

Impetus to Start-Ups, Government Companies and Section 8 Companies





In furtherance to the exemptions granted to private companies, Section 8 companies and Government companies from the applicability of certain provisions of the Companies Act, 2013 (the "Act") through the notifications issued by the Ministry of Corporate Affairs ("MCA") on June 05, 2015, the MCA has now granted further exemptions to such entities by a notifications dated June 13, 2017 ("Amendment Notifications"). It is pertinent to note that the exemptions are applicable only to such private company and Section 8 companies which have not committed a default in filing its financial statements under Section 137 of the Act or annual return under Section 92 of the Act.

The exemptions applicable to private companies are briefly analysed below:

- I. Section 2(40) of the Act provides a proviso that the financial statement with respect to one person company, small company and dormant company may not include cash flow statement. Pursuant to the relevant Amendment Notification, financial statement of private companies that are 'start-ups' may also not include cash flow statement. In this regard, it has been clarified that a start-up means a private company incorporated under the Act or the Companies Act, 1956 and recognized as a start-up in accordance with the notification issued by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry that defines startups.
- II. Clauses (a) to (e) of Section 73(2) of the Act provides for the conditionalities for accepting deposits by a company from its members. As per the exemptions granted by virtue of notification dated June 05, 2015, MCA 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 Registrar of Companies in prescribed manner. Pursuant to the relevant Amendment Notification, further relaxations have been put in place and it is now stipulated that clauses (a) to (e) of Section 73(2) will not apply to a private company:
 - 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:
 - i. the company is not an associate or subsidiary of another company;
 - ii. 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 INR 50 crores, whichever is lower; and
 - iii. such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section;provided that the company referred to in points a) to c) above, file the details of monies accepted to the Registrar of Companies in the prescribed manner.
- III. Section 92(1) (g) provides that the annual return of a company shall comprise of the details of the remuneration of directors and key managerial personnel as they stood at the end of the financial year. Pursuant to the relevant Amendment Notification, a private company, which is a small company shall only be required to provide information with respect to the remuneration drawn by its directors.



- IV. Section 92(1) provides that the annual return of a one person company and small company is required to be signed by the company secretary or where there is no company secretary then by the director of the company. Pursuant to the relevant Amendment Notification, such a provision is applicable even to private companies that are ‘start-ups’.
- V. Section 143(3) (i) stipulates that the auditor’s report has to state whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls. Pursuant to the relevant Amendment Notification, relaxation has been granted to a private company:
 - a) which is a one person company or a small company or
 - b) which has turnover of less than INR 50 crores as per latest audited financial statement or which has aggregate borrowings of less than INR 25 crores from banks or financial institutions or any body corporate at any point of time during the financial year.
- VI. Section 173(5) mandates that a one person company, small company and a dormant company is required to hold at least one board meeting in each half of the calendar year and the gap between two meetings should not be less than 90 days. As per the relevant Amendment Notification, such exemption has also been granted to private companies that are ‘start-ups’.
- VII. Section 174(3) stipulates that 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, is to be reckoned as the quorum during such time. It has now been provided that the interested directors may also be counted towards the quorum as long as the interested director’s disclosure is duly made.

The exemptions applicable to Section 8 companies are briefly analysed below:

- I. Section 149 (1) (b) of the Act mandates that the maximum number of directors of a company can be 15. Pursuant to the Amendment Notification, this cap / upper limit is not applicable to Section 8 companies.
- II. Section 186 (7) of the Act prescribes that no loan is to be provided at a rate lower than the prevailing yield of one year, three year, five year and ten year Government security closest to the tenor of the loan. Pursuant to the Amendment Notification, it has been stipulated that such a provision would 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.



The exemptions applicable to Government companies are briefly analysed below:

- I. Section 96(2) of the Act prescribes that every annual general meeting of a Government company shall be called during business hours (i.e. 9 am to 6 pm) 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 prescribe. Pursuant to the relevant Amendment Notification, it has been stated that a Government company may hold its annual general meeting 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 prescribe.
- II. Section 152(6) & (7) of the Act provides for retirement of directors and vacancy of retiring directors. It has now been provided that the provisions relating to retirement of directors and vacancies will not be applicable to a Government company which is not a listed company, in which not less than 51% 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.

With the aforementioned exemptions that have been provided under the Amendment Notifications, it can be clearly seen that the Government is putting special emphasis on providing impetus to start-ups by relaxing the provisions of the Act. Furthermore, the relaxations provided to private companies, Section 8 companies and Government companies seem to create a conducive and positive environment for such companies to manage their operations.

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