



ALERT

EXEMPTIONS AVAILABLE TO PRIVATE LIMITED COMPANIES

Under the earlier Companies Act, 1956 private companies enjoyed exemptions from the applicability of many of the provisions of the Act. However with the introduction of the Companies Act, 2013 (Act) most of these exemptions had been withdrawn. This was creating lots of difficulties for a private company to enter into transactions and thus making it hard in doing business.

With a view to minimize these difficulties, the MCA on 5th June, 2015 has issued a notification exempting a private company from the applicability of some of the provisions of the Companies Act, 2013 and in certain cases, the applicability of certain provisions of the Act have been modified/relaxed to certain extent so as to remove the difficulty of applicability such part.

Highlights of the above notification issued by MCA are given below:

1. Related Party Transactions:

For the purpose of section 188 of the Act, a holding company, subsidiary company or an associate company of a private limited company shall not be considered as a related party.

Similarly any other subsidiary of the holding company of such private limited company shall also not be considered as a related party for the purpose of Section 188 of the Act.

However a director or a KMP of the holding company or his relative shall still continue to be a related party.

Note: Section 188 of the Act is for related party transactions. Hence now a private limited company need not comply with the provisions of Section 188 of the Act while entering into transactions with its holding company, subsidiary company or an associate company.

2. Kinds of share capital and voting rights:

If the memorandum or articles of association of a private limited company provides for some different provisions then sections 43 and section 47 of the Act dealing with kinds of share capital and voting rights respectively shall not be applicable to such private limited company.

3. Time limit for closure of rights offer made u/s 62(1)(a):

In case 90% of the members of a private limited company have given their consent in writing or in electronic mode, then:

- ✓ The rights offer can be closed even before 15 days.
- ✓ Notice of rights offer can be made even before 3 days of opening of the rights issue.

4. A private limited company can now issue ESOPs to its employees by passing an ordinary resolution. Passing of a special resolution is now not required.

5. Restrictions on purchase by company or giving of loans by it for purchase of its shares u/s 67:

Provisions of Section 67 shall not apply to private limited companies which comply with the following conditions:

- ✓ in whose share capital no other body corporate has invested any money;
- ✓ 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
- ✓ such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.

6. Acceptance of money by a private limited company from its members:

A private limited company can now accept money from its member's upto 100% of the aggregate of the paid up share capital and free reserves without following the procedure prescribed in clause a to e of section 73(2) of the Act. i.e. following procedures are not required to be followed:

- ✓ Issuance of a circular;
- ✓ Filing the circular with the ROC;
- ✓ Depositing money in a separate bank account maintained with scheduled bank;
- ✓ Providing of deposit insurance;

- ✓ Certifying that the company has not defaulted in the repayment of deposit or interest thereon.

However the company needs to file with the Registrar the details of monies accepted from its members.

7. If the articles of association of a private limited company provides otherwise then the following provisions of the act shall not apply:

- ✓ Section 101: Content and length of calling of a general meeting.
- ✓ Section 102: Statement to be annexed to a notice calling a general meeting.
- ✓ Section 103: Quorum for general meeting.
- ✓ Section 104: Chairman of meetings.
- ✓ Section 105: Proxies.
- ✓ Section 106: Restriction on voting rights.
- ✓ Section 107: Voting by show of hands.
- ✓ Section 109: Demand for poll.

8. A private limited company is not required to file with the ROC any resolutions of the Board passed u/s 179(3) of the Act.

9. For the purpose of computing the limit of number of audit assignments, the appointment of such an auditor in the following companies shall not be considered:

- ✓ One person companies;
- ✓ Dormant companies;
- ✓ Small companies and
- ✓ Private limited companies having paid up share capital less than ` 100 crores.

10. Candidature not required for Appointment of Director at General Meeting:

Provisions of Section 160 of the Act is now exempt for private limited companies. Now there is no need to deposit ` 100,000 by the candidate proposing to be elected as a director.

11. Appointment of 2 or more directors in a general meeting can now be made by passing a single resolution in case of a private limited company. Provisions of Section 162 which provided for appointment of directors to be voted individually is now not applicable to a private limited company.

12. Section 180 of the Act which provided that for certain business transactions the Board of Directors had to obtain the consent of the members by a special resolution. This provision is now not applicable to a private limited company.

Hence the matters contained in Section 180 of the Act can now be transacted by the Board of Directors of a private limited company.

13. Interested director of a private limited company can now participate in the board meeting after disclosure of his interest.

14. **Loan to directors etc. u/s 185:**

Provisions of Section 185 shall not apply to private companies which comply with the following conditions:

- ✓ in whose share capital no other body corporate has invested any money;
- ✓ 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
- ✓ such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.

Note: Hence now private limited companies fulfilling above conditions can now provide loan to directors etc. which was earlier prohibited.

15. A member of a private limited company who is a related party to a transaction u/s 188 of the Act can now vote on such resolution.

16. There is no requirement of the following procedure for appointment of a managing director, whole time director or a manager:

- ✓ Ratification of shareholders in the general meeting of the company is not required.
- ✓ Schedule V is not applicable.
- ✓ Filing of Form No. MR. 1 with the ROC is also not required.
- ✓ Terms and conditions of appointment of managing director, whole time director or a manager may not be mentioned in the board resolution.

Damania & Varaiya

14/2, Mahalaxmi Industrial Estate,
Dainik Shivner Marg,
Lower Parel, Mumbai – 13.
Branch-Pune



For any queries email at consult@mvdco.com