

**New exemptions to Private Limited Companies under the Companies Act, 2013.**

Ministry of Corporate Affairs ('MCA') vide its notification number G.S.R. 464(E) dated 5<sup>th</sup> June , 2015 (hereinafter referred to as the principal notification) had granted several exemptions to private companies with such exceptions, modifications and adaptations, as specified in the said notification. Recently, MCA vide its notification dated 13<sup>th</sup> June, 2017 has given further exemptions to the private limited companies.

The exemptions given to private limited companies as per the aforesaid notification are explained below:

**a. Proviso of Section 2 (40) of the Companies Act, 2013 (the Act) pertaining to Definition of "Financial Statement" :**

**Existing Provision:** The financial statement with respect to one person company, dormant company and small company may not include cash flow statement.

**Amendment :** The exemption has been extended to the start-up private companies also.

The term "start-up" company means a private company incorporated under the Companies Act, 2013 or as per the Companies Act, 1956 and recognized as start-up in accordance with the notification issued by the Department of Industrial Policy and Promotion , Ministry of Commerce and Industry etc.

**b. Clause (a) to (e) of section 73(2) of the Act pertaining to Terms and conditions for acceptance of deposit**

**Applicability as per the Principal Notification :**

The aforesaid clauses do not apply to a private company which accepts from its members monies not exceeding one hundred per cent of aggregate of the *paid up share capital and free reserves*. Such company is required to file the details of monies so accepted to the Registrar in such manner as may be specified.

While retaining the aforesaid exemption the following changes have been made to provide further relaxation to a larger category of private limited companies

**Amendment :**

- While calculating the limit of 100% of the monies accepted from its members, the “securities premium account” has also been included along with the paid up share capital and free reserves.
- The aforesaid clauses shall not apply to the any private start-up companies for 5 years from the date of its incorporation
- The aforesaid clauses i.e. clause (a) to (e) of section 73(2) of the Act shall not apply to any private company which fulfils all the following conditions :
  - which is not an associate or a subsidiary of any other company
  - if the borrowings of such company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or Rs. 50 crore, whichever is lower; and
  - such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section

Note : In respect of the aforesaid conditions, the companies are required to file the details of monies accepted to the Registrar in such manner as may be specified.

#### **c. Section 92(1)(g) of the Act pertaining to Particulars of Annual Return**

The aforesaid section prescribes information to be furnished in respect of “Remuneration of directors and key managerial personnel” (KMP)

**Existing Provision** : This information was required to be filled by every company in the Annual Return.

**Amendment** : Private companies which are small companies need to provide information of “ aggregate amount of remuneration drawn by directors” Thereby the requirement to furnish information in respect of KMPs has been dispensed with in the case of small companies.

#### **d. Proviso to section 92(1) of the Act pertaining to Signing of Annual Return**

**Existing Provision** :

The Annual Return of the every company is required to be signed by a director

and the company secretary or where there is no company secretary, by a company secretary in practice.

However, in relation to One person Company and small company, the same is required to be signed by the Company Secretary or where there is no Company Secretary, by the director of the Company.

**Amendment :** In case of start-up private companies also, the Annual Return shall require to be signed by the Company Secretary or where there is no Company Secretary, by the director of the Company

**e. Section 143(3)(i) of the Act pertaining to Reporting of Internal financial controls system in Auditor's Report by the Auditor**

The aforesaid section requires every Audit Report to state as under :

“whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls”

**Existing provision :** It was applicable to all category of companies.

**Amendment :** This will not be applicable to a private company

- which is a one person company or a small company ;or
- Which has turnover less than Rs. 50 crore as per latest audited financial statement or
- which has aggregate borrowings from banks or FIs or any other body corporate at any point of time during the financial year less than Rs. 25 crore

**f. Section 173(5) of the Act pertaining to holding of Meeting of Board of Director in some companies**

**Existing Provision :** A One person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than 90 days.

**Amendment :** The aforesaid provisions now will also be applicable to the start-up private companies.

**g. Section 174(3) of the Act pertaining to Quorum for meeting of Board of Directors**

**Existing Provision :**Where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time.

**Amendment :** The aforesaid provisions shall be applicable to all the private Companies with an exception that all the interested directors shall be counted as quorum in the meeting after giving his/her disclosure of interest pursuant to section 184 of the Companies Act, 2013.

#### **The Key**

The recent relaxations in the Companies Act, 2013 are welcome changes and are in line with the Government's objective of Ease of Doing Business in India and also to promote the start-up culture in the country.