

De Jure

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Further exemptions granted to Private Companies,
Section 8 Companies and Government
Companies

EXEMPT



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simple solutions

When the Companies Act, 2013 (the "Act") was notified, it did not specifically provide for any separate list of exemptions for certain categories of companies. Finally, the Ministry of Corporate Affairs ("MCA"), after taking cognizance of the demands made from various stakeholders, through its Notifications dated June 05, 2015¹, granted exemptions to Private Companies, Section 8 Companies and Government Companies from the applicability of certain provisions of the Act to such entities.

In furtherance to the said exemptions, the MCA, through its Notifications dated June 13, 2017 have granted further exemptions to Private Companies, Section 8 Companies and Government Companies.

The analysis of exemptions granted to the Private Limited Companies are as follows:

It must be noted that exemptions with respect to the private company is to be applicable only where such private company has not committed a default in filing its financial statements under Section 137 of the Act or annual return under Section 92 of the Act with the ROC.

Sr. No	Relevant Provision of the Act	Particulars	Exemptions in the terms of the Notifications dated June 13, 2017
1.	Chapter I, Section 2(40) [Financial Statement]	The definition of the term 'Financial Statement' includes cash flow statement. However, One Person Company, Small Company and Dormant Company were not required to prepare the cash flow statement as part of their financial statements.	The relaxation for preparation of cash flow statement has now been extended to a Private Company provided such Private Company is a start-up. For the purposes of the Act, the term 'start-up' or 'start-up company' is to mean a private company incorporated under the Companies Act, 2013 or the Companies Act, 1956 and recognised as a start-up in accordance with the notification

¹ Notifications G.S.R. 464(E), G.S.R. 463(E) and G.S.R. 466(E)

Sr. No	Relevant Provision of the Act	Particulars	Exemptions in the terms of the Notifications dated June 13, 2017
			issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.
2.	Chapter V, Section 73 (2) (a) to (e) [Deposits]	Clauses (a) to (e) of Section 73(2) provides for the conditionalities for accepting deposits by a company from its members. The MCA, through its Notification dated June 05, 2015 had granted exemption to a Private Company from the provisions of Clauses (a) to (e) of Section 73(2) subject to the condition that the Private Company accepts monies not exceeding 100% percent of aggregate of the paid up share capital and free reserves and such company files details of such monies accepted with the ROC in prescribed manner.	<p>It has been clarified now that Clauses (a) to (e) of Section 73(2) will not apply to private company:-</p> <ol style="list-style-type: none"> a) which accepts from its members deposits not exceeding one hundred percent (100 %) of aggregate of the paid up share capital, free reserves and securities premium account or; b) which is a start-up (for five years from the date of its incorporation) or; c) which fulfils all of the following conditions: <ul style="list-style-type: none"> ▪ the company is not an associate or subsidiary of another company; ▪ the borrowings of such company from banks or financial institutions or any body corporate is less than twice of its then paid up share capital or fifty crore rupees, 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; <p>provided that the company referred to in points a) to c) above, file the details of monies accepted to the ROC in prescribed manner.</p>

Sr. No	Relevant Provision of the Act	Particulars	Exemptions in the terms of the Notifications dated June 13, 2017
3.	Chapter VII, Section 92 (1) (g) [Annual Return]	Under Section 92(1)(g), Companies have an obligation to file an annual return which shall also include information regarding remuneration of directors and key managerial personnel.	It has now been clarified that a Private Company, which is a small company, shall be required to provide information with respect to only aggregate amount of remuneration drawn by directors.
4.	Chapter VII, Proviso to Section 92(1)	Presently, in relation to One Person Company and Small Company, the annual return is required to be signed by the company secretary, or where there is no company secretary, by the director of the company.	It has now been clarified that in addition to a One Person Company and Small Company even for a Private Company (which is a start-up) the annual return is to be signed by the company secretary, or where there is no company secretary, by the director of the company.
5.	Chapter X, Section 143 (3) (i) [Powers and Duties of Auditor and Auditing Standards]	Presently, the auditor's report has to <i>inter-alia</i> confirm whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls.	This provision is not to apply to a private company- <ul style="list-style-type: none"> ▪ which is a one person company; or ▪ small company; or ▪ which has turnover less than rupees fifty crores as per latest audited financial statement or which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than rupees twenty five crore.
6.	Chapter XII, Section 173 (5) [Meetings of Board]	Presently, a One Person Company, small company and dormant company are required to hold at least one board meeting in each half of a calendar year and the gap between the two meetings should not be less than ninety days.	Now, pursuant to the notification, even a Private Company, which is a start-up, is entitled to the relaxation with respect to the frequency of holding a board meeting.

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7.	Chapter XII, Section 174 (3) [Quorum for Board Meetings]	Presently, if 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, was to be reckoned as the quorum during such time.	Pursuant to the exemption, the interested director may also be counted towards the quorum in such a meeting after the disclosure of such interest pursuant to section 184 (Disclosure of interest by director).

The analysis of exemptions granted to the Section 8 Companies are as follows:

The exemptions with respect to the Section 8 company are to be applicable only where such Section 8 company has not committed a default in filing its financial statements under Section 137 of the Act or annual return under Section 92 of the Act with the ROC.

Sr. No	Relevant Provision of the Act	Particulars	Exemptions in terms of the Notifications dated June 13, 2017
1.	Section 149 (1) (b) and first proviso [Maximum number of directors]	As per section 149 (1) (b) the maximum number of directors can be 15.	Pursuant to the notification, this upper limit is not to apply to a Section 8 Company.
2.	Section 186 (7) [Loan and	Presently, no loan is to be given under this section at a rate of interest lower than the prevailing yield of one	However, pursuant to the notification, there shall be a proviso added to this sub-section (7), stating that this sub-

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	Investment by company]	year, three year, five year or ten year Government Security closest to the tenor of the loan.	section shall not be applicable to a company where 26% or more of the paid up share capital is held by the Central Government or one or more State Governments or both, in respect of the loans provided by such company for funding Industrial Research and Development projects in furtherance of the objects as stated in its memorandum of association.

The analysis of exemptions granted to the Government Companies are as follows:

The exemptions with respect to the Government Company shall be applicable only where such Government company has not committed a default in filing its financial statements under Section 137 of the Act or annual return under Section 92 of the Act with the ROC.

Sr. No	Relevant Provision of the Act	Particulars	Exemptions in terms of the Notifications dated June 13, 2017
1.	Chapter VII, Section 96 (2) [Annual General Meeting]	Presently, with respect to a Government Company, Section 96(2) states that every AGM 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 such other place as the Central Government may approve in this behalf.	Some flexibility has been provided for the Government Company for holding its AGM. It has now been stated that the Government Company can hold its AGM at the registered office or such other place within the city, town or village in which the registered office of the company is situated or such other place as the Central Government may approve in this behalf.

Sr. No	Relevant Provision of the Act	Particulars	Exemptions in terms of the Notifications dated June 13, 2017
2.	Chapter XI, Section 152 (6) and (7) [Appointment of Directors]	Sub-section 6 of section 152 enumerates the retirement of directors and sub-section 7 talks about vacancy of the retiring directors.	The provision relating to retirement of directors and vacancy will not be applicable to a Government Company which is not listed company, in which not less than fifty one percent of the paid-up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments.
3.	Chapter XV, Sections 230 to 232 [Merger/ Amalgamations/ Arrangements]	Sections 230 to 232 talks about the Power to compromise or make arrangements with creditors or members, power of the tribunal to enforce compromise or arrangement and merger and amalgamation of companies respectively.	Now, the word "Tribunal" is substituted by the words "Central Government" for the Sections 230 to 232.

Our Views

From the exemptions which have now been provided under the present notifications, especially with respect to private companies, one can understand that the Government is trying to provide further impetus to start-ups by relaxing certain provisions of the Companies Act to the Private Companies which are start-ups. This is in line with the various other relaxations and incentives provided by the Government of India to a start-up entity under various other legislations. This seems to be in furtherance to the agenda of the Government of 'ease of doing business'. More such steps and concessions are welcome as they provide requisite encouragement to the budding enterprises and thereby promote the spirit of entrepreneurship.

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