



SIDDHANT DHYANI & ASSOCIATES
PRACTICING COMPANY SECRETARIES

EXEMPTIONS AVAILABLE TO A PRIVATE COMPANY

UNDER THE COMPANIES ACT, 2013

The Companies Act, 2013 (“the act”) governs the formation, management, and compliance obligations for companies which are registered in India. However, private companies benefit from several exemptions and relaxations to foster their business growth and reduce regulatory & compliance burdens.

These exemptions, were introduced through various MCA notifications, amendments, and circulars, over the years to cover critical aspects such as board functioning, financial reporting, internal controls, and loans to directors, filing requirements etc. This presentation of SDA takes you through a comprehensive overview of these exemptions, ensuring clarity on how private companies can leverage these to streamline their operations while maintaining absolute compliance.

Note:

All the exemptions provided so far by the ministry shall only be available to a private company which has made no default in filing its financial statements & annual return with the concerned Registrar of Companies (‘RoC’).

Section/Rule	Provision/Requirement	Exemption for Private Companies
Section 2(40)	Definition of Financial Statement	Private companies that are OPC, Small companies, Dormant companies & Start-ups are exempt from including a Cash Flow Statement as a part of their financial statements.
Section 43 and Section 47	Kinds of Share Capital and Voting Rights	Shall not apply to a private company where MoA or AoA so provides
Section 62(1)(a)(i) & 62(2)	Further Issue of Share Capital	For rights issue, the offer period to the existing members can be less than 15 days or more than 30 days & notice can be dispatched at a variance than 3 days if 90% of the members agree in writing or electronically.
Section 62(1)(b)	ESOP Resolution	Private Companies can issue of further shares to its employees under a scheme of ESOP with merely passing an “Ordinary Resolution”, instead of a “Special Resolution”.
Section 67	Restrictions on purchase by company or Giving Loans for purchase of its own shares	<p>These provisions are not applicable on a private company, provided;</p> <ul style="list-style-type: none"> • No Body Corporate has invested any money in the Company • Borrowing of the company from bank/ financial institutions/ body corporate is less than 2 times of paid-up share capital or Rupees 50 Crores (whichever is lower) • The company is not in default in repayment of its debt subsisting at the time of making the transaction under this section

Section/Rule	Provision/Requirement	Exemption for Private Companies
Section 73(2)- Clauses (a) to (e)	Acceptance of Deposits	<p>Shall not apply to a private company-</p> <p>(A) which accepts from its members monies not exceeding 100% of aggregate of the paid up share capital, free reserves and securities premium account; or</p> <p>(B) which is a start-up, for 5 years from the date of its incorporation; or</p> <p>(C) which fulfils all of the following conditions, namely:-</p> <p><i>(a) which is not an associate or a subsidiary company of any other company;</i></p> <p><i>(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</i></p> <p><i>(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:</i></p> <p>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.”.</p>

Section/Rule	Provision/Requirement	Exemption for Private Companies
Section 92(1)(g)	Disclosure of Remuneration of directors and key managerial personnel	Private companies that are small companies may disclose the remuneration details of Directors in aggregate instead of individually in its annual return for a particular financial year
Section 92(1)	Signing of Annual Return	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.”.
Section 101 to Section 107 & 109	Notice of Meetings, Quorum, and Voting rights, Proxies etc.	Provisions related to notice of meetings, quorum, chairman, proxies, voting rights do not apply to private companies if otherwise provided in their Articles of Association (AoA). In simple words, procedure laid down in AoA would prevail.
Section 117(3)(g)	Filing of resolutions and agreements with the Registrar	Private companies are not required to file Board Resolutions for the matters as laid down in section 179(3) of the act, such as granting loans, issuing securities, or approving financial statements with the Registrar.
Section 141(3)(g)	Audit Limits	In calculating maximum limit 20 companies for an auditor to be appointed or reappointed as an auditor, private companies including OPC, Dormant Companies, Small Companies & Private Companies having < 100 cr PUC shall NOT be included

Section/Rule	Provision/Requirement	Exemption for Private Companies
Section 143(3)(i)	Reporting by auditor on internal financial controls in Auditor's Report	<p>Shall not apply to a private company:-</p> <p>(i) which is a one person company or a small company; or</p> <p>(ii) which has turnover less than rupees 50 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 25 crore.”.</p>
Section 149(4)	Requirement of Independent Directors	Private companies are exempt from appointing independent directors.
Section 160	Right of Persons Other Than Retiring Directors to Stand for Directorship	Shall not apply to a private company
Section 162	Appointment of directors to be voted individually	Shall not apply to a private company

Section	Provision/Requirement	Exemption for Private Companies
Section 173(5)	Board meetings	<p>Shall apply to a private company with below substitution :</p> <p>A One Person Company, small company, dormant company and a private company (if such private company is a start-up) shall be deemed to have complied with the provisions of this section if at least 1 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:</p> <p><i>Provided that nothing contained in this sub-section and in section 174 shall apply to One Person Company in which there is only one director on its Board of Directors.</i></p>
Section 174(3)	Quorum of Board meetings	In a private company interested director may also be counted in calculating the quorum of a meeting after the disclosure of his/her interest under section 184
Section 180	Restrictions on powers of Board	Shall not apply to a private company
Section 184 (2)	Disclosure of interest by director	Shall apply to a private company with an exception that the interested director may participate in such meeting after disclosure of his interest

Section	Provision/Requirement	Exemption for Private Companies
Section 185	Loan to Directors	<p>These provisions are not applicable on private companies, provided</p> <ul style="list-style-type: none"> • No Body Corporate have invested any money in the Company • Borrowing of the company from bank/ financial institutions/ body corporate is less than 2 times of paid-up share capital or Rupees 50 Crores (whichever is lower) • No default in repayment of debt is subsisting at the time of making the transactions under this section
Section 188(1)- Second Proviso	Related party transactions	<p>The below second proviso to section 180(1) shall not be applicable to a private company;</p> <p><i>"Provided further that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party</i></p>
Section 196(4) & (5)	Appointment of managing director, whole-time director or manager	Shall not apply to a private company
Section 2(76) (viii)	Definition of Related Party	For a private company its holding, subsidiary and associate company or a subsidiary of a holding company to which it is also a subsidiary (fellow subsidiary) shall not be treated as a Related Party for the purposes of section 188.

Section	Provision/Requirement	Exemption for Private Companies
Section 164(3)	Disqualification for Appointment of Director	Private companies are allowed to specify additional disqualification criterias for appointment of a director in their AoA, in addition to those that are already prescribed in Section 164(1) and (2).
Section 167(4)	Vacation of Office of Director	Private companies are allowed to specify additional criteria for vacation of a Director in their AoA, in addition to those that are already prescribed in Section 167(1).
Section 177 & 178	Audit Committee & Nomination & Remuneration Committee	A private need not to constitute such committees as per the CA 2013



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THANK YOU

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