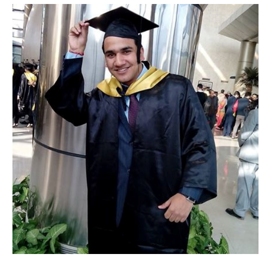
CS DIVESH GOYAL
Practicing Company Secretary
GOYAL DIVESH& ASSOCIATES

Mob: +918130757966
csdiveshgoyal@gmail.com

EXEMPTION TO PRIVATE COMPANIES

SERIES NO
85



GOYAL DIVESH & ASSOCIATES,
Practicing Company Secretary

"Everything is easy, if you are crazy about it And
Nothing is easy, when you are lazy about it."

Dear Professionals,

MCA u/s 462 passed exemption for Private Companies under Companies Act, 2013

Provisions of companies act, 2013 given below will not apply or shall apply with such exceptions, modifications and adaptations, as specified below.

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a very few, all the exemptions which were available to private companies under the Companies Act, 1956 have been withdrawn in the Companies Act, 2013.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 Notification under section 462 of the Companies Act 2013 ("the Act") providing necessary exemptions to private company from the provisions of the Companies Act, 2013.

[PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

On 5th June, 2015 MCA lay down below given exemption to private company from the provision of the Companies Act, 2013.

S. N	Chapter/ Section of the Act	Particular	Exemption Provided in MCA Notification
A.	Chapter 1, Sub-clause (viii) of clause (76) of section 2.	Bare Act Language of Section: "related party", with reference to a company, means- any company which is— (A) a holding, subsidiary or an associate company of such company; or (B) a subsidiary of a holding company to	Holding, Subsidiary and Associate Company will not cover under Related Party for the purpose of section 188. **Note:-** Although Holding company is excluded but Director (other than independent Director), KMP of holding company or their relative are still included in definition of Related Party. (Section 2(76)(ix)) Language of Notification: **Shall not apply** with respect to section 188.
B.	Chapter IV, Section 43 and Section 47	Section 43- Kind of Capital Section – 47 Voting Right	If anything else mentioned in MOA & AOA then *MOA & AOA prevail over the section 43 and 47.* Language of Notification: **Shall not apply** where MOA & AOA of the Private Company so provides.

C.	Chapter IV, Section 62(1)(a)(i) and (2)	<u>Bare Act Language Earlier:</u> The offer of Right issue of shares shall be open for minimum 15 days not exceeding 30 days from the date of the offer within which offer made.	In case 90%, of the members of a private company have given their consents in writing or in electronic mode then *<u>Offer Can Be Close Before 15 Days.</u>* <u>Note:-</u> The time limits cannot be increased, they can only be reduced.
D.	Chapter IV, Section 62(1)(b): Further Issue of Share Capital	For ESOP Special Resolution Required.	Now for ESOP *<u>Ordinary Resolution</u>* is enough. <u>Language of Notification</u> The words "special resolution", the words "ordinary resolution" shall be substituted.
E.	Chapter IV- Section 67	Restrictions on purchase by company or giving of loans by it for purchase of its shares.	<u>Language of Notification given at the end</u>
F.	Chapter V- Section-73(2) (a) (e):	Earlier Private Limited Company can accept deposits from the Member after follow up the procedure mention under Section 73.	<u>Acceptance Of Deposits From Members Made Easier For Certain Companies</u> *Private Limited Company can accept deposit from the Members upto 100%* of aggregate of the paid up share capital and free reserves without followings: • Issue Circular • File circular with ROC • Maintain deposit repayment reserve • Provide deposit insurance

G.	Chapter VII	• 101- Notice of meeting. • 102- Statement to be annexed to notice. • 103- Section Quorum for meetings. • 104- Chairman of meetings. 105- Proxies. • 106- Restriction on voting rights. • 107- Voting by show of hands. • 109- Demand for poll.	If anything else mentioned in AOA then *AOA prevail over the section 101-107 & 109.* Articles of A Private Company May Override Provisions Pertaining To 1. Content & Length of Notice 2. Explanatory Statement 3. Quorum 4. Chairman 5. Proxies 6. Restriction on Voting Rights 7. Show of Hands & Poll
H.	Chapter VII- Section:117 (3)(g)	Earlier Provision: Copy of Resolution passed in pursuance of sub-section (3) of Section 179 required to filing with ROC.	Now there is ***NO NEED TO FILE FORM MGT-14*** for the purposes of resolutions passed u/s 179(3) read with rule 8 of Companies (Meeting of Board & its power) Rules, 2014 Language of Notification Provisions of Section 117(3)(g) will not apply on Private Limited Company.

I.	Chapter X- Section 141 (3)(g):	Earlier ***Auditor can't be appoint as auditor*** in more than 20 (Twenty) Companies.	Now under the limit of 20 (Twenty) Companies following will not include: • one person companies, • dormant companies, • small companies, and • Private Companies having paid-up share capital less than one hundred crore rupees". Limit of 20 Companies only Includes:- 1. Public Companies 2. Private Companies having paid up capital of Rs. 100 Crore or more
J.	Chapter XI- Section 160-	Candidature Not Required For Appointment of Director at General Meeting	Now there is no need to deposit Rs. 100,000/- by the Director at the time of appointment.
K.	Chapter XI- Section 162-	Appointment of directors Need not to be voted individually.	Now more than one director can be appoint via a single resolution.
L.	Chapter XII- Section 180-	Restrictions on powers of Board Not Apply	Now there is ***no need to pass "Special Resolution"*** for the purposes of passing of Resolution mentioned under Section 180. Example: 1. Borrow exceeding paid up capital & free reserves. 2. Sell/lease/dispose off undertaking

M.	Chapter XII- Section 184(2)	Disclosure of interest by director.	Now ***Interested directors can participate in the meeting*** and vote in the meeting after disclosure of his interest. Note:- He Cannot be counted in Quorum (Section 174(3) explanation)
N.	Chapter XII- Section 185-	Loan to Director was earlier not allowed.	***Loan to director are allowed for Private Limited Companies*** if its fulfill the below mentioned conditions: 1. No Body Corporate Shareholder 2. Not borrowed money from Bank/ Financial Institution/ Body Corporate exceeding lower of the following:- i. Twice its Paid up capital ii. Rs. 50 crore 3. No repayment default subsisting of such borrowings at time of giving loan Note: Giving of loans/ guarantee/security to Group Companies now possible.

Mob: +918130757966
csdiveshgoyal@gmail.com

O.	Chapter XII- second proviso to section 188 (1):	Bare Act Language Earlier: No member of the company shall vote on such Resolutions, to approve any contract or arrangement which may be entered into by the Company, if such member is related party.	Restriction On Voting Right In General Meeting In Case Of Related Party Transaction Not Applicable: Now This proviso will not apply on Private Limited Company. ***"Even if, Member is related then also he can vote on such resolution required to be pass u/s 188 in GM.***
P.	Chapter XIII- section 196(4) & (5):	Appointment of MD, WTD & Manager.	Now there is no need to Pass Resolution in General Meeting for appointment of Managerial Personnel and no need to file form MR-1. Managerial Personnel can be appoint in Private limited Company without following: 1. Shareholder's Ratification in not required. 2. Schedule V not applicable. 3. MR-1 not required to be filed 4. T&C of appointment, remuneration not mandatory to be mentioned in resolution

	LANGUAGE OF NOTIFICATION
C.	Shall apply with following modifications:- 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.

E	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 III. such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.
F	Prohibition 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.
G	Shall apply unless otherwise specified in respective sections or the articles of the company Provide otherwise.
N	Language of Notification Provisions of Section 185 not apply to a private company if its fulfill the following below mention conditions- {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 anybody 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.

(Author – CS Divesh Goyal, GOYAL DIVESH & ASSOCIATES Company Secretary in Practice from Delhi and can be contacted at csdiveshgoyal@gmail.com)