

## COMPANIES ACT, 2013

### **EXEMPTIONS TO PRIVATE LIMITED COMPANIES**

MCA issued Notification on 5<sup>th</sup> June, 2015 under section 462 of the Companies Act, 2013 (“the Act”) providing exemptions to private companies from the provisions of the Companies Act, 2013

1. **Sub-Clause (viii) of Clause (76) of Section 2 shall not apply with respect to Section 188**  
Holding, Subsidiary and Associate Company will not be covered 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))
2. **Section 43 (Kinds of Capital) and Section – 47 (Voting Right) shall not apply where MOA & AOA of private company so provides**  
If anything else mentioned in MOA & AOA of a private company then MOA & AOA prevail over the section 43 and 47.
3. **Section 62(1)(a)(i) and (2): Time period of Offer**  
In case 90%, of the members of a private company have given their consents in writing or in electronic mode then offer can be closed before 15 days.
4. **Section 62(1)(b):** Now for ESOP Ordinary Resolution is adequate
5. **Section 67 Restriction on purchase by company or giving of loan by it for purchase of its shares**  
This restriction will not apply to private company if following conditions are fulfilled:
  - a) No other body corporate has invested any money in such a company;
  - b) The borrowings of such a company from banks or financial institutions or any body corporate are less than twice its paid up share capital or fifty crore rupees, whichever is lower; and
  - c) It is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.
6. **Section 73(2) (a) to (e)** shall not apply to a private company which accepts from its members monies not exceeding one hundred per cent of the aggregate of the paid up share capital and free reserves.

# Grewal & Singh, Chartered Accountants

A – 17, LGF, Lajpat Nagar – 3,  
New Delhi – 110024  
Email: info@cagrewalsingh.com

Newsletter  
June 2015

7. **Section 101 to section 107 and section 109** of the Act shall not apply to a private company unless otherwise specified in respective sections or the Articles of Association of the company provide otherwise. These sections deal with the following aspects:-

- 101 – Notice of General Meeting
- 102 – Explanatory statements
- 103 – Quorum
- 104 – Chairman of the Meeting
- 105 – Proxies
- 106 – Restrictions on voting rights
- 107 – Voting by show of hands
- 109 – Demand for a poll.

8. **Section 117(3)(g)**

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 Powers) Rules, 2014.

9. **Section 141(3)(g)**

Following classes of companies will not be included in the audit limit of 20 (Twenty) Companies:

1. One person companies
2. Dormant companies,
3. Small companies, and
4. Private Companies having paid up share capital less than one hundred crore rupees.

However, it may be noted that as per the ICAI guidelines ceiling limit is 30 companies (including both public and private Companies). Please note that this guideline was in relation to erstwhile section 224/228 of the Companies Act, 1956.

10. **Sub-Section (2) of Section 184**

The section deals with the disclosure of interest by a director in a contract or arrangement and restrains him from participating in the meeting of the Board in which such contract or arrangement is discussed. It has been provided in the notification that in case of private limited such a director may participate in the meeting after disclosure of his interest.

However, he cannot be counted in Quorum (Section 174(3) explanation)

# Grewal & Singh, Chartered Accountants

A – 17, LGF, Lajpat Nagar – 3,  
New Delhi – 110024  
Email: info@cagrewalsingh.com

Newsletter  
June 2015

## **11. Section 185 Loan to Director**

*Loan to director are allowed for Private Limited Companies if it fulfills the below mentioned conditions:*

1. No Body Corporate is a shareholder
2. It has not borrowed money from Bank/ Financial Institution/ Body Corporate exceeding lower of the following:
  - Twice it's paid up capital
  - Rs. 50 crore
3. No repayment default is subsisting of such borrowings at time of giving loan.

## **12. Second proviso to sub-section (1) of section 188 shall not apply to private company**

Any company which is a holding, subsidiary or an associate of such company or a subsidiary of a holding company to which it is also a subsidiary shall not be considered a related party in case of a private limited company for the purposes of ascertaining Related Party Transaction under section 188 of the Act.

Further, second proviso to the said section requires that no member of the company shall vote on such resolution to approve any contract or arrangement which may be entered into by the company, if such member is a related party. This proviso has been made inapplicable to a private limited company.

## **13. Sub-section (4) and (5) of section 196 shall not apply to private company**

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 appointed in Private limited Company without:

1. Shareholder's Ratification
2. Schedule V is not applicable.
3. MR-1 is not required to be filed
4. T&C of appointment, remuneration not mandatory to be mentioned in resolution

## **14. Section 160 shall not apply to Private Company**

Now there is no need to deposit Rs. 100,000/- by the Director at the time of appointment.

## **15. Section 162 shall not apply to Private Company**

Now more than one director can be appoint via a single resolution.

## **16. Section 180 shall not apply to Private Company.**

Now there is *no need to pass "Special Resolution"* for the purposes of passing of Resolution mentioned under Section 180. Examples:

- a. Where borrowing exceeds paid up capital and free reserves.
- b. Sell/lease/disposal of undertaking.
- c. Making Investments.

For Private Circulation only

# Grewal & Singh, Chartered Accountants

A – 17, LGF, Lajpat Nagar – 3,  
New Delhi – 110024

Email: [info@cagrewalsingh.com](mailto:info@cagrewalsingh.com)

Newsletter  
June 2015

## **Disclaimer:**

The information contained in the newsletter is purely based on our understanding and is not an opinion or advice. We shall not be held responsible for any action taken on the basis of above information. The user is advised to seek professional service specific to its circumstances.

## **Contributed By:**



**CA. (Dr.) Gurmeet S. Grewal**  
B. Com.(Hons.), FCA, Ph.D, CAL (IIAM)



**CA. Harsimran Grewal Dhillon**  
B.Com ACA



**CA. Amit Goswami**  
M. Com ACA



**CA. Anita Goyal**  
B. Com ACA