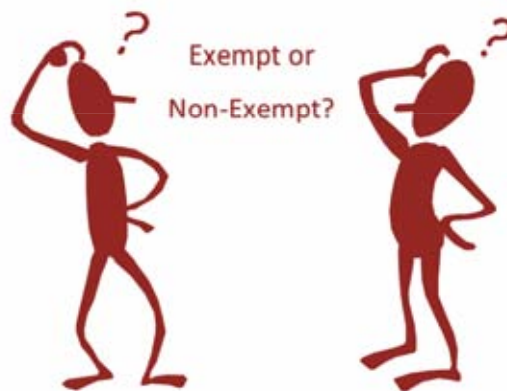


**EXEMPTIONS
AND RELAXATIONS
TO
COMPANIES REGISTERED
UNDER SECTION 8**

(COMPANIES ACT, 2013)

NON PROFIT



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EXEMPTIONS AND RELAXATIONS TO

COMPANIES REGD. U/S 8

FROM FEW PROVISIONS OF COMPANIES ACT, 2013

(To be notified in official gazette)

The Ministry of Corporate Affairs has released the much awaited notification granting certain relaxation to Companies registered under Section 8 of the Companies Act, 2013. Relaxations have also been notified for Nidhi Companies, Government Companies and Private Companies.

Under the Companies Act, 1956, the Companies registered u/s the erstwhile Section 25 of the said Act (Section 8 under the Companies Act, 2013) enjoyed certain privileges by means of non applicability of certain specific provisions of the Companies Act, 1956. With the introduction of the Companies Act, 2013, these exemptions had stood withdrawn and these Companies were also being treated on par with any other Public or Private Company barring minimal reliefs which were granted in the Act itself, like relief in not affixing the word "Private Limited" or "Public Limited" in their name.

With the recent notification granting certain exemptions to Section 8 Companies, the position of these Companies in relation to applicability of the provisions of the Act is expected to be restored, to some extent at least, to their status.

In continuation to our write up on exemptions granted to Private Companies, we now present to you, an insight on the exemptions granted to Companies registered under Section 8 of the Companies Act, 2013 from applicability of certain provisions of the Companies Act, 2013.

EXEMPTIONS TO COMPANIES REGISTERED U/S 8 OF THE COMPANIES ACT, 2013

DEFINITION OF COMPANY SECRETARY

Provisions of the Act	Nature of Exemption	Impact of Exemption
Section 2(24) defines <i>company secretary</i> or <i>secretary</i> means a <i>company secretary</i> as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act.	The provision shall not apply.	The company Secretary or secretary in relation to Section 8 Company need not be a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980.

REQUIREMENT OF MINIMUM PAID UP CAPITAL FOR PRIVATE LIMITED COMPANY

Provisions of the Act	Nature of Exemption	Impact of Exemption
Section 2(68) defines " <i>private company</i> " means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed	The requirement of having minimum paid up share capital shall not apply	The requirement of maintenance of minimum paid up capital of Rs. 1 Lakh by Private Companies will no longer be applicable in case of Companies registered u/s 8 of the Act. While this may not have a significant impact on the corporate, it will lower cost of registration. This relief has already come into effect by way of Companies Amendment Act, 2015 for all Private Limited Companies.

REQUIREMENT OF MINIMUM PAID UP CAPITAL FOR PUBLIC LIMITED COMPANY

Provisions of the Act	Nature of Exemption	Impact of Exemption
Section 2(71) defines "public company" means a company which— (a) is not a private company; (b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed	The requirement of having minimum paid up share capital shall not apply	The requirement of maintenance of minimum paid up capital of Rs. 5 Lakh by Public Companies will no longer be applicable in case of Companies registered u/s 8 of the Act. While this may not have a significant impact on the corporate, it will lower cost of registration. This relief has already come into effect by way of Companies Amendment Act, 2015 for all Public Limited Companies.

FIXING TIME, DATE AND PLACE FOR CONDUCT OF GENERAL MEETINGS

Provisions of the Act	Nature of Exemption	Impact of Exemption
Section 96, sub-section 2 provides that - <i>Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate.</i> <i>Provided that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.</i>	In sub-section (2) after the proviso and before the explanation, the following proviso shall be inserted namely <i>"Provided further that, the time, date and place of each annual general meeting are decided upon before hand by the board of directors having regard to the directions, if any given in this regard by the company in its General Meeting"</i>	The date, time and place of Annual General Meeting can be predetermined by the board, if the shareholders have given directions to the board to this effect in the general meeting. Whether the requirement of sub-section 2 of Section 96 will all together be not applicable in the above scenario seems to be a contentious issue, which needs to be settled by way of further clarification.

NOTICE PERIOD FOR GENERAL MEETING

Provisions of the Act	Nature of Exemption	Impact of Exemption
Section 101, sub-section 1, interalia, contains that <i>A general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed-----</i>	For the words twenty one days, the words "Fourteen days" shall be substituted.	General Meetings of a Section 8 Company can now be conducted with notice of 14 clear days instead of 21 days as prescribed earlier.

METHOD OF MAINTENANCE AND RECORDING OF MINUTES

Provisions of the Act	Nature of Exemption	Impact of Exemption
Section 118, interalia, contains that – <i>Every company shall cause minutes of the proceedings of every general meeting of any class of shareholders or creditors, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in such manner as may be prescribed and kept within thirty days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered.</i>	Section shall not apply as a whole except that minutes may be recorded within 30 days of conclusion of every meeting in case of companies where Articles of association provide for confirmation of minutes by circulation	The entire provisions of Section 118 relating to minutes of proceedings of general meetings, Board meetings etc. shall not apply except that in case the AOA of the Company contains a provision that minutes have to be confirmed by circulation, then in that case, the minutes have to be recorded within 30 days.

TIME PERIOD FOR SENDING COPIES OF AUDITED FINANCIAL STATEMENTS

Provisions of the Act	Nature of Exemption	Impact of Exemption
Section 136, sub-section 1 contains that, <i>Without prejudice to the provisions of section 101, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than <u>twenty-one days</u> before the date of the meeting</i>	For the words twenty one days, the words "Fourteen days" shall be substituted	Consequent to the relief granted u/s 101, which provides that notice of general meeting can be sent 14 days before the meeting instead of 21 days, amendment has also been made to Section 136 providing that copies of financial statements and documents to be annexed thereto can be sent to the members 14 days before the meeting instead of 21 days as was required before this amendment.

REQUIREMENT OF MINIMUM AND MAXIMUM NUMBER OF DIRECTORS

Provisions of the Act	Nature of Exemption	Impact of Exemption
Section 149, sub-section 1 and first proviso contains that – <i>(1) Every company shall have a Board of Directors consisting of individuals as directors and shall have—</i> <i>(a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and (b) a maximum of fifteen directors:</i> <i>Provided that a company may appoint more than fifteen directors after passing a special resolution:</i>	Sub-section (1) of Section 149 and first proviso to sub-section (1) shall not apply	A company registered u/s 8 may have any number of Directors and the requirement of passing of special resolution for having more than fifteen directors will not be required.

PROVISIONS RELATING TO INDEPENDENT DIRECTORS

Provisions of the Act	Nature of Exemption	Impact of Exemption
Following provisions of relating to independent directors: • Sub-sections 4 to 11 of Section 149 • Clause (i) of sub-section 12 of Section 149 • Sub-section 13 of Section 149 • Section 150 • Proviso to sub-section (5) of Section 152	Shall not apply	Any of the provisions relating to requirement of having Independent Directors, their appointment, and manner of appointment etc. as contained in any of the Sections mentioned in the first column shall not be applicable to Section 8 Companies.

RIGHTS OF PERSON OTHER THAN RETIRING DIRECTOR TO STAND FOR DIRECTORSHIP

Provisions of the Act	Nature of Exemption	Impact of Exemption
Section 160, inter alia, contains that – <i>A person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of one lakh rupees or such higher amount as may be prescribed</i>	Shall not apply to companies whose articles provides for election of directors by ballot	If the Articles of the company provide for the election of directors by way of Ballot, then the entire provisions of Section 160 will not be applicable. In other cases, Section 160 will continue to apply. The exact implication of “election of directors by means of ballot” appears to be a grey area and the relief which it seeks to provide needs to be clarified or settled with time.

MAXIMUM NUMBER OF DIRECTORSHIPS THAT CAN BE HELD BY A PERSON

Provisions of the Act	Nature of Exemption	Impact of Exemption
Section 165, sub-section (1) contains that - No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.	Section 165, sub-section (1) shall not apply.	A person holding office as Director in more than 20 Companies can still be appointed as a Director in a Section 8 Company.

NUMBER AND FREQUENCY OF HOLDING BOARD MEETINGS

Provisions of the Act	Nature of Exemption	Impact of Exemption
Section 173, sub-section (1) contains that - <i>Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.</i>	Shall apply only to the extent that the Board of Directors, of such companies shall hold at least one meeting within every six calendar months.	Requirement to have atleast 4 meetings in a year and to hold board meeting within 120 days of previous board meeting is dispensed with. It is sufficient if the companies conduct at least one board meeting within every six calendar months.

QUORUM FOR MEETINGS OF BOARD

Provisions of the Act	Nature of Exemption	Impact of Exemption
Section 174, sub-section (1) contains that: <i>The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.</i>	In Sub-section (1), a) for the words, “one third of its total strength or two directors whichever is higher, the words “either 8 members or twenty five percentage of its total strength whichever is less” shall be substituted. b) The following proviso shall be inserted namely - <i>Provided that quorum shall not be less than two members</i>	Quorum requirement for Board Meetings for Section 8 Companies has been changed as 8 directors or 1/4th of total strength whichever is lower subject to minimum of 2 directors.

REQUIREMENT OF INDEPENDENT DIRECTORS FOR AUDIT COMMITTEE

Provisions of the Act	Nature of Exemption	Impact of Exemption
Section, sub-section (2) contains that – <i>The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority.</i>	The words “with independent directors forming a majority” shall be omitted	Consequent to the relief granted whereby requirement of appointment of independent directors has been done away with, the requirement of audit committee to have majority as independent directors is also removed by virtue of this exemption.

FORMATION OF NOMINATION AND REMUNERATION COMMITTEE

Provisions of the Act	Nature of Exemption	Impact of Exemption
Section 178 relating to constitution of Nomination and Remuneration Committee	Entire Section shall not apply	Requirement of constitution of nomination and remuneration committee and related compliances u/s 178 has been removed.

POWERS TO BE EXERCISED ONLY AT BOARD MEETING

Provisions of the Act	Nature of Exemption	Impact of Exemption
Section 179, sub-section 3 interalia contains that <i>(3) The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—</i> <u><i>(d) to borrow monies;</i></u> <u><i>(e) to invest the funds of the company;</i></u> <u><i>(f) to grant loans or give guarantee or provide security in respect of loans;</i></u>	Matters referred to in clauses (d), (e) (f) of sub-section 3 of Section 179 may be decided by the board by circulation instead of a meeting	The following powers of the Board can be exercised by means of passing of resolution by circulation instead of at a meeting of the Board - - to borrow monies; - to invest the funds of the company; - to grant loans or give guarantee or provide security in respect of loans;

DISCLOSURE OF INTEREST BY INTERESTED DIRECTORS AND ABSTAINING FROM PARTICIPATING IN THE MEETING

Provisions of the Act	Nature of Exemption	Impact of Exemption
Section 184, sub-section 2 contains that - <i>Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into— (a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; (b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting</i>	Sub-section (2) of Section 184 shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees	The Director of a Section 8 company, being an interested director, is required to disclose his interest in a transaction, arrangement or contract and abstain from participating in the relevant Board meeting only if the value of such transaction exceeds Rs. 1 Lakh.

ENTRY IN REGISTER OF RELATED PARTY TRANSACTIONS

Provisions of the Act	Nature of Exemption	Impact of Exemption
Section 189 contains provisions relating to making entry in the register of related party transactions	Section 189 shall apply only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds one lakh rupees.	Consequent to Amendment in Section 184(2), compliance requirement relating to this section also has been amended. The details are needed to be entered in the register only in case of interested contract or arrangement in which the value of transaction exceeds Rs. 1 Lakh.

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