24 August 2009

Illustrative list of exemptions and privileges for private company under the Companies Act, 1956

Section	Nature of exemptions/ privileges
3(1)(iii)	A Private Company can be incorporated with minimum paid-up capital of Rs. 100,000 as against Rs. 500,000 in case of a Public Company
12(1)	Private Company can be formed by only 2 persons as against at least 7 persons in case of Public Company
58A	Deposit taken from members is exempt from the ceilings etc. of Section 58A subject to furnishing of undertaking
70(3)	Statement in lieu of prospectus need not be delivered to the ROC before allotting shares
77(2)	Financial assistance can be given for purchase of or subscribing for its own shares or shares in its holding company
81(3)(a)	Further shares can be issued without passing special resolution or obtaining Central Government's approval and without offering the same necessarily to existing shareholders
90(2)	Provisions as to kinds of share capital (sec.85), voting rights (sec.87), and termination of disproportionate excessive rights (sec.89)
111A	Appeal against refusal to register a transfer or transmission of shares is not applicable
149(7)	Business can be commenced immediately on incorporation without obtaining a certificate of commencement from ROC
165(10)	It is not necessary to hold a statutory meeting and to send statutory report to shareholders and file the same with ROC
170(1)	Articles of private company may provide for regulations relating to general meetings without being subject to the provisions of sections 171 to 186 Sec 171 – Length of notice for calling meeting Sec 172 – Contents and manner of service of notice and persons on whom it is to be served Sec 173 – Explanatory statement to be annexed to notice Sec 174 – Quorum for meeting Sec 175 – Chairman of meeting Sec 176 – Proxies Sec 177 – Voting to be by show of hands in first instance Sec 178 – Chairman's declaration of result of voting by show of hands to be conclusive Sec 179 – Demand for poll Sec 180 – Time of taking poll Sec 181 – Restriction on exercise of voting right of members who have not paid calls, etc. Sec 182 – Restrictions on exercise of voting right in other cases to be void Sec 184 – Scrutineers at poll Sec 185 – Manner of taking poll and result thereof Sec 186 – Power of Tribunal to order meeting to be called
192A	Passing of resolution by postal ballot do not apply
198(1)	Any amount of managerial remuneration can be paid and the same is not restricted to any particular proportion of the net profits
204(6)	Private company can appoint a firm or body corporate to an office or place of profit under the company
220	Profit & Loss account filed with the ROC is not available for the inspection to the public (other than a member of the company).

Section	*Nature of exemptions/ privileges*
224(1B)	Requirement of obtaining a certificate under section 224(1B) at the time of appointment of auditors do not apply to private company
252(1)	Appointment of Small Shareholders' Directors is not applicable
252(2)	Private company need not have more than two directors
255(1)	A proportion of directors need not retire every year
257(2)	Statutory notice, etc., is not required for a person to stand for election as a director
259	Central Government's sanction is not required to effect increase in the number of directors beyond 12 or the number fixed by articles of association
262	Manner of filling casual vacancy and duration of office of director is not applicable
263(1)	In passing resolution for election of directors, all directors can be appointed by a single resolution
264(3)	Consent to act as director need not be filed with ROC
266(5)	Restriction on appointment or advertisement of director as regards consent and qualification of shares does not apply
268	Central Government's sanction is not required to modify any provision relating to appointment of managing, whole-time or non-rotational directors
269(2)	Central Government's approval is not required for appointment of managing or whole-time director or manager.
273	Directors of a private company need not possess any share qualifications, in terms of section 270
274(1)(g)	Default in filing annual accounts and annual return for 3 continuous financial years (or) failure to repay deposit or interest thereon on due date or redeem debentures on due date or pay dividend and such failure continues for 1 year or more in a private company will not disqualify a director of such private company to get appointed in any other company
275 to 279	Restrictive provisions regarding total number of directorships which any person may hold do not include directorships held in private companies which are not subsidiary of public company
283	Private companies may provide for special grounds for vacating the office of director.
292A	Requirement of appointing an Audit Committee do not apply
293(1)	Certain restrictions on powers of board of directors do not apply
295(2)	Prohibition against loans to directors does not apply
300(2)	Prohibition against participation in board meetings by interested director does not apply
303(1)	Date of birth of director need not be entered in the register of directors
309(9)	There is no restriction on remuneration payable to directors
310	Any change in remuneration of directors also does not require Government's approval
311	Any increase in the remuneration not being sitting fees beyond specified limit of directors on appointment or reappointment does not require Central Government's approval
316(1)	Number of companies of which one person may be appointed managing director do not apply
317(4)	Restriction on appointment of a managing director for more than five years at a time do not apply
349, 350 & 355	Provisions relating to method of determination of net profits and ascertainment of depreciation do not apply

Section	*Nature of exemptions/ privileges*
372A	Restriction on the inter-corporate loans and investments etc. do not apply
388A	Provisions of sections 386 and 387, which restrict the number of companies of which a person can be appointed as manager, remuneration of the manager, etc. and also provisions of sections 269, 310, 311, 312 and 317 do not apply
409(3)	Central Government cannot exercise its power to prevent change in board of directors which is likely to affect the company prejudicially
416(1)	Person can enter into contract on behalf of company as undisclosed principal and need not give intimation to the other directors

****