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N. A. SHAH **BULLETIN**

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A. Amendment in the principal notification giving partial or full relaxations/ exemptions to private companies

The Ministry of Corporate Affairs (MCA) vide its notification on 13th June, 2017 has amended the notification G.S.R. 464(E) dated 5th June, 2015 (principal notification) which was issued for giving partial or full relaxations/exemptions to private companies from certain sections of the Companies Act, 2013 ('the Act'). Amended notification mainly contains (a) further exemptions to private companies which fulfills the definition of Start-up and (b) also contains certain exemptions to small companies/private companies.

The exemptions and relaxations as per principal notification and as per the amended notification (as mentioned in the Table given below) are applicable to a private company, only if it has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar.

Following explanation has been added in section 2(40) of the Act to define the Start-up:
For the purposes of this Act, the term 'Start-up' or "Start-up company" means a private company incorporated under the Companies Act, 2013 or the Companies Act, 1956 and recognised as start-up in accordance with the notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry".

Summary of the amendments are given below.

Sr. no.	Particulars
1.	Start-up company is exempted from preparing cash flow statement as a part of financial statements.
2.	<p>Clauses (a) to (e) of Section 73(2) related to prohibition on acceptance of deposits from public or from its members are not applicable in case the following criteria are fulfilled by private companies:</p> <ul style="list-style-type: none"> i) which accepts deposit from its members not exceeding 100% of aggregate of paid up share capital, free reserves and securities premium account; or ii) which is a Start-up, for five years from the date of its incorporation; or iii) which fulfills all of the following conditions, namely:- <ul style="list-style-type: none"> (a) which is not an associate or a subsidiary company of any other company; (b) if the borrowings of such a company from banks or financial institutions or anybody 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

	<p>subsisting at the time of accepting deposits under this section: Further, company referred to in para (i), (ii) or (iii) above, has to file the details of monies accepted to the Registrar in the prescribed manner.</p> <p>As per the earlier notification, there was only one category [i.e. para (i) above] which was given the relaxation from the applicability of clause (a) to (e) of section 73(2) of the Act.</p>
3.	<p>Proviso is added to section 92(1)(h) of the Act to exclude small companies from making disclosures with respect to remuneration of Key Managerial Person (KMP) in the Annual Return. Consequently, small company now need to disclose only "aggregate remuneration drawn by the Directors" and does not have to disclose remuneration drawn by other KMPs.</p>
4.	<p>In line with the relaxation given earlier to small company and one person company, now in case of Start-up company also, annual return can be signed either by the company secretary or where there is no company secretary, it can be signed by the director.</p>
5.	<p>As per the amendment, auditor is exempted from reporting on adequacy of internal financial controls and its operating effectiveness in the audit report in respect of following companies. Earlier, statutory auditor was required to report on IFC in respect of all the companies.</p> <ol style="list-style-type: none"> 1) One Person Company 2) Small Company 3) Private Company <ol style="list-style-type: none"> i. which has a turnover of less than Rs. 50 crores as per the latest Audited Financial Statements, or ii. which has an aggregate borrowing from Banks or FIs or any Body Corporate at any point of time during the financial year less than Rs. 25 crores. <p>Clarity is awaited regarding applicability of above exemption to the Audit Reports issued in respect of FY 2016-17 after the date of this notification. Further, directors of private company will have to continue to report in the director's report on internal financial control over financial statement.</p>
6.	<p>In line with the relaxation given to small company and one person company earlier, now in case of Start-up company also, at least one meeting can be conducted in each half of a calendar year with the maximum gap between the two meetings of not be less than ninety days. Earlier Start-up companies were required to hold 4 board meetings.</p>
7.	<p>In case of private company, section 174(3) is amended to include the interested director for the purpose of quorum of the meeting upon disclosure of interest. Principal notification issued earlier provided that interested director may participate in the meeting after disclosure of interest, however, there was ambiguity in respect of his</p>

inclusion for the purpose of quorum.

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

B. Amendment in provisions related to rotation of auditors in case of private company

Earlier rotation of auditors was applicable to private companies having paid share capital of Rs. 20 crores or more or borrowings of Rs. 50 crores or more. MCA has amended Rule 5 of Companies (Audit and Auditors) Rules, 2015 and accordingly, rotation is now applicable to private companies whose paid up share capital is Rs. 50 crore or more as against earlier threshold limit of Rs. 20 crores or more. The other condition with respect of borrowings remains unchanged.

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