

All About Private Companies

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**2 days Company Law Refresher Course – Pune
Branch of WIRC of ICAI**

Private Company

- ✓ All About Private Company – What is ‘ALL’
- ✓ Definition under Sec. 2(68) of the Act,
- ✓ Exemptions in Cos. Act, 2013 vis-à-vis Cos. Act, 1956.

Further classification of Private Co.

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Small Company

One Person Company

DIPP-registered Start-Up

Private Co. (other than above)

Applicability & Exemptions

MCA Notification dated June 5, 2015 & June 13, 2017

Exceptions, modifications & adaptations shall be applicable to Private Co. which has not committed a default in filing its Financial Statements (u/s 137 of the Act) or Annual Return (u/s 92 of the Act) with the ROC.

Applicability of the exemptions to Private Co.

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Loan to directors

Section 185 of Cos. Act, 2013

Companies (Amendment) Act, 2017.

Section completely substituted.

(effective from May 7, 2018)

Amended provision:

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Sec. 185 is completely substituted by Cos. (Amendment) Act, 2017

Revised Sec. is divided in 4 sub-Sec., highlights are as follows:

- (1) Complete restriction on loans, guarantees & securities to certain parties,
- (2) Permits granting of loans, guarantees & securities to certain parties, subject to riders,
- (3) Loans, guarantees & securities to certain parties completely exempted from compliance of the Sec.,
- (4) Penal provisions under Sec. 185 of the Act.

Related Parties

Section 2 (76) read with section 188 – Holding Co., Subsidiary Co., Associate Co., Fellow subsidiaries are not ‘related parties’.

Companies (Amendment) Act, 2017.

Relevant clause of ‘Related Party’ under Cos. Act, 2013

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‘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 Co. to which it is also a subsidiary; or

(C) An Investing Co. or the venturer of the Co.

Explanation – For the purpose of this clause, ‘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.

RPTs

Section 188 of Cos. Act, 2013

Approval of shareholders for RPTs u/s 188 of Act by ordinary resolution is not applicable to:

A company in which 90% or more members, in number, are relatives of promoters or are related parties.

(effective from Feb. 9, 2018)

Companies capable of being registered

Section 366 of Cos. Act, 2013

U/s 366 of the Act, any partnership firm, LLP, co-operative society or any other business entity (with 7 or more members, now 2 members or more members) may be converted into company limited by shares, guarantee or unlimited company under the Act.

(Companies Amendment Act – Not yet notified)

Financial Statement

Section 2 (40) of Companies Act, 2013

Non-applicability of ‘Cash Flow Statement’ to OPC, Small Co., Dormant Co. & Private Co. (DIPP registered ‘start-up’).

Kinds of Share Capital

Section 43 – Kinds of Share Capital – Shall not apply where MoA or AoA of the private company so provides.

Voting Rights

Section 47 – Voting Rights shall not apply where MoA or AoA of the private company so provides.

Further Issue of Shares

Section 62 of Companies Act, 2013

In case 90%, of the members of private Co. have given their consent in writing or in electronic mode, the period lesser than those specified (i.e. 15 – 30 days) shall apply – Offer Letter under Rights Issue u/s 62 of the Act.

Further Issue of Shares

Section 62 of Cos. Act, 2013:

By passing an Ordinary Resolution, a Pvt. Co. can offer shares to employees under ESOP scheme, subject to prescribed conditions.

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Provisions relating to acceptance of deposit

Section 73(2) of Cos. Act, 2013

Conditions prescribed in Sec. 73(2) of the Act

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Passing of resolution in general meeting, subject to rules prescribed by RBI w.r.t. *acceptance of deposits from its members* with the conditions:

- (i) Issuance of Circular,
- (ii) Filing of copy of circular with ROC,
- (iii) Depositing 30% of maturing amount in separate Bank A/c,
- (iv) Certifying that Co. has not committed any default in the repayment of deposits accepted either before or after the commencement of Cos. Act or payment of interest on.

Said conditions are not applicable to Private Co., subject to following riders:

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- (A) Such Pvt. Co. accepts from its members monies not exceeding 100% (Paid-up Share Capital + Free Reserves + Securities Premium A/c); or
- (B) Such Pvt. Co. which is a Start-Up, for 5 years from date of its incorporation; or
- (C) Which fulfils all of the foll. conditions, namely:

Members 'Deposits' from Private Company

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- (i) Which is not Associate or Subsidiary Co. of any other Co.;
- (ii) If borrowings of such a Co. from Banks or Financial Institutions or any body corporate is less than twice of its paid-up share capital or Rs. 50 crores, whichever is lower; and
- (iii) Such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits.

Annual Return

Section 92 – In case of OPC, Small Co. & Private Co. (DIPP registered ‘Start-Up’) – the Annual Return shall be signed by CS, or where there is no CS by the director of the company.

Notice of General Meeting

Section 101 of Cos. Act, 2013 – Shall apply unless otherwise specified in respective sections or AoA of the Co. provide otherwise.

Explanatory Statement

Section 102 – Shall apply unless otherwise specified in respective sections or AoA of the Co. provide otherwise.

Quorum for general meetings

Section 103 – Shall apply unless otherwise specified in respective sections or AoA of the Co. provide otherwise.

Chairman for general meetings

Section 104 – Shall apply unless otherwise specified in respective sections or AoA of the Co. provide otherwise.

Proxies at General meetings

Section 105 – Shall apply unless otherwise specified in respective sections or AoA of the Co. provide otherwise.

Restriction on voting rights

Section 106 – Shall apply unless otherwise specified in respective sections or AoA of the Co. provide otherwise.

Voting by show of hands

Section 107 – Shall apply unless otherwise specified in respective sections or AoA of the Co. provide otherwise.

Demand for Poll

Section 109 – Shall apply unless otherwise specified in respective sections or AoA of the Co. provide otherwise.

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Eligibility, qualifications & disqualifications of auditors

Section 141 of Companies Act, 2013

Person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 cos. *other than OPCs, Dormant Cos., Small Cos. and Private Cos. having paid-up share capital less than Rs. 100 crore.*

31 Powers & duties of Auditors & Auditing Standards

The auditor's report shall also state – whether the company has adequate Internal Financial Controls with reference to financial statements in place and operating effectiveness of such controls:

Shall not apply to: (i) OPC or Small Co. (ii) Private Co. which has Turnover less than Rs. 50 crores as per latest audited financial statement or which has aggregate borrowings from Banks or FIs or any body corporate at any point of time during FY less than Rs. 25 crore.

Retiring Directors to stand for Directorship

Section 160 of Companies Act, 2013 – Right of persons other than retiring directors to stand for directorship is not applicable to Private Company.

Not applicable to public company

Appointment of directors to be voted individually

Sec. 162 – Appointment of directors to be voted individually.

Not applicable to Private Company

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Board Meetings

Section 173 of Companies Act, 2013

Board Meeting

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OPC, Small Co., Dormant Co. & Private Co. (DIPP registered 'Start-up') shall be deemed to have complied with Sec. 173 of the Act if:

- (i) At least 1 Board Meeting has been conducted in each half of a calendar year and*
- (ii) Gap between 2 meetings is not less than 90.*

Provisions relating to Board Meetings & Quorum are not applicable OPC in which there is only 1 director.

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Quorum for Board Meeting

Section 177 of Companies Act, 2013

Quorum for Board Meeting – Pvt. Co.

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Basic provision: *Where at any time the number of interested directors exceeds or is equal to 2/3rd of the total strength of board of directors, the number of directors who are not interested directors and present at the meeting, being not less than 2, shall be the quorum during such time.*

For Private Co. – Interested Director may also be counted towards quorum in such meeting after disclosure of his interest.

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Restrictions on Powers of Board of directors

Section 180 of Companies Act, 2013

- (i) To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of Co.,
- (ii) To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation,
- (iii) Restrictions on borrowings,
- (iv) To remit, or give time for the repayment of, any debt due from a director.

Above provisions not applicable to Private Co.

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Disclosure of interest by director

Section 184 of Companies Act, 2013

Disclosure of interest by director – Exemption for Private Co.

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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 shall disclose the nature of his concern or interest at board meeting in which the contract or arrangement is discussed and shall not participate in such meeting.

For Private Co. – It shall apply with the exception that the interested director may participate in such meeting after disclosure of his interest.

Related Party Transactions

No member of the Co. shall vote on the Ordinary Resolution, to approve any contract or arrangement which may be entered into by the Co., if such member is a related party.

Not applicable to Private Company.

Appointment of MD, WTD or Manager

Section 196 (1), (2) & (3) - Applicable

Section 196(4) and (5) – Not applicable.

*Certain provisions for appointment of MD,
WTD or Manager – Not applicable to Private
Company*

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Q & A Session

2 days Company Law Refresher Course – Pune Branch of WIRC of ICAI
By Gaurav Pingle, Company Secretary, Pune

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Thank you ICAI Pune Branch for the wonderful opportunity!! 😊

Thank you Members & students for active participation!! 😊

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