Exemptions to Private Companies under Companies Act, 2013

The definition of Private Company is given under Section 2 (68) of the Companies Act, 2013.

Private company is a company which:

(i) restricts the **right to transfer its shares;**

(ii) except in case of One Person Company, **limits the number of its members to two hundred** (except employees of the Company and Ex-employees who are still members)

(iii) **prohibits any invitation to the public** to subscribe for any securities of the company

Exemptions

Certain exemptions have been provided to Private Companies by Central Government in exercise of powers conferred under Section 462(1) (a) (b) and (2) of Companies Act, 2013 vide notification No. GSR 464 (E) dated 05.06.2015 as amended vide notification no. GSR 583(E) dated 13.06.2017 (as corrected by Corrigendum No. S.O. 2218 (E) dated 13.07.2017.

However, the exceptions, modifications, etc. as provided in the notifications as mentioned above shall be applicable to a Private Company which has not committed a default in filing its financial statements under section 137 or Annual Return u/s 92 of the said Act with the ROC.

The said exemptions/modifications are as under:

S.NO.	Provisions of CA, 2013 (A)	Exceptions/Modifications (B)	Impact (C)
1.	Section 2 (40)	The following proviso shall be substituted: Provided that the financial statement, with respect to one person company, small company, dormant company and **private company (if such private company is a start-up) may not include the cash flow statement.** For the purposes of this Act, the term 'start-up' or "start-up company" means a private company incorporated under the Companies Act, 2013 and recognized as start-up in accordance with the notification issued by the Department of industrial	**Cash Flow Statement** **Analysis** Unlike other companies, Private companies (only *start up companies) do not require to include the 'Cash Flow Statement' in their financial statements. (*startup company means a private company as incorporated under CA, 2013 or CA, 1956 & recognized as start up in accordance with notification issued by DIPP, Ministry of Commerce & Industry). **Startups as per Department for Promotion of Industry and Internal Trade (DPIIT), (DIPP renamed as DPIIT in January, 2019):** -Period of existence and operations should not be exceeding 10 years from the Date of Incorporation.

		Policy and Promotion, Ministry of Commerce and Industry.	- Incorporated as a Private Limited Company, a Registered Partnership Firm or a Limited Liability Partnership - Should have an annual turnover not exceeding Rs. 100 crore for any of the financial years since its Incorporation - Entity should not have been formed by splitting up or reconstructing an already existing business, it should be original entity -It should work towards development or improvement of a product, process or service and/or have scalable business model with high potential for creation of wealth & employment
2.	2 (76) (viii)	Shall not apply w.r.t to Section 188	**Analysis** Pursuant to this exemption, any transaction of a private company with the **holding company/subsidiary company/associate company/subsidiary of holding company/*investing/venturer company** would not be considered as related party transaction under section 188 of CA, 2013. **Pursuant thereto, private companies shall not be required to obtain the approval of the board or the shareholders, for the purpose of entering into a contract/ arrangement with the companies as mentioned above.** *"Related Party" with reference to a Company means:* *(viii)-any body corporate which is—* *(A) a holding, subsidiary or an associate company of such company;* *(B) a subsidiary of a holding company to which it is also a subsidiary; or* *(C) an investing company or the venturer of a company;* *Explanation: "the *investing Company or the venturer of a Company means a body corporate whose investment in the company would result in*

			the company becoming an associate company of the body corporate.
3.	Section 43 & Section 47	Shall not apply where MOA/AOA of the private company so provides.	Sections 43 and 47 contain the provisions regarding kinds of share capital and the voting rights for various types of shareholders. **Analysis:** This relaxation provides major relief, especially for private equity funds since they typically want priority on dividend, liquidation and entitlement to vote on an as-if-converted basis.
4.	Section 62 (1)(a)(i) and 62(2)	Shall apply with following modification: In clause (a), in sub-clause (i), the following proviso shall be inserted, namely: **Provided that notwithstanding anything contained in this sub clause and sub-section (2) of this section, in case ninety per cent. of the members of a private company have given their consent in writing or in electronic mode, the periods lesser than those specified in the said sub-clause or sub-section shall apply.**	The said Section 62 (1)(a)(i) read with Rule 12A of Companies (Share Capital & Debentures) Rules, 2014 states that the offer for the Rights issue shall be made by a notice limiting a time not being less than 15 days or 7 days (7 days time period has been inserted vide amendment rules, 2021) and not exceeding 30 days from the date of offer. Further, Section 62(2) of the 2013 Act also requires the company to dispatch the offer letter in respect of the rights issue through speed post or registered post or electronic mode to all the shareholders at least 3 days before the date of opening of the issue. **Analysis:** The relaxation provides that if at least 90% of members of a private company give their consent in writing or in electronic mode: - a period lesser than 7 days and -a period of lesser than 3 days for dispatch of rights issue offer letter can be adopted in respect of the rights issue.
5.	62(1)(b)	In clause (b), for the words 'special resolution', the words 'ordinary resolution' shall be substituted	the approval of the members of the company by way of a special resolution was required for the purpose of issuance of ESOPs to employees. **Analysis:** With this exemption, the members of the private company can approve issuance of ESOPs to employees by way of an ordinary resolution instead of Special Resolution.

6.	67	Shall not apply to private companies: -in whose share capital no other body corporate has invested any money; -if the company's borrowings 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; -such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.	Section 67(1) of the 2013 Act imposes restrictions on the companies limited by shares or by guarantee and having a share capital including a private company to purchase its own shares unless the consequent reduction of capital is affected and sanctioned under the provisions of this Act. **Analysis:** The exemption notification allows a private company to buy its own shares without consequent reduction in capital.
7.	73(2) (a) to (e)	Shall not apply to private company: (A) which accepts from its members monies not exceeding one hundred per cent. 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 fulfills all of the following conditions, namely: (a) which is not an associate or a subsidiary company of any other company;	Presently, under Section 73(2) of the 2013 Act, the acceptance of deposits by a private company from its members requires approval of the members by way of ordinary resolution and the fulfilment of certain conditions as agreed between the company and members subject to fulfilment of following conditions: - issuance of circular including therein, a statement showing financial position of the company, credit rating obtained, total no. of depositors in respect of various deposits accepted by the Company and other prescribed particulars. -filing a copy of circular with ROC within 30 days of issue of circular -creation of a deposit repayment reserve account by depositing not less than 20% of the amount of deposits maturing during the following FY.

		(b) 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 (c) 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 clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified."	-certifying no default in repayment of deposits or payment of interest and where there was a default, company made good it and 5 years has elapsed since the date of making good the default. **Analysis:** After the exemption notification, private Companies which fall under any of the three conditions as mentioned in column B, do not require to comply the aforesaid conditions. It is pertinent to mention that Rule 3(3) of the Companies (Acceptance of Deposits) Rules, 2014 provides that a company cannot accept or renew any deposits from its members, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds 35% of the aggregate of the paid-up capital and free reserves of the company. However, a private company may accept from its members monies not exceeding 100% of aggregate of paid up capital, free reserves and Securities premium account and shall file the form DPT-3 in this regard. Provided further that the following private companies may accept deposits more than the maximum limit as mentioned above, namely: (i) a private company which is a start-up, for ten years from the date of its incorporation; (ii) a private company which fulfills all of the following conditions, namely: (a) which is not an associate or a subsidiary company of any other company; (b) 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 less; and (c) such a company has not defaulted in the repayment of such borrowings

			subsisting at the time of accepting deposits under section 73:
8.	Section 92 (1) Proviso	For the proviso, the following proviso shall be substituted: provided that in relation to One Person Company, small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company."	Presently, Annual Return of a Private Company need to be signed by one director and a CS/PCS in case of no CS. **Analysis:** The said exemption allows that annual return of a Private Company (startup company) can be signed by only company secretary or by the director of the company, if no company secretary exists.
9.	Section 101 to 107 & 109	Shall apply unless otherwise specified in the respective sections or the articles of the company provide otherwise.	**Section 101: Notice of General Meeting** **Section 102: Statement to be annexed with notice** **103: Quorum of Meetings** **104: Chairman of the General Meeting** **105: Proxies** **106: Restrictions on Voting Rights** **107: Voting by show of hands** **109: Demand for poll** Sections 101 to 107 and Section 109 of the 2013 Act deal with the requirements of convening and conducting of general meetings by all companies, such as service of notice of general meeting, explanatory statement, quorum, chairperson of the meetings, appointment of proxies, restriction on voting rights, voting by show of hands and demand for poll. **Analysis:** The Notification provides the flexibility to private companies to decide their own procedure for conducting general meetings by incorporating the provisions in their articles of association. In case of no specific provisions are mentioned in the AOA of a private Company, then Section 101 to 107 & 109 shall apply to a Private Company.
10.	117 (3)(g)	Shall not apply	Section 117(3) (g) of the 2013 Act requires companies to file board resolutions passed in

			connection with certain matters dealt with under section 179(3) with the ROC in form MGT-14 and the rules framed thereunder. These matters are: • making calls on shareholders in respect of money unpaid on their shares • authorizing buy-back of securities under Section 68 • issuance of securities, including debentures, whether in or outside India • borrowing of monies • investing the funds of the company • granting loans or giving guarantee or providing security in respect of loans • approving financial statement and the Board's report • diversifying the business of the company • approving amalgamation, merger or reconstruction • taking over a company or acquiring a controlling or substantial stake in another company additional matters as prescribed under Rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014: • to make political contributions • to appoint or remove KMP • to appoint Internal Auditor or Secretarial Auditor **Analysis** This exemption enables private companies to maintain the confidentiality of the board proceedings and also reduce the compliance burden on private companies as form MGT-14 is not required to be filed by private companies in respect of the aforementioned maters.
11.	Section 141(3)(g)	In case of private company: in clause (g) of sub-section 3 after the words twenty companies", the following words shall be inserted: "other than one person companies, dormant companies, small companies and private companies having	Section 141 (3) (g) states that the following persons shall not be eligible for appointment as a Statutory Auditor of a Company: • 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

		paid-up share capital less than one hundred crore rupees"	persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than one hundred crore rupees. **Analysis:** In addition to removing restrictions on auditors, this relaxation would permit private companies which are part of the same group to appoint the same statutory auditor. Further, it is pertinent to mention that the limit of 20 and the provisions of Exemption Notification will apply to the individual partner and not to the entire audit firm. Further, Auditors are also bound by the guidelines issued by ICAI. Hence apart from CA, 2013, auditors will also have to comply with the guidelines of ICAI to compute the maximum number of audits that they can undertake.
12.	143 (3)(i)	Section -143(3)(i) shall not apply to the following private companies: 1. which is a one person company or a small company; or 2. 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.	The said Section alongwith respective rules requires to disclose in the Auditor's Report from FY 2015-16: whether the adequate Internal Financial Controls with reference to financial statements in place & its operating effectiveness **Analysis** With the said exemption, the private companies as specified in column B, are not obligated to disclose the adequacy of Internal Financial Controls with reference to financial statements and its operating effectiveness in Auditor's Report.

13.	Section 160	Shall not apply	This section basically deals with the rights of person other than retiring director under Section 152 to stand for Directorship. In this regard, it is required that the applicant or some member intending to propose a person as a director gives a notice in writing, signifying his candidature as a director, of minimum 14 days before the GM, alongwith a deposit of minimum 1 lakh rupees which would be refunded if the said person is elected as a director or gets more than 25% of the total valid votes cast. However, the deposit requirement is not applicable in case of appointment of ID, director recommended by Nomination & Remuneration Committee (NRC)/BOD, in case no NRC is required to constitute. The intent behind deposit is to deter frivolous proposals for candidature, but if the company itself proposes the candidature, there seems no reason to apply section 160. This exemption would ease compliance requirements for private companies in respect of appointment of directors. .
14.	Section 162	Shall not apply	As per the provisions under Section 162, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first agreed to at the meeting without any vote being cast against it. **Analysis:** A private company can appoint two or more persons as directors by passing a single resolution at the general meeting of the company without any previous agreement for such motion.
15.	173 (5)	For sub section (5), the following sub section shall be substituted: A One Person Company, small company, dormant company and a private company (if a startup) shall be	Private Companies (start up company) was also required to hold minimum number of 4 meetings of BOD with gap of maximum 120 days between two consecutive meetings. **Analysis:**

		deemed to have been complied with the provisions of this section if at least one board meeting has been conducted in each half of a calendar year, with a gap of no less than ninety days between the two meetings. Provided that nothing contained in this sub-section and in section 174 shall apply to One Person Companies in which there is only one director on their Board of Directors.	With this exemption notification, private (start up) companies are required to hold one BM in each half of calendar year with a minimum 90 days gap between two meetings.
16.	174 (3)	Shall apply with the exception that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to Section 184	Section 174 (3) states that Interested Directors shall not be counted for the purpose of quorum. **Analysis:** In view of the provisions of Exemption Notification, an interested director will be counted for the purpose of quorum as Exemption Notification allows the director to participate and vote on matters in which he is interested provided he discloses regarding his interest. As provided in Section 174 (3), interested director shall have meaning assigned in Section 184 (2). Where Section 184 (2) itself is exempted for private companies, interested director should be counted for the purpose of quorum. **The said view has also been established with the provision mentioned in revised SS-1 (applicable w.e.f. 01.04.2024) where it is mentioned that** in case of a private company, a Director shall be reckoned for Quorum and entitled to participate in respect of such item after disclosure of his interest.
17.	180	Shall not apply	***Analysis:*** *Section 180 prescribes certain *matters which have to be mandatorily approved by the shareholders at the general meeting by a special resolution.*

			However, with the exemption notification, the provisions have been relaxed and now private companies can proceed in respect of the said matters without seeking approval of the shareholders. **The said matters are as under:* *(a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.* *Explanation: For the purposes of this clause:* *(i) "undertaking" shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year;* *(ii) the expression "substantially the whole of the undertaking" in any financial year shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;* *(b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;* *(c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves paid-up share capital, free reserves and securities premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business:* *Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the*

			banking company within the meaning of this clause. *Explanation: For the purposes of this clause, the expression "temporary loans" means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;* *(d) to remit, or give time for the repayment of, any debt due from a director.*
18.	184 (2)	Shall apply with the exception that the interested director may participate in such meeting after disclosure of his interest.	***Interested Directors as mentioned in Section 184 (2) are not allowed to participate in the meeting presently.** **Analysis:** With the provisions of exemption notification, if director is interested, such an interested director is allowed to participate and vote and also will be counted for the purpose of quorum. As the Exemption Notification allows the director to participate and vote on matters in which he is interested subject to the disclosure of his interest in this regard. The said view has also been established with the provision mentioned in revised SS-1 (applicable w.e.f. 01.04.2024) where it is mentioned that in case of a private company, a Director shall be reckoned for Quorum and entitled to participate in respect of such item after disclosure of his interest. ***Interested Director as under Section 184(2):*** *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—* *(a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a*

			promoter, manager, Chief Executive Officer of that body corporate; or *(b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be,* *shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.*
19.	185	The provision of Section 185 shall not apply to a Private Company- -in whose share capital no other body corporate has invested any money -if the company's borrowings 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; -such a company has no default in repayment of such borrowings subsisting at the time of making transactions under this section.	Section 185 (1) of the 2013 Act, prohibits companies from directly or indirectly, advancing any loan (including loan represented by a book debt) or giving any guarantee or any security in connection with a loan taken by the directors of such company or of a company which is its holding company or any partner or relative of such director. Further, sub section 2 also requires **passing of SR and utilization of loan by borrowing company for its principal business activities** in case a company advance any loan (including loan represented by a book debt) or give any guarantee or any security in connection with a loan taken by any person in whom the director of the company is interested. "**Any person in whom director is interested**" is defined in the explanation given under the section. There are some exemptions also in sub section 3 for all companies. **Analysis:** -Private Companies as mentioned in column B are allowed to give loan including book debt to directors, giving guarantee, or security in connection with loan taken by directors or directors of a holding company or to any partner/relative of Director or to any person in whom the director of the company is interested

			Some important terms as used in Section 185: *Section 2 of Companies Act, 2013, does not define "loan". A loan is defined by the Oxford English Dictionary as "**a thing lent; something the use of which is allowed for a time, on the understanding that it shall be returned or an equivalent given, a sum of money lent on these conditions and usually with interest.*** The term **"Indirect"** is interpreted as mentioned below in the case of **Dr. Fredie Ardeshir Mehta v Union of India [1991]:** When section 295 refers to an indirect loan to a director, ***what it means is that the company shall not give a loan to a director through the agency of one or more intermediaries. The Word "indirectly" in the section cannot be read as converting what is not a loan into a loan.*** A **Book debt** has been defined in the legal lexicon as under: "***a sum of money due to a business in the ordinary course of its business. It has been described as a debt that would normally be entered in the books of a business regardless of whether or not it is in fact entered."*** However, any advance given by a company to a director against his salary, cannot be considered as a loan unless the advance was given in the guise of a loan and recovery is not being done regularly. ***(M.R. Electronic Components Ltd. v Asstt. Register of Companies on 11th August, 1986***)
20.	188(1) second proviso	Shall not apply	As per the first proviso to section 188 (1), member's approval is required in some prescribed cases for approval of contract/arrangement under section 188 (1). Further, as per the second proviso to section 188(1), the member of a company shall not vote on the shareholders' resolution to approve contract/arrangement in case he is a related party. MCA had clarified vide General Circular No 30/ 2014 that related party in second proviso shall

			mean related party in the context of contract or arrangement for which the said special resolution is being passed. **Analysis** With the Exemption Notification, the member of a private company who is a related party will be able to vote on any such resolution in which he is interested. It is pertinent to mention that provisions of section 2(76)(viii) will not apply to private companies with respect to section 188. Therefore contracts/arrangements between group companies are exempted from the purview of Section 188.
21.	196 (4) & (5)	Shall not apply	Section 196 (4) states that the appointment of MD, WTD or Manager and the terms & conditions of such appointment and remuneration payable be approved by the BOD at a meeting which shall be subject to approval of members at the next GM of the company Further approval of CG would be required in case such appointment is at variance to the conditions as specified in part I of that schedule. Further, MR-1 is also required to file in respect of the aforesaid appointment. Further, sub section (5) states that subject to the provisions of the act, where an appointment of MD/WTD/Manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid. **Analysis** The Exemption Notification provides that sub-section (4) and (5) of Section 196 shall not apply to private companies: • Consequent thereto, appointment of MD/WTD/Manager need not to be approved at a general meeting of the

			company. Further, the provisions of Schedule V will also not apply. • Approval of Central Government is not required where the appointment of Managerial Personnel is not in accordance with the provisions of Schedule V. • notice convening the general meeting need not to include terms and conditions of such appointment, remuneration payable and other matters including interest of a director or directors in such appointment. • No need to file MR-1 with the Registrar of Companies. **It is pertinent to mention that the said appointment needs to be approved** yet Rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014 still requires appointment of KMP to be approved at a board meeting.