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EXEMPTIONS/ PRIVILEGES AVAILABLE TO PRIVAE COMPANIES

(Other than OPCs)

By P C Agrawal,
B.Com., LL.B., CAIIB, FCS
cs.pcagrawal@gmail.com

Chap-ter	Sec-tion	Rule	Description	Remarks
II	3(1)(b)		Minimum number of members required is only two.	A public company requires minimum seven members.
			A private company which is a small company within the meaning of Section 2(85) can avail of following exemptions available to a small company: a) Exemption from presenting cash flow statement [Sec.2(40)] b) Annual return need not be compulsorily signed by CS or CS in practice [Section 92(1)] c) .Can follow simplified procedure for merger of two or more private companies (Section 233)	Public company cannot be a small company within the meaning of Section 2(85) and hence cannot avail of such exemptions.
II	2(68)		Minimum paid-up capital required is Rs.1 lac or such higher amount as may be prescribed.	In case of public company, minimum paid-up capital required is Rs.5 lacs or such higher amount as may be prescribed. [Section 2(71)]
II	14(1)(a)	7	A private company (other than a company registered under Section 8 of the Act) whose paid-up share capital is Rs.50 lacs or less or average annual turnover during the relevant period is Rs.2 crores or less, may convert itself into a One Person Company.	Rules do not provide for conversion of a public company into a One Person Company.
III	39(1)		The restriction on allotment of securities without getting minimum subscription is not applicable to a private company.	A public company cannot allot securities in a public offer unless minimum subscription is received.
III	39(2)		The requirement of minimum 5% nominal amount of every security payable on application is not applicable to a private company.	The requirement of minimum 5% nominal amount of every security payable on application is applicable to a public company.
IV	67(2)		A private company can give financial assistance for purchase or subscription of any shares in the company or its holding company.	A public company cannot give financial assistance for purchase or subscription of any shares in the company or its holding company.
VII	103		Unless the articles provide for a larger number, only two members personally present shall form quorum for a meeting of a private company.	In case of a public company, unless the articles provide for a larger number, the required quorum (no. of members personally present) is: a) 5 – if no. of members is not more than 1,000 b) 15 – if no. of members is more than 1,000 but upto 5,000 c) 30 – if no. of members exceeds 5,000
VII	108	20(1)	A private company is not required to provide electronic voting facility to its members.	Every listed company or a company having not less than 1,000 shareholders is required to provide electronic voting facility to its members.
VII	120	27(1)	A private company is not required to maintain records in electronic form.	Every listed company or a company having not less than 1,000 shareholders, debenture holders and other security holders is required to maintain its

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				records under the Act in electronic form.
IX	134(3)(p)		Report of Board of Directors of a private company need not contain a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.	Report of Board of Directors of a listed company and every other public company having paid-up share capital of Rs.25 crores or more as at the end of the previous financial year is required to contain such statement.
IX	135	5 (CSR)	CSR Committee (if applicable) of a private company which has only two directors on its Board can consist of such two directors only.	CSR Committee (if applicable) of a public company which is required to appoint an independent director under Section 149 must have an independent director.
IX	138	13	A private company having paid-up share capital of Rs.50 crores or more during the preceding financial year or outstanding deposits of Rs.25 crores or more at any point of time during the preceding financial year is not required to appoint internal auditor unless one of following criteria is met: a) Turnover of Rs.200 crores or more during preceding financial year; or b) Outstanding loans or borrowings from banks or public financial institutions exceeding Rs.200 crores or more at any point of time during the preceding financial year.	A public company which meets this criteria or every listed company is also required to appoint internal auditor.
X	139(2)	5	A private company having paid-up share capital of Rs.10 crore or more but less than Rs.20 crores is not required to compulsorily rotate its auditors.	A public company meeting this criteria is also required to compulsorily rotate its auditors.
XI	149(1)(a)		A private company is required to have minimum two directors only.	A public company is required to have minimum three directors.
XI	149(1)	3	A private company is not required to appoint a woman director.	Every listed company and every other public company having paid-up share capital of Rs.100 crores or more or turnover of Rs.300 crores or more is required to have at least one woman director.
XI	152(6)		Directors of a private company are not liable to retire by rotation.	Specified minimum number of directors of a public company are liable to retire by rotation.
XI	164(3)		A private company can provide for additional grounds for vacation of office of director in the articles.	A public company cannot provide for additional grounds of vacation of office of director in the articles.
XI	167(4)		A private company can provide for additional grounds for disqualification of director in the articles.	A public company cannot provide for additional grounds of disqualification of director in the articles.
XII	177(1)	6	A private company is not required to constitute an Audit Committee irrespective of its size.	Every listed company or other public companies with paid up capital of Rs.10 crores or more or turnover of Rs.100 crores or more or aggregate outstanding loans or borrowings or debentures or deposits exceeding Rs.50 crores is required to constitute an Audit Committee.
XII	178(1)	6	A private company is not required to constitute a Nomination & Remuneration Committee irrespective of its size.	Every listed company and every other public company with a paid-up capital of Rs.10 crores or more or having in aggregate outstanding loans or borrowings or debentures or deposits of Rs.50 crores or more as per latest audited financial statements is required to constitute such committee.
XII	190(4)		A private company is not required to maintain contract of service with MD/WTD.	A company (other than a private company) is required to maintain contract of service with MD or WTD or where such contract is not in writing, a

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				written memorandum setting out its terms & inspection thereof by a member of the company.
XIII	203		A private company is not required to appoint a whole time key managerial personnel.	Every listed company and every other public company having paid-up share capital of Rs.10 crores or more is required to have whole-time key managerial personnel.
XIII	204(1)	9(1)	A private company need not appoint secretarial auditor.	Every listed company and every other public company having paid-up share capital of Rs.50 crores or more or a turnover of Rs.250 crores or more is required to annex with the Board's report a secretarial audit report in Form No.MR.3.
			A private company is not required to follow provisions of the Act applicable to listed companies: a) Compliance of SEBI regulations for issue of sweat equity shares [Sec.54(1)(d)] b) NOC of SEBI for reduction of share capital [Sec.66(2) c) File declaration of solvency for buy-back of shares with SEBI [Sec.68(6)] d) File return of buy-back with SEBI [Sec.68(10)] e) Compliance of SEBI regulations for compromise/ arrangement involving takeover offer [Section 230(11)] f) Certification of annual return by CS in practice even if paid-up capital is less than Rs.10 crores or turnover is less than Rs.50 crores [Rule 11(2) of Companies (Management & Administration) Rules 2014] g) File return of changes in number of shares held by promoters and top ten shareholders in Form MG.10 (Section 93) h) File report on AGM (Section 121) i) Directors Responsibility Statement in Board's report to contain statement of responsibility regarding internal controls [Section 134(5)(e)] j) Place financial statements on company's website [Section 136(1)] k) Ratio of remuneration of each director to the median employee's remuneration to be disclosed in Board's report [Section 197(12)]	A listed company is required to comply with all these formalities.

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