

# Analysis of Central Government Notification granting Exemptions to Private Limited Companies under the Companies Act, 2013

By CA Sumit Binani, [sumit\\_binani@hotmail.com](mailto:sumit_binani@hotmail.com), +919830810003

## Applicability & Powers:

Notification issued by MCA on 5<sup>th</sup> June, 2015. The notification so issued reveals that the same is yet to be gazetted. However, as per previous precedents, the same is to be effective from the date of its notification only i.e. 5<sup>th</sup> June, 2015.

The aforesaid notification has been issued by the Central Government in terms of the powers bestowed upon it by Section 462(1) of the Companies Act, 2013. The said section 462(1) empowers the Central Government to issue such notification in public interest after laying it before both the houses of parliament as prescribed in sub section 2 of the said section 462.

The provisions of the aforesaid Section 462(1) provides that, the Central Government may in the public interest, by notification direct that any of the provisions of the Companies Act, 2013 (a) shall not apply to such class or classes of companies; or (b) shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.

A copy of this notification, which pertains to exemptions to private limited companies (other than private companies which is a subsidiary of a public company) has been laid in draft before both Houses of Parliament as required by sub-section (2) of section 462 of the Companies Act, 2013.

The private companies, while complying with such exemptions provided by the aforesaid notification shall ensure that the interests of their shareholders are protected.

## Exceptions, Modifications & Adaptations (EMAs)

Certain entities not to be treated as Related Party for the purpose of S 188 dealing with Related Party Transactions

EMAs	Impact
S 2(76)(viii) shall not apply to a private company with respect to S 188 dealing with Related Party Transactions	Any related party transaction as specified in S 188, entered into by a private limited company with its following related parties will be outside the purview of the applicability of the provisions of S 188: a. holding company b. subsidiary company c. associate company d. other subsidiary of the holding company

### Non applicability of provisions relating to Kinds of Share Capital & Voting Rights

EMAs	Impact
S 43 and S 47 of shall not apply to a private company if its MOA or AOA so provides.	<p>a. Provisions of S 43 relating to Kinds of Share Capital i.e. Equity (with or without differential rights) and Preference not to apply.</p> <p>b. Provisions of S 47 dealing with provisions of Voting Rights of Equity &amp; Preference Shareholders not to apply.</p>

### Relaxation in minimum time conditions relating to Rights Offer

EMAs	Impact
<p>Modification in S 62(1)(a)(i) and S 62(2).</p> <p>In clause (a), in sub-clause (i), the following proviso shall be inserted, namely:</p> <p><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 or sub-section shall apply</i></p>	<p>Section 62 lays down time conditions to be followed by companies while coming up with rights offer. It requires that the rights offer shall be made as prescribed by giving at least 15 days' notice and not exceeding 30 days from the date of the offer, within which if the offer is not accepted, it shall be deemed to have been declined. It also requires that such notice shall be dispatched in the manner prescribed at least 3 days before the opening of the rights issue.</p> <p>Now, a private limited company if 90% of its members provide their consent in writing or in electronic mode can:</p> <p>a. send notice of shorter period than 15 days as mentioned above</p> <p>b. dispatch notice of a lesser period than 3 days as mentioned above. In other words, it can also dispatch notice even 1 day before the opening of the rights issue.</p>

### Modification in condition pertaining to Issue of shares to employees under a scheme of employees' stock option

EMAs	Impact
<p>Modification in S 62(1)(b):</p> <p><i>In clause (b), for the words "special resolution", the words "ordinary resolution" shall be substituted.</i></p>	<p>A private limited company can now issue further shares to employees under a scheme of employees' stock option subject to passing of an ordinary resolution (instead of special resolution) and subject to other prescribed conditions in Rule 12 of Chapter IV Rules, which remains the same.</p>

Restrictions on purchase by company or giving of loans by it for purchase of its own shares removed for certain class of private companies

EMAs	Impact
Restrictions in terms of provisions of S 67 removed for certain class of private companies.	Restrictions on purchase by company or giving of loans by it for purchase of its own shares removed for private companies which satisfies <u>all</u> the following conditions: <ol style="list-style-type: none"> <li>in whose share capital no other body corporate has invested any money;</li> <li>if the borrowings of such a company from banks or financial institutions or any body corporate is less than [lower of (i) 2 x paid up share capital or (ii) Rs 50 crores]; and</li> <li>such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section</li> </ol>

Relaxation in conditions for Acceptance of Deposits from Members

EMAs	Impact
Provisions of Sec 73(2) (a) to (e) shall not apply to a private company which accepts from its members monies not exceeding 100% 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	<p>Till now, a private company (non-nbfc) was permitted to accept or renew deposits from its members subject to a limit of 25% of its aggregate of paid up capital and also subject to compliance of stringent conditions laid down under the provisions of S 73(2).</p> <p>Henceforth, a private company (non-nbfc) is permitted to accept monies (whether secured or unsecured) from its members up to a maximum of 100% of aggregate of its paid up capital and free reserves (which does not include securities premium). This is however, subject to the condition of intimation of details to ROC in prescribed manner.</p> <p><u>Comments:</u></p> <ol style="list-style-type: none"> <li>acceptance of monies by a private company from its members is not excluded from the definition of deposits.</li> <li>there is no mandatory minimum interest clause on such monies accepted. However, it has been clearly mandated by the aforesaid notification that the private companies, while complying with such exemptions provided shall ensure that the interests of their shareholders are protected.</li> <li>other prescribed conditions and procedures laid down in Chapter V Rules relating to Acceptance of Deposits is applicable.</li> <li>relevant modifications in the Chapter V Rules is awaited as a consequence of this amendment. Whether there would be further relaxation from the applicable Rules, shall only become clear once the revised Rules are communicated/notified by MCA</li> </ol>

Relaxation in various provisions pertaining to General meetings etc.

EMAs	Impact
Section 101 to 107 and 109 shall apply to a private company unless otherwise specified in respective sections or the AOA of such company provide otherwise	<p>Private companies are now permitted to deal with the following provisions relating to general meetings in a manner provided in their AOA:</p> <p><b>Notice(101); Explanatory Statement(102); Quorum(103); Chairman(104); Proxies(106); Voting by Show of Hands(107); Demand for Poll(109).</b></p> <p><u>Comments: Similar privileges were available to private companies under the Companies Act, 1956</u></p>

Exemption from filing certain resolutions passed at the Board Meetings

EMAs	Impact
Resolutions mentioned in Section 117(3)(g) i.e. listed out in Section 179(3) and Rule 8 of Chapter XII Rules will no longer required to be filed by a private company.	<p>Private companies are now exempt from filing resolutions listed in Section 179(3) and Rule 8 of Chapter XII Rules. Hence private companies will no longer be required to file MGT-14 for prescribed matters taken up at its Board Meetings. It is to be noted that such companies are still required to file MGT-14 for other matters prescribed in Sec 117.</p>

Number of Companies in which a PCA can act as Statutory Auditor

EMAs	Impact
Section 141(3)(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".	<p>While reckoning the limit of 20 companies in which a person can be appointed as a Statutory Auditor, the following shall be excluded:</p> <ol style="list-style-type: none"> <li>OPCs</li> <li>Dormant Companies</li> <li>Small Companies</li> <li>Private companies having paid up share capital of <u>less than</u> Rs 100 crores.</li> </ol>

Exemptions from the provisions and procedures relating to right of persons other than retiring directors to stand for directorship

EMAs	Impact
Section 160 dealing with right of persons other than retiring directors to stand for directorship now longer applicable to a private company	<p>In case of a private company, requirements of special notice of 14 days and deposit of Rs 1 lac in case of appointment of directors at a general meeting is now longer applicable. The private companies have been fully exempt from the provisions of Sec 160 of the Act.</p> <p><u>Comments: Similar privileges were available to private companies under the Companies Act, 1956</u></p>

Exemptions from the provisions of individual voting for appointment of 2 or more persons as directors at a general meeting

EMAs	Impact
Section 162 requiring individual voting for appointment of 2 or more persons as directors now longer applicable to a private company	<p>In case of a private company, requirements of individual voting for appointment of 2 or more persons as directors at a general meeting is now longer applicable. The private companies have been fully exempt from the provisions of Sec 162 of the Act.</p> <p><u>Comments: Similar privileges were available to private companies under the Companies Act, 1956</u></p>

Exemptions from passing Special Resolution in certain cases

EMAs	Impact
The provisions of Section 180 which imposed restrictions on certain powers of the Board is now longer applicable to a private company	<p>A private company is no longer required to seek approval of its members by way of a special resolution on the following matters besides being totally exempt from the provisions of Sec 180:</p> <ol style="list-style-type: none"> <li>a. selling, leasing or otherwise disposing whole or substantially the whole of undertaking of the company</li> <li>b. investing the compensation amount received by it as a result of any merger or amalgamation</li> <li>c. borrowing money in excess of its paid up capital and free reserves</li> <li>d. remitting or giving time for repayment of any debt due from a director</li> </ol> <p><u>Comments: Similar privileges were available to private companies under the Companies Act, 1956</u></p>

Interested Director allowed to participate at the meeting of the Board where contracts and arrangement in terms of Sec 184(2) is being taken up and discussed.

EMAs	Impact
The provisions of Section 184(2) shall continue to apply to a private company with the exception that the interested director may participate in such meeting after disclosure of his interest	<p>In terms of the provisions of Section 184(2), every director of a company who is in any way directly or indirectly, concerned or interested in a contract or arrangement entered or proposed to be entered into as prescribed therein is required to:</p> <ol style="list-style-type: none"> <li>a. disclose the nature of his concern or interest at the meeting of the Board in which such contract or arrangement is discussed and</li> <li>b. shall not participate in such meeting.</li> </ol> <p>However, as a consequence of the notification in question, every such director interested in a contract or arrangement as specified is now <u>permitted to participate</u> in such meeting.</p>

	<p><u>Comments:</u></p> <ul style="list-style-type: none"> <li>i. There has been no consequential amendment in S 174 relating to quorum for board meetings. Such interested director may participate (is participation akin to voting?) but shall not be counted for the purpose of quorum.</li> <li>ii. The contracts and arrangements are those which are other than prescribed in S 188. S 188 and the related Rule 15 of Chapter XII Rules disallows an interested director from being present at the board meeting at which the contracts or arrangements as specified in Sec 188 is being taken up. Hence, similar amendments in the said Rule 15 is awaited.</li> </ul>
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**Exemptions from restrictions of giving loan to directors etc (applicable to certain class of private companies)**

EMAs	Impact
<p>The provisions of Section 185 relating to loan to directors etc shall not apply to certain class of private companies</p>	<p>The provisions of Section 185 lay restrictions on loans to be given by a company to its directors or entities in which the directors are interested. It also lays down restrictions on guarantee or security given by a company in connection with any loan taken by the aforesaid directors and entities.</p> <p>The above restrictions will now no longer be applicable to the private companies which satisfies <u>all the 3 conditions</u> mentioned below:</p> <ul style="list-style-type: none"> <li>(a) in whose share capital no other body corporate has invested any money;</li> <li>(b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than [lower of (i) 2 x paid up share capital or (ii) Rs 50 crores]; and</li> <li>(c) such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this section</li> </ul>

**Exemption from ban on voting at the general meeting in case of related party transactions**

EMAs	Impact
<p>Second proviso to Section 188(1) now no longer applicable to a private company</p>	<p>In case of a private limited company, the related party shareholder(s), with whom such company proposes to enter into a related party transaction and if such transaction requires approval by an ordinary resolution at a general meeting, can now vote at the general meeting. In other words, the restriction to vote on a member being related party to vote on an ordinary resolution in case of a related party transaction is now no longer applicable in case of a private company.</p> <p><u>Comments:</u> Similar exemption is expected from MCA in case of Board Meeting by way of amendments in Rule 15 of chapter XII Rules.</p>

Relaxations in provisions relating to appointment of Managerial Personnel (MP)

EMAs	Impact
<p>Provisions of Section 196(4) &amp; (5) are now no longer applicable to a private company</p>	<p>Private companies have been exempted from the requirement:</p> <ol style="list-style-type: none"> <li>a. of seeking approval from the Board or Members at a meeting for appointment of MP and also of the Central Government where such appointment/remuneration of MP is not in accordance with the provisions of Schedule V of the Act.</li> <li>b. that the notice convening the BM or GM considering such appointment shall include terms, conditions and other prescribed matters.</li> <li>c. of filing MR-1 for appointment of MP within 60 days with ROC</li> </ol> <p><u>Comments: The other provisions of section 196 continues to be applicable to a private company</u></p>