

EXEMPTIONS TO A PRIVATE LIMITED COMPANY

[Personal & Private Circulation bearing no opinion or advice]

S. No.	Exemption and Interpretation	Section	Date of Applicability
1.	DEFINITION OF RELATED PARTY RELAXED WITH RESPECT TO SECTION 188: Related Party does not include Holding, Subsidiary, Associate Company and sister concern (subsidiary of holding). Transactions entered with them and falling under section 188 does not require compliance of section 188. <i>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)).</i>	2(76)(viii)	From 05.06.2015 till now
2.	TIME LIMITS IN RIGHT ISSUE CAN BE REDUCED: Sending of offer letter minimum 3 days period before opening of offer AND Minimum & maximum offer period of 15 & 30 days respectively. In case of emergency, the mentioned time limits can be reduced with the consent of 90% of shareholders give their consent in writing/electronic mode. <i>Note: The time limits cannot be increased, they can only be reduced.</i>	62(1)(a) & 62(2)	From 05.06.2015 till now
3.	ACCEPTANCE OF DEPOSITS FROM MEMBERS MADE EASIER FOR CERTAIN PRIVATE COMPANIES: Private Companies borrowing monies from members up to aggregate limit of paid-up share capital & free-reserves need not require to comply with conditions mentioned in section 73(2)(a) to (e). However details of money so borrowed shall be filed with ROC in manner as may be specified. If Such Company borrows money from member then no need to: · Issue Circular · File circular with ROC · Maintain Deposit repaymentreserve · Provide deposit insurance	73(2) (a) to (e)	From 05.06.2015 till now
4.	NO NEED TO FILE MGT-14 FOR BOARD RESOLUTIONS: Any Board resolution mentioned in section 179 (3) read with rule 8 of Companies (Meeting of Board & its power) Rules, 2014 is now not required to be filed with ROC. <i>Note: This will reduce compliance for the companies. But there are certain resolutions which need to be filed with ROC. This is not a blanket exemption.</i>	117(3)(g)	From 05.06.2015 till now

5.	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 <u>Private Company Cannot:</u> 1. Reduce quorum below 2 (In re- Ram Villas Press Publication Pvt. Ltd- Kerala HC) 2. Increase time limit of 48 hours for depositing proxy form (Section 105(4)) 3. Reject a proxy form if it fails to comply with specific requirement of AOA (Section 105(7)) 4. Restrict voting right of a member other than restrictions in section 106(section 106(2))	101 to 107 & 109	From 05.06.2015 till now
6.	MAXIMUM NUMBER OF AUDIT IN CASE OF PRIVATE COMPANY RELAXED: Limit of 20 Companies only includes:- 1. Public Companies 2. Private Companies having paid up capital of Rs. 100 crore or more.	141(3)(g)	From 05.06.2015 till now
7.	CANDIDATURE NOT REQUIRED FOR APPOINTMENT OF DIRECTOR AT GENERAL MEETING: Amount of Rs. 1 lakh not required to be deposited at least 14 days before GM.	160	From 05.06.2015 till now
8.	APPOINTMENT OF DIRECTORS NEED NOT TO BE VOTED INDIVIDUALLY: More than 1 director can be appointed via single resolution.	162	From 05.06.2015 till now
9.	RESTRICTIONS ON POWERS OF BOARD NOT TO APPLY: Private Company can now without shareholder's approval: 1. Borrow exceeding paid up capital & free reserves. 2. Sell/lease/dispose of undertaking.	180	From 05.06.2015 till now
10.	INTERESTED DIRECTOR CAN PARTICIPATE IN BOARD MEETING AFTER DISCLOSURE OF INTEREST: Interested Director can now participate in agenda in which he is interested. Note: He Cannot be counted in Quorum (Section 174(3) explanation).	184	From 05.06.2015 till now

11.	LOANS/GUARANTEE/SECURITY CAN BE GIVEN TO DIRECTOR AND PERSON IN WHOM HE IS INTERESTED BY CERTAIN PRIVATE COMPANIES: A private Company which has: 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 loans/ guarantee/security to Group Companies now possible.	185	From 05.06.2015 till now
12.	RESTRICTION ON VOTING RIGHT IN GENERAL MEETING IN CASE OF RELATED PARTY TRANSACTION NOT APPLICABLE: Member although being related party to the concerned resolution can still cast his vote at GM.	188(1) 2nd proviso	From 05.06.2015 till now
13.	SHAREHOLDER'S RATIFICATION NOT REQUIRED FOR APPOINTMENT OF MD/WTD: 1. Shareholder's Ratification is 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.	196(4) &(5)	From 05.06.2015 till now
14	OMISSION OF REQUIREMENT OF MINIMUM SHARE CAPITAL: No minimum paid up share capital is prescribed under the act now. A Private limited can be formed with any paid up share capital.	2(68)	From 25.05.2015 till now
15	REMOVAL OF COMMON SEAL: The requirement of common seal has been replaced with the signature of directors.	9, 12, 22 and 46	From 25.05.2015 till now
16	LOAN FROM DIRECTOR OR HIS RELATIVES: Loan is allowed from the director and its relative without any limit subject to the Loan is given from his own funds.	73, 76	From 15.09.2015 till now

Disclaimer: This document contains the views and analysis of the author regarding the mentioned amendment Act and it is for personal and private circulation and not bearing any opinion or advice.

Prepared By:
Mohit Gupta,
B Com. (Hons.), FCA, LLB,
Alumnus Rajdhani College (DU)
Alumnus Law Centre 2, Law Faculty (DU)
For any query and feedback, please write to mohit@gmrindia.com