parties required prior consent of the Board of Directors and also prior approval of the shareholders by a special resolution if the transaction exceeded the prescribed limit.</p> <p>Further, in case of related party transaction, the member who is related shall not vote on such resolution to approve any contract or arrangement which may be entered by the company.</p>	<p>Holding, subsidiary or an associate company of a company or a subsidiary of a holding company to which it is also a subsidiary (fellow subsidiary) shall not be considered as a Related Party for the purposes of section 188. Therefore, any transaction between the above parties would not be regarded as related party transaction and consequently such transaction will not require prior approval of the board of directors or the shareholders.</p> <p>Voting by member who is related is permitted to vote on special resolution to approve any contract or arrangement which may be entered by the company.</p> <p>However, where there is a common director between the aforesaid companies or where the director is also a member in subsidiary or associate company in addition to holding company, then the said companies may be regarded as related party and the aforesaid relaxation may not apply. To await for additional clarification from the MCA.</p>
Acceptance of Deposits from its members	<p>Amount received from members (other than directors) was treated as deposit and the company receiving the same was required to satisfy the following conditions:</p> <p>Issue a circular with financial position, credit rating , number of depositors and the amount due towards previous deposits</p>	<p>Private Limited Company accepting money from members up to 100 percent of the paid up share capital and free reserves is required to satisfy the following conditions only:</p> <p>Details of monies received should be filed with the Registrar in the prescribed form.</p>

Particulars	Before Relaxation/ exemption	After Relaxation/ exemption
	<p>File a copy of such circular with ROC within 30 days before the date of issue</p> <p>Deposit an amount not less than 15% of deposits maturing in the current year and the next year in deposit repayment reserve account</p> <p>Provide deposit insurance and</p> <p>Certify that the Company has not defaulted in repayment of deposits.</p> <p>Providing security, if any for the due repayment of the amount of deposit or interest thereon. In case where it is not secured or partially secured, then the same shall be termed as unsecured deposit and shall be so quoted in every circular, form, advertisement or any other document related to invitation or acceptance of deposits.</p>	<p>Providing security, if any for the due repayment of the amount of deposit or interest thereon. In case where it is not secured or partially secured, then the same shall be termed as unsecured deposit and shall be so quoted in every circular, form, advertisement or any other document related to invitation or acceptance of deposits.</p>
<p>Filing of MGT 14 for the board meeting</p>	<p>By virtue of section 179(3), the board resolution for the following transactions was also required to be filed with the ROC in Form MGT-14 within 30 days.</p> <p>To make calls on shareholders in respect of money unpaid on their shares;</p> <p>To authorize buy-back of securities under section 68;</p> <p>To issue securities, including debentures, whether in or outside India;</p> <p>To borrow monies;</p> <p>To invest the funds of the company;</p> <p>To grant loans or give guarantee or provide security in respect of loans;</p> <p>To approve financial statement and the Board's report;</p> <p>To diversify the business of the company;</p> <p>To approve amalgamation, merger or reconstruction;</p> <p>To take over a company or acquire a controlling or substantial stake in another company;</p> <p>Any other matter which may be prescribed</p>	<p>Section 179(3) shall no longer be applicable to private limited company and therefore MGT 14 is required to be filed for limited purposes only and is not required to be filed in respect of the aforesaid transactions.</p>
<p>Ceiling limit for undertaking audit assignments</p>	<p>An auditor has a ceiling limit for appointment or reappointment as auditor for twenty companies. While considering the said ceiling limit, even private limited companies were required to be counted.</p>	<p>The said ceiling limit for auditors has been relaxed to exclude one person companies, dormant companies, small companies and private companies having paid-up share capital of less than one hundred crore rupees.</p>

Particulars	Before Relaxation/ exemption	After Relaxation/ exemption
Right of persons other than retiring directors to stand for directorship and appointment of directors to be voted individually	Private Limited companies were also required to comply with the provisions of section 160 and 162 for appointment of directors other than retiring directors and voting of the directors individually.	Such Provisions are no longer applicable to Private Limited Companies.
Restrictions on powers of Board	The Board of director can exercise powers such as to sell, lease or dispose undertaking (whole or in part) or to invest otherwise in trust securities or to borrow money in case where the amount borrowed and to be borrowed exceeds the aggregate of its paid up capital and free reserves only with the approval of shareholders by special resolution.	The Board of directors can exercise the aforesaid power without the approval of the shareholder by special resolution unless explicitly provided in the articles of association.
Disclosure of interest by director	Every director of a company who is directly or indirectly concerned or interested in a contract or arrangement shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.	The provision is relaxed to the extent that said interested director may participate in such meeting after disclosure of his interest.
Loan to directors or any person in whom the director is interested [Section 185]	Companies are restricted to grant any loan or advance to any of the directors or to any other person in whom the director is interested or provide guarantee or security to aforementioned person.	The said restriction is relaxed to private limited companies subject to satisfaction of the following: No body corporate is a shareholder The borrowing of the company from bank/ financial institutions & body corporate should be less than 2 times of paid up share capital or Rupees 50 Crores (whichever is lower) The company should not have defaulted in repayment of debt at the time of making transaction under this provision
Appointment and remuneration of Managing Director, Whole Time Director and Manager	The terms and conditions for appointment and remuneration was required to be approved by the Board of Directors and by the shareholder at the next annual general meeting, and by the Central Government in case where the appointment is at variance to the conditions specified in Schedule V.	The aforesaid provision is no longer applicable to Private Limited Companies.

Particulars	Before Relaxation/ exemption	After Relaxation/ exemption
Further issue of share capital through rights issue	Companies proposing to increase its Share Capital by the issue of further shares were required to send a notice specifying the number of shares offered and such offer were required to be made at least not less than fifteen days and not exceeding thirty days.	Pursuant to the amendment, the private limited company can have lesser time period for the offer provided <u>ninety per cent of the members</u> have given their consent in writing or in electronic mode.
Employees Stock Option Schemes ('ESOP')	Companies proposing to issue shares to employees under ESOP scheme were required to obtain shareholder approval with a <u>special resolution</u> .	<u>Ordinary Resolution</u> is sufficient for issuing shares to employees under ESOP scheme.
Restriction on buy back of shares / giving loans for purchase of its shares.	Section 67 of the Companies Act, 2013 provides restriction on all companies to purchase its own shares and granting of loan to any person for purchasing its shares.	The aforesaid provision is not applicable to Private Limited Company which are satisfying the following conditions: No body corporate is a shareholder The borrowing of the company from bank/ financial institutions & body corporate should be less than 2 times of paid up share capital or Rupees 50 Crores (whichever is lower) The company should not have defaulted in repayment of debt subsisting at the time of making transaction under this provision
Meetings, Voting Rights, Demand for Poll	Section 101 to 107 and section 109 lays down the conditions and procedure for conducting meeting, notice to meeting, chairman for meeting, proxies, voting rights and demand for poll which were required to be satisfied by all companies.	The aforesaid provision shall apply unless otherwise specified in the respective provision or articles of association provides otherwise. In other words, if the articles of association provide a specific procedure, then the same would prevail over the provisions of the Companies Act, 2013.