CS Divesh Goyal
ACS- 35817
csdiveshgoyal@gmail.com
+91-8130757966

Dear Professionals,

MCA lays draft notification u/s 462 for Private Companies in Parliament
CS Divesh Goyal

Companies Act, 2013 has brought massive changes for private companies as barring a very few, all the exemptions which were available to private companies under the Companies Act, 1956 have been withdrawn in the Companies Act, 2013.

MCA has laid down the copy of the draft notification under section 462 of the Companies Act 2013 ("the Act") on 24th June, 2014 providing necessary exemptions to private company from the provisions of the Act. [PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

On 14th July, 2014 MCA lay down below given exemption to private company from the provision of the Act. It is to be expected that MCA placed before the Parliament in Parliamentary session of 14th July, 2014 following Below mentions Exemptions for Private Companies.

The details of exemptions provided in comparison to their status under the draft notification issued earlier for public comments are outlined below.

The matter in given below signifies new addition to the notification, which was not there in the draft notification issued.

Serial number	Chapter/ Section number/ Sub-section(s) in the Companies Act, 2013	Status under the draft notification issued for inviting suggestions (Earlier issued)	Exceptions / Modifications/ Adaptations: (Placed before Parliamentary session on 14.07.20141)
1.	Chapter I- Section- 2 Clause- 76, Sub- Clause (viii): Bare Act Language of Section is Given below: Section-2 Definition (76) "related party", with reference to a company, means— Sub Clause (viii) any company which is— (A) a holding, subsidiary or an associate company of such company; or (B) a subsidiary of a holding company to	Didn't provide in Earlier Notification.	**Shall not apply** with respect to section 188.

2.	Chapter IV, section 43 and section 47.	Shall not apply	**Shall not apply** where memorandum or Articles of association of the private company so provides.
3.	Chapter IV, Section 62(1)(a)(i) and (2)	section 62(1)(a) and (2) shall apply with the following modification:- Words 'not being less than fifteen days and not exceeding thirty days' shall be substituted with 'not being less than seven days and not exceeding fifteen days'	<u>Shall apply with following modifications:-</u> In clause (a), in sub-clause (i), the following proviso shall be inserted, namely:- Provided that notwithstanding anything contained in this sub- clause and sub-section (2) of this section, in case 90% , of the members of a private company have given their consents in writing or in electronic mode, the periods lesser than those specified in the said sub- ¬clause or sub-section shall apply
4.	Chapter IV, Section 62(1)(b): Further Issue of Share Capital	No change	In clause (b), for the words "special resolution", the words "ordinary resolution" shall be substituted.
5.	Chapter IV- Section 67: Restrictions on purchase by company or giving of loans by it for purchase of its shares.	Didn't provide in Earlier Notification.	Shall not apply to private companies - I. in whose share capital another 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 such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.

6.	Chapter V- Section-73(2) (a) (b): Prohibition on acceptance of deposits from public.	Entire sub-section (2) was exempted. Shall not apply to private companies having 50 or less number of members, if they accept monies from their members not exceeding 25% of aggregate of the paid up capital and free reserves or one hundred per cent of the paid up capital, whichever is more, and which inform the details of such monies to the Registrar in the	Shall not apply to a private company which accepts from its members monies not exceeding one hundred per cent, 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.
7.	Chapter VII **Section 101-** Notice of meeting. **Section 102-** Statement to be annexed to notice. **Section 103-** Quorum for meetings. **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.	Shall apply unless otherwise specified in respective sections or the articles of the company Provide otherwise.	Shall apply unless otherwise specified in respective sections or the articles of the company Provide otherwise.
8.	Chapter VII- Section 117(3)(g) **(g) resolutions passed in pursuance of sub-section (3) of section 179; and**	Didn't provide in Earlier Notification.	Shall not apply.
9.	Chapter X- Section 141(3)(g): Text of section is reproduced below: Section 141- Eligibility, Qualifications and disqualifications of auditors.	Shall not apply in respect of appointment of auditors by private companies.	Shall apply with the modification that the words "other than one person companies, dormant companies, small companies, and private companies having paid-up share capital less than one hundred crore rupees" shall be inserted after the words "twenty companies".

10.	Chapter XI- Section 160- Right of persons other than retiring directors to stand for directorship.	Shall not apply.	Shall not apply.
11.	Chapter XI- Section 162- Appointment of directors to be voted individually.	Shall not apply.	Same
12.	Chapter XII- Section 180- Restrictions on powers of Board.	Shall not apply.	Not provided
13.	Chapter XII- Section 184(2) Section 184- Disclosure of interest by director.	Didn't provide in Earlier Notification.	Shall apply with the exception that the interested director may participate in such meeting after disclosure of his interest
14.	Chapter XII- Section 185- Loan to directors, etc.	Shall not apply to Private companies – {a}which have borrowings from banks or financial institutions or any bodies corporate not more than twice of their paid up share capital or Rs. 50 crore, whichever is lower; and {b}in whose share capital no other body corporate has invested any money".	Shall not apply to a private company - {a}in whose share capital another body corporate has invested any money; {b}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 {c}such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.
15.	Chapter XII- second proviso to section 188 (1): Section 188- Related party transactions.	Shall not apply	Shall not apply

16.	Chapter XIII-section 196(4) & (5): Appointment of MD, WTD & Manager.	Shall not apply	Shall not apply

Details of exemption provided under the draft notification but are missing from the final notification.

S.No.	Chapter/ Section number/ Sub-section(s) in the Companies Act, 2013	Exceptions/ Modifications/ Adaptations
1.	Chapter XIII – section 203(3) Text of section is reproduced below: Section 203(3) - Appointment of key managerial personnel. (3) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time	Shall not apply

Guys these are the Exemptions placed in budgetary session. If it will approve then it will be relax for private companies. Because presently there are a lot restrictions on Private Companies. Hope our leaders will read these exemptions carefully and will emphasize impact of this on private/ small companies. Let's wait for any other clarification from MCA side on this issue.

Guys for any queries Relating to Companies Act or any assistance in works relating to Companies Act-2013 kindly contact me on given mail id.

Regards,
CS Divesh Goyal
ACS-35817
csdiveshgoyal@gmail.com
+91-8130757966