

The Ministry of Corporate Affairs (MCA) has by notification dated 5<sup>th</sup> June, 2015 given certain relaxations / exemptions to private companies [subject to certain criteria in few cases] which have been listed below.

The notification does not specify the date from which such exemptions/ modifications/ adaptations will come into effect and hence it will have to be examined whether the notification can be construed as beneficial nature and hence comes into effect from the date the respective sections were notified.

| Existing provision   | Exemptions / Modifications / Adaptations as per notification issued on 5 <sup>th</sup> June 2015  | Our comments / views  |
|--|---|---|
| <b>Related party transactions [Section 188] and definition of related party under section 2(76)</b>  |   |   |
| <p>Transactions with related parties requires prior approval of Board of Directors / Members based on the threshold limits.</p> <p>If the member is a related party, such member was not allowed to vote on special resolution for such related party contracts proposed to be entered into.</p> | <p>No such prior approval is required by a private company for transactions with certain related parties i.e. holding, subsidiary or an associate company and fellow subsidiaries.</p> <p>Such member is now allowed to vote.</p> | <p>This would provide relief to private companies and removes many procedural /compliance requirements under section 188. However transactions with other than specified companies, prior approval / special resolution would be required.</p> <p>This will resolve the issue of deadlock in case all members are interested parties.</p> |

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| <b>Disclosure of interest by directors [Section 184(2)]</b>  |   |   |
| Interested directors were not allowed to participate in meeting where the related party transactions is being discussed.   | Interested director may participate in such meeting after disclosure of his / her interest.   | This is a welcome change and would facilitate ease of doing business.   |
| <b>Loan to directors, etc. [Section 185]</b>   |   |   |
| No company [other than loan or guarantee given by a company to its wholly owned subsidiary] shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person. | <p>This section will not apply to private companies –</p> <ul style="list-style-type: none"> <li>• In whose share capital no other body corporate has invested any money; and</li> <li>• 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</li> <li>• Such a company is not in default in repayment of such borrowings subsisting</li> </ul> | <p>This change is not expected to benefit many private companies on accounting of the following:</p> <ul style="list-style-type: none"> <li>• This relaxation would also not be applicable if one of shareholder is a body corporate</li> <li>• Many private companies have minimum or small paid up capital</li> </ul> |

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|   | at the time of making transactions under section 185.  |   |
| <b>Prohibition on acceptance of deposits from public [Section 73(2)(a) to (e)]</b>  |  |   |
| There are certain conditions to be fulfilled by the company accepting deposits from members like issuance of circular and filing it with ROC, mandatory liquid deposits of 15%, deposit insurances and certification that the company has not defaulted in repayment of deposits. | These conditions shall not apply to a private company which accepts from its members monies not exceeding 100% of aggregate of the paid up share capital and free reserves.<br><br>Such company shall also file the details of monies so accepted to the Registrar in such manner as may be specified. | This would be beneficial to private companies who have significantly high paid up capital and free reserves.<br><br>However as per the existing rules the maximum deposit which can be accepted from members should not exceed 25 % of paid up capital and free reserves. |
| <b>Kinds of share capital [Section 43] &amp; Voting Rights [Section 47]</b>   |  |   |
| Section 43 of the Act, which defines the type of share capitals of a company limited by shares and also specifies conditions for issue of shares with differential rights as regards dividend, voting etc.  | As per the notification, the clause / provisions of the MOA and AOA will prevail over the requirements of section 43 and section 47.   | This is a welcome change and would have significant impact on private companies as it provides flexibility in issuing differential  |

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|--|--|--|
| <p>The rules specified stringent conditions for issue of differential class of shares.</p> <p>Section 47 of the Act, deals with rights of equity and preference shareholders and also specified that preference shareholders would get a right to vote on all resolutions if dividends are not paid for a period of two years or more.</p> |  | <p>class of shares as also rights of the shareholders.</p>   |
| <p><b>Resolutions and agreements to be filed [Section 117 (3)(g) - Section 179(3)]</b></p>   |  |  |
| <p>Various resolutions passed at board meeting were required to be filed with ROC including</p> <ul style="list-style-type: none"> <li>• Calls on shares, Buy-back of securities and Issue of securities</li> <li>• Authority to Borrow, make investments, Grant loans or giving guarantee/ security for loans</li> </ul>                  | <p>These resolutions are now not required to be filed with ROC.</p>                              | <p>Major relief for private companies and would help in ease of doing business and reduce the compliances.</p> |

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|--|--|--|
| <ul style="list-style-type: none"> <li>• Diversify the business of the company, Amalgamation, merger and Controlling stake in another company</li> <li>• To make political contribution</li> <li>• To appoint internal / secretarial auditor</li> <li>• Approval of Financial statements / Directors report</li> </ul> |  |  |
| <b>Further issue of share capital [Section 62 (1)(a) (i) and 62(2)]</b>  |  |  |
| Time limit of 15 to 30 days prescribed for accepting the offer of issue of shares to existing shareholders. Also time limit of 3 days before the opening of issue is specified for dispatch of notice to all members.  | The time limit will not apply if 90% of the members have given their consent for lesser time / short notice. | This would provide more flexibility to private companies and hence help in ease of doing business. |
| <b>Further issue of share capital [Section 62(1)(b)]</b>   |  |  |
| Special resolution is required to be passed for issue of shares to employees of the company under a scheme of employee stock option.   | Special resolution is substituted with ordinary resolution.  | This would help in ease of doing business.   |

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|---|---|----------------------|
| <p><b>Restriction on purchase by company or giving of loans by it for purchase of its shares [section 67]</b></p>   |   |                      |
| <p>The company cannot buy its own shares and cannot give any loan, guarantee, security, etc. for purchase of shares in the company or in its holding company.</p> | <p>This section will not apply to private companies -</p> <ul style="list-style-type: none"> <li>• In whose share capital no other body corporate has invested any money;</li> <li>• If the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice its paid up share capital or Rs. 50 crore, whichever is lower; and</li> <li>• Such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under section 67.</li> </ul> |                      |

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| <b>Meetings related [Section 101 to 107 and 109]</b>   |  |   |
| The provisions are related to general meeting, special business, quorum, appointment of chairman, proxy etc. | As per the notification, the clause /provisions of AOA will prevail over the requirements of sections 101 to 107 and 109 except minimum 2 members shall be present for a meeting of the company. | This would provide flexibility to the private companies and help in ease of doing business. |
| <b>Eligibility of auditors [Section 141(3)(g)]</b>   |  |   |
| Overall limit of audit of 20 companies per member which includes private companies.                          | Now it excludes one person companies, dormant companies, small companies, and private companies having paid up share capital less than Rs. 100 crore.  | This would avoid hardship to private companies.   |

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| <b>Other sections</b>   |  |  |
| <ul style="list-style-type: none"> <li>• Right of person other than retiring directors to stand for directorship [Section 160]</li> <li>• Appointment of directors to be voted individually [Section 162]</li> <li>• Appointment of managing director, whole time director or manager [section 196(4) &amp; (5)]</li> <li>• Restrictions on powers of Board [Section 180].</li> </ul> | <p>These sections [section 160, 162, 196(4) &amp; (5) and 180] are now not applicable to Private Limited Companies.</p> <ul style="list-style-type: none"> <li>• Now Members consent is not required for the specified transactions covered under section 180</li> </ul> | <p>These would reduce the compliance requirements.</p> |

The notification is available on: [Link](#)

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This document has been prepared as a service to the clients. We recommend you to seek professional advice before taking any action on the specific issues.