

The curtain has been finally lifted and the suspense is over!

EXEMPTIONS AND RELAXATIONS TO PRIVATE COMPANIES (COMPANIES ACT, 2013)



S. Dhanapal
Senior Partner
M/s. S Dhanapal & Associates
A Firm of Practising Company Secretaries
Chennai



From the team of M/s. S Dhanapal & Associates:

Mr. S.Dhanapal, B.Com, BABL, FCS

Ms. Smita Chirimar, ACS, DCG(ICSI)

Mr. N. Ramanathan, B.Com, FCS

Mr. S.Chandrasekar,FCS, AICS(UK)

Ms. R. Pratheepa, B.C.S, ACS

Ms. Lavang Arora, B.Com, ACS

Ms. Preetha S, M.Com, ACS

EXEMPTIONS AND RELAXATIONS TO

PRIVATE COMPANIES

FROM FEW PROVISIONS OF COMPANIES ACT, 2013

(To be notified in official gazette)

The Ministry of corporate Affairs has released the much awaited exemptions for Private Companies, Government Companies, Nidhi Companies and Companies registered under Section 8 of the Companies Act, 2013 (Act). Since the introduction of the Companies Act, 2013 in September 2013, these companies were reeling under the pressure of the rigorous provisions of the Act and the compliances required therein. Under the erstwhile Companies Act, 1956, several exemptions or reliefs were available to these set of Companies which were revoked with the commencement of the Companies Act, 2013.

Last year in July, the MCA had sought public views on the proposed exemptions to be granted to Private Companies and thereafter the relevant exemption notifications were laid before both the Houses of Parliament. Since then all stakeholders of these Companies were eagerly awaiting for the notification to be announced and finally, today the MCA has released these four notifications, which are dated 05th June, 2015, to be notified in the official gazette.

This write-up presents an insight on the exemptions provided by means of these notifications to Private Companies. Exemptions to Government Companies, Companies registered u/s 8 of the Act and Nidhi Companies will be covered in a separate write up.

EXEMPTIONS TO PRIVATE COMPANIES

Definition of Related Party

Nature of Exemption	Impact of the Exemption
Section 2(76), sub-clause VIII shall not apply with respect to Section 188	Following companies shall not be treated as related party to a company for the purpose of determining whether the transaction with them is a related party transaction u/s. 188 or not: • Holding Company • Subsidiary Company • Associate Company • Subsidiary Company of Holding Company to which the company is also a subsidiary.

Kinds of Share Capital and Voting Rights

Nature of Exemption	Impact of the Exemption
Section 43 and 47 shall not apply where MOA or AOA of the Private Company so provides	Provisions relating to kind of share capital, being only equity (with or without differential voting rights) and preference shall not apply to a Private Company (Section 43) Provisions relating to voting rights of equity share holders and preference share holders, as contained in Section 47, shall not apply to a Private Company.

Day from when and duration for which rights issue offer to be kept open

Nature of Exemption	Impact of the Exemption
Following proviso to be added in Section 62, after Sub-section (1), clause (a), sub-clause (i): <i>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 consent in writing or in electronic mode, the periods lesser than those specified in the said sub-clause of sub-section shall apply.</i>	The provision relating to keeping rights issue open for a minimum of 15 days and maximum of 30 days and also the provision that the letter of offer has to be sent atleast 3 days before opening of the offer shall not apply in case of a Private Company, provided atleast 90% of the members agree in writing for a shorter period.

Nature of resolution for ESOP

Nature of Exemption	Impact of the Exemption
In Section 62, sub-section (1), clause b; the word ordinary resolution shall be substituted in place of special resolution	A private Company can issue shares to its employees under a scheme of Employee Stock option by passing an Ordinary resolution. Earlier, special resolution was required to be passed.

Restriction on purchase by company or giving of loans by it for purchase of its shares

Nature of Exemption	Impact of the Exemption
Section 67 shall not apply to Private Companies – (a) in whose share capital no other 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 its paid up share capital or Rs. 50 Crores whichever is lower; and (c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section	Restriction on purchase by a private company or giving of loans by it for purchase of its shares shall not apply to those Private Companies which satisfy all the 3 conditions given in the left hand column.

Acceptance of deposits from members

Nature of Exemption	Impact of the Exemption
Provisions of Section 73, sub-section (2), clauses (a) to (e), shall not apply to a private company which accepts from its members monies not exceeding 100% of its 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.	Private Companies can accept deposits from its members upto 100% of its paid up share capital and free reserves without having to comply with the procedural requirements prescribed under Section 73 like issuing circular, maintaining repayment reserve etc., provided details of the deposits so accepted is filed with the ROC in the manner to be specified.

Notice of general meeting, explanatory statement, quorum, chairman etc.

Nature of Exemption	Impact of the Exemption																		
Section 101 to 107 and 109 shall apply unless otherwise specified in the respective sections or the articles of the company provide otherwise.	The provisions of the following section shall apply in the manner contained in the AoA of the Company : <table><tr><th>Section No.</th><th>Section Heading</th></tr><tr><td>101</td><td>Notice of Meeting</td></tr><tr><td>102</td><td>Statement to be annexed to notice</td></tr><tr><td>103</td><td>Quorum for Meetings</td></tr><tr><td>104</td><td>Chairman of meetings</td></tr><tr><td>105</td><td>Proxies</td></tr><tr><td>106</td><td>Restriction on voting rights</td></tr><tr><td>107</td><td>Voting by show of hands</td></tr><tr><td>109</td><td>Demand for poll</td></tr></table>	Section No.	Section Heading	101	Notice of Meeting	102	Statement to be annexed to notice	103	Quorum for Meetings	104	Chairman of meetings	105	Proxies	106	Restriction on voting rights	107	Voting by show of hands	109	Demand for poll
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Filing of certain resolutions passed by the Board of Directors in e-form MGT 14

Nature of Exemption	Impact of the Exemption
Section 117, sub-section (3), clause (g) shall not apply to a private company	The requirement of filing e-form MGT 14 for resolutions passed by the Board in exercise of its powers u/s. 179(3) is no longer applicable to a private company.

Number of Companies in which a person can act as Auditor

Nature of Exemption	Impact of the Exemption
Section 141, sub-section (3), clause (g) 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 Rs.100 crores" shall be inserted after the words "twenty companies"	While calculating the limit of 20 Companies on which a person can be appointed as a statutory auditor, the following companies shall be excluded: • one person companies, • dormant companies, • small companies, and • private companies having paid up share capital less than Rs.100 crores

Right of person other than retiring director to stand for directorship

Nature of Exemption	Impact of the Exemption
Section 160 shall not apply	Various provisions of Section 160 like seeking deposit of Rs. 1 Lakh, notice of candidature etc. shall not apply to a private company in case of appointment of a director in a general meeting.

Appointment of Director to be voted individually

Nature of Exemption	Impact of the Exemption
Section 162 shall not apply	A private company can pass a single resolution for appointment of 2 or more persons as directors.

Restrictions on powers of Board

Nature of Exemption	Impact of the Exemption
Section 180 shall not apply	A private company is no longer required to seek members approval by means of special resolutions for: • selling, leasing or otherwise disposing whole or substantially the whole of undertaking of the company, • investing in trust securities, the amount of compensation received by it as a result of any merger or amalgamation, • borrowing money where the money to be borrowed exceeds the paid up capital and free reserves, • remitting or giving time for repayment of any debt due from a director

Participation of an interested director in a Board Meeting

Nature of Exemption	Impact of the Exemption
Section 184, sub-section 2 shall apply with the exception that the interested director may participate in such meeting after disclosure of his interest	A director, being an interested director u/s 184, can now participate in the Board Meeting where the any contract, transaction or arrangement in which he is interest is to be discussed or approved, provided he discloses his interest, before he so participates in the meeting.

Loans and Advances to Directors and other interested entities

Nature of Exemption	Impact of the Exemption
Sections 185 shall not apply to a private company – (a) in whose share capital no other 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 its paid up share capital or Rs. 50 Crores whichever is lower; and (c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section	The restriction on giving of loans, advances and guarantees etc. to directors and other entities in which directors are interested will not apply to those Private Companies which satisfy all the 3 conditions given in the left hand column.

Restriction on voting in general meeting by a related party

Nature of Exemption	Impact of the Exemption
Section 188, sub-section (1), second proviso shall not apply	The restriction on a member, being a related party, to vote on a special resolution, to approve a related party transaction, is no longer applicable in case of a private company.

Appointment of Managerial Personnel

Nature of Exemption	Impact of the Exemption
Section 196, sub-section (4) and (5) shall not apply	The following provisions of Section 196 have been exempted for private companies: • Requirement of seeking approval of Board and Members at a meeting for appointment of managerial personnel and also of Central Government where such appointment/remuneration of managerial personnel is not in accordance with provisions of Schedule V. • Requirement that notice convening the Board or General Meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including, interest, of a director or directors, in such appointment, if any • Requirement of filing return of appointment of managerial personnel within 60 days with the ROC • Provision that where an appointment of a managing director, whole time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.

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WITH

BORDERLESS SUCCESSES

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Post your reflections to

S. DHANAPAL

FCS, B.Com, B.A.B.L.

Senior Partner,

S Dhanapal & Associates

(A firm of Practising Company Secretaries)

Suite No.103, First Floor, Kaveri Complex,

96/ 104, Nungambakkam High Road,

(Next to NABARD & ICICI Bank),

Nungambakkam, Chennai - 600 034.

Land-line 044 - 4553 0256 / 0257

Dir- 42652127 Cell-9677022712

Email Id. csdhanapal@gmail.com

Website:www.csdhanapal.com

M/s. S Dhanapal & Associates, Practising Company Secretaries, Chennai