

Pune Branch of WIRC of ICAI – 2 Days Company Law Refresher Course

Key Exemptions to Private Companies under Companies Act, 2013

Sr. No.	Details of exemptions to Private Companies
1.	Sec. 2(40) – Financial Statements – Non-applicability of ‘cash flow statement’ to OPC, Small Co., Dormant Co. & Private Co. (if such private company is a ‘start-up’).
2.	Sec. 2(76) read with section 188 - Holding Co., Subsidiary Co., Associate Co., Fellow subsidiaries are not ‘related parties’.
3.	Sec. 43 – Kinds of Share Capital – Shall not apply where MoA or AoA of the private company so provides.
4.	Sec. 47 – Voting Rights – Shall not apply where MoA or AoA of the private company so provides.
5.	Sec. 62 – Further issue of shares – In case 90%, of the members of private Co. have given their consent in writing or in electronic mode, the period lesser than those specified (i.e. 15 – 30 days) shall apply – Offer Letter under Rights Issue u/s 62 of the Act.
6.	Sec. 62 – Further issue of shares – By passing an ordinary resolution, a private company can offer shares to employees under ESOP scheme, and subject to prescribed conditions.
7.	Sec. 67 – Restrictions on purchase by company or giving of loans by it for purchase of its shares – <i>The provision is not applicable to Private Cos.: (i) In whose share capital no other body corporate has invested any money, (ii) If the borrowings of such a company from banks or financial institutions or any body corporate is less than twice its paid-up share capital or Rs. 50 crore, whichever is lower; and (iii) Such a Co. is not in default in repayment of such borrowings subsisting at the time of making transactions.</i>
8.	Sec. 73(2) – Provisions relating to acceptance of deposit – Passing of resolution in general meeting, subject to rules prescribed by RBI w.r.t. acceptance of deposits from its members) with the conditions: (i) Issuance of circular, (ii) Filing of copy of circular with ROC, (iii) Depositing 30% of maturing amount in separate bank A/c, (iv) Certifying that Co. has not committed any default in the repayment of deposits accepted either before or after the commencement of Cos. Act or payment of interest on. <i>Above conditions are not applicable to private company, subject to following riders:</i> A. <i>Such Private Company accepts from its members monies not exceeding 100% of aggregate of the paid-up share capital, free reserves and securities premium account; or</i>

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	<p><i>B. Such Private Company which is a start-up, for 5 years from date of its incorporation; or</i></p> <p><i>C. Which fulfils all of the following conditions, namely:</i></p> <p><i>(i) Which is not an Associate or Subsidiary Company of any other company;</i></p> <p><i>(ii) If the borrowings of such a company from Banks or Financial Institutions or any body corporate is less than twice of its paid-up share capital or Rs. 50 crores, whichever is lower; and</i></p> <p><i>(iii) Such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits</i></p> <p><i>However, in all the 3 cases, the company shall file the necessary details with the RoC.</i></p>
9.	Sec. 92 – Annual Return – Disclosures of aggregate amount of remuneration drawn by directors by Small Company
10.	Sec. 92 – Annual Return – In case of OPC, Small Co. & Private Co. (if registered as ‘Start-Up’), the Annual Return shall be signed by CS, or where there is no CS by the director of the company.
11.	Section 101 – Notice of general meeting – <i>Shall apply unless otherwise specified in respective sections or AoA of the Co. provide otherwise.</i>
12.	Section 102 – Statement to be annexed to notice – <i>Shall apply unless otherwise specified in respective sections or AoA of the Co. provide otherwise.</i>
13.	Section 103 – Quorum for general meetings – <i>Shall apply unless otherwise specified in respective sections or AoA of the Co. provide otherwise.</i>
14.	Section 104 – Chairman for general meetings – <i>Shall apply unless otherwise specified in respective sections or AoA of the Co. provide otherwise.</i>
15.	Section 105 – Proxies at General meetings – <i>Shall apply unless otherwise specified in respective sections or AoA of the Co. provide otherwise.</i>

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16.	Section 106 – Restriction on voting rights – <i>Shall apply unless otherwise specified in respective sections or AoA of the Co. provide otherwise.</i>
17.	Section 107 – Voting by show of hands – <i>Shall apply unless otherwise specified in respective sections or AoA of the Co. provide otherwise.</i>
18.	Section 109 – Demand for Poll – <i>Shall apply unless otherwise specified in respective sections or AoA of the Co. provide otherwise.</i>
19.	Section 117(1)(g) – Filing of certain resolutions passed by the board of directors u/s 179 (3) of the Act – (i) Resolution to make calls on shareholders in respect of money unpaid on their shares, (ii) Resolution to authorise buy-back of securities, (iii) Resolution to issue securities, including debentures, whether in or outside India, (iv) Resolution to borrow monies, (v) Resolution to invest the funds of the company, (vi) Resolution to grant loans or give guarantee or provide security in respect of loans, (vii) Resolution to approve financial statement and the Board’s report, (viii) Resolution to diversify the business of the company, (ix) Resolution to approve amalgamation, merger or reconstruction, (x) Resolution to take over a Co. or acquire a controlling or substantial stake in another Co.; (xi) any other matter which may be prescribed (Rules) – <i>Not applicable to private company.</i>
20.	Sec. 141 – Eligibility, qualifications and disqualifications of auditors – A person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 cos. <i>other than OPCs, Dormant Cos., Small Cos. and Private Cos. having paid-up share capital less than Rs. 100 crore.</i>
21.	Sec. 143 – Powers & duties of Auditors & Auditing Standards – The auditor’s report shall also state – whether the company has adequate internal financial controls with reference to financial statements in place and operating effectiveness of such controls: <i>Shall not apply to: (i) OPC or Small Co. (ii) Private Co. which has turnover less than Rs. 50 crores as per latest audited financial statement or which has aggregate borrowings from Banks or FIs or any body corporate at any point of time during FY less than Rs. 25 crore.</i>

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22.	Section 160 – Right of persons other than retiring directors to stand for directorship – <i>not applicable to Private Company.</i>
23.	Section 162 – Appointment of directors to be voted individually – <i>not applicable to Private Company.</i>
24.	<i>OPC, Small Co., Dormant Co. & Private Co. (registered as ‘Start-up’) shall be deemed to have complied with the provisions of Sec. 173 of the Act (‘Board Meetings’) if at least one meeting of board has been conducted in each half of a calendar year and the gap between the 2 meetings is not less than 90. Provisions relating to Board Meetings & Quorum are not applicable OPC in which there is only 1 director.</i>
25.	Section 174 – Quorum for board meeting – Where at any time the number of interested directors exceeds or is equal to 2/3 rd of the total strength of board of directors, the number of directors who are not interested directors and present at the meeting, being not less than 2, shall be the quorum during such time. <i>For private company – Interested Director may also be counted towards quorum in such meeting after disclosure of his interest.</i>
26.	Section 180 – Restrictions on the powers of the Board of directors – (i) To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of Co., (ii) To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation, (iii) Restrictions on borrowings, (iv) (d) to remit, or give time for the repayment of, any debt due from a director – <i>Not applicable to private company.</i>
27.	Section 184 – Disclosure of interest by director – Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement (or proposed contract or arrangement) entered into or to be entered into shall disclose the nature of his concern or interest at board meeting in which the contract or arrangement is discussed and shall not participate in such meeting. <i>For Private Company – it shall apply with the exception that the interested director may participate in such meeting</i>

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	<i>after disclosure of his interest.</i>
28.	Section 185 – Loans to directors – <i>The provisions shall not apply to a private company: (i) In whose share capital no other body corporate has invested any money, (ii) If the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and (iii) Such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.</i>
29.	Section 188 – Related party Transactions – No member of the company shall vote on the Ordinary Resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party – <i>Not applicable to Private Company.</i>
30.	Section 196 (4) and (5) – Certain provisions for appointment of MD, WTD or Manager – <i>Not applicable to Private Company.</i>

The exceptions, modifications and adaptations shall be applicable to a private company which has not committed a default in filing its Financial Statements (u/s 137 of the Act) or Annual Return (u/s 92 of the Act) with the RoC.

Reference:

- (i) MCA Notification No. GSR 464(E) [F.NO.1/1/2014-CL-V], dated June 5, 2015 &
- (ii) MCA Notification No. GSR 583(E) [F.NO.1/2/2014-CL-V] dated June 13, 2017.