

MCA Extends Exemptions Under Company Law to Private Companies & Start-Ups

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Introduction :

In comparison to the Companies Act, 1956, there are very few provisions in the Companies Act, 2013 which provide for specific exemptions to private companies. Taking into consideration the representation made by the stakeholders, Chamber of Commerce and Professional Institutes, the Ministry of Corporate Affairs ('MCA') issued a notification on June 5, 2015 that provided for certain exemptions to private companies. Such exemptions are subject to compliance of certain conditions and disclosures. With an objective to provide more exemptions, MCA issued another notification dated June 13, 2017 ('recent MCA Notification'). The recent notification provides exemptions to private companies, small companies, start-ups, one person company ('OPC'). These exemptions are also subject to certain compliances and disclosures. The

recent MCA notification amends the original notification (dated June 5, 2015). This article provides for the highlights and analysis of the recent MCA notification.

Highlights, Analysis of the MCA Notification dated June 13, 2017 :

- 1) **Cash Flow Statement:** Definition of 'Financial Statements' is amended, whereby the OPC, small company, dormant company and private company (which is recognised as a 'Start-Up' by DIPP) need not include the cash flow statements in the 'Financial Statements'. Earlier, this exemption was extended only to OPC, small company, dormant company,
- 2) **Acceptance of Deposits:** Certain provisions relating to acceptance of deposits are not applicable to following types of companies:

- i) Private Co., which accepts from its members monies not exceeding 100% of aggregate of paid-up share capital, free reserves and Securities Premium Account, OR
- ii) Start-Ups,
- iii) Co., which is not an Associate Co. or Subsidiary Co. of another company, borrowings are within prescribed limits and such Co. has not defaulted in repayment of such borrowings.

The above-mentioned companies are exempt from complying with the following provisions relating to acceptance of deposits :

- (i) Issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and



the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in prescribed form;

- ii) Filing a copy of the circular along with such statement with the registrar within 30 days before the date of issue of the circular;
- iii) Depositing such sum which shall not be less than 15% of the amount of its deposits maturing during a financial year and the next following financial year, and kept in a scheduled bank in a separate bank account to be called as Deposit Repayment Reserve Account;
- iv) Providing such Deposit Insurance in the prescribed manner;
- (v) Certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits.

3) Disclosures in Annual Return:

Pursuant to the existing provisions of the Companies Act, 2013, every company shall prepare and file the annual return with the Registrar of Companies. Amongst others, the company is required to disclose 'Remuneration of directors and Key Managerial Personnel' in the annual return. According to the recent MCA notification, a private company and a small company will be required to disclose only the aggregate amount of 'remuneration of directors'. Therefore,

the remuneration drawn by key managerial personnel need not be disclosed by private companies, which are small companies.

4) Signing of Annual Return:

According to extant provisions of Companies Act, 2013, the annual return of OPC and small company shall be signed by the company secretary, or where there is no company secretary, by the director of the company. The exemption w.r.t. signing of the annual return has been extended to start-ups by the recent MCA notification. Accordingly, in case of OPC, small company and private company (if such private company is a 'start-up' recognized by DIPP), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director.

5) Reporting by the Statutory Auditor:

Pursuant to the extant provisions of the Companies Act, 2013, the statutory auditor of the company is required to report certain prescribed matters. For a private company which satisfies the prescribed conditions, the statutory auditor is not required to report whether the said company has adequate internal financial controls system in place and the operating effectiveness of such controls,

6) Meetings of the Board of Directors:

As per the amendment, OPC, small company and dormant company and private company (which is

a start-up) shall be deemed to have complied with the provisions of Sec. 173 of the Companies Act, 2013, 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 2 meetings is not less than 90 days (earlier this provision was applicable to only OPC, Small Co. and Dormant Co.)

7) Quorum for the meeting of the Board of Directors:

According to the provisions of the Companies Act, 2013, the quorum for a meeting of the Board of Directors of a company shall be $1/3^{\text{rd}}$ of its total strength or 2 directors, whichever is higher. It further states that if the number of interested directors exceeds or is equal to $2/3^{\text{rd}}$ of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, not being less than 2, shall be the quorum. Such provision is a hurdle for closely-held public companies and private companies. Taking into consideration that there is no exception to the said provision, MCA has clarified that, in case of private companies, interested director may be counted towards quorum in the meeting after specific disclosure of his interest.

Conclusion :

With an intention to boost the start-up eco system, the MCA has extended some more exemptions to start-ups and private companies. However, in my view, such exemptions are not adequate enough to boost the formation and recognition of start-ups. Taking into consideration the efforts taken by the Government for 'Ease of doing Business' and 'Start-Up India', the MCA needs to introduce substantial exemptions in the Company Law for start-ups.

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