



## Inside this edition

- Exemption to Private Companies
- Exemption to Section 8 Companies
- Exemption to Government Companies
- Relaxation on auditor's term for Private Companies
- Transfer of pending proceedings to the Tribunal
- Surrender of DIN and filing of e-form DIR-5 at MCA portal
- Division of work between Division and Single Bench of NCLT
- Fast track Insolvency Resolution process for Corporate Persons Regulations, 2017

## Exemption to Private Companies

MCA vide its notification dated 13<sup>th</sup> June, 2017 has provided following exemptions to the private companies:

### a) Section 2(40): Financial statement

Now the Private Companies (Start-up only) are not required to provide Cash Flow Statement along with financial statements.

Earlier Provisions: The financial statement, with respect to person company, small company, dormant company not include the cash flow statement.

Revised Provision: The financial statement, with respect to person company, small company, dormant company, **private company (if such private company is a start-up)** not include the cash flow statement.



b) **Clauses (a) to (e) of sub-section (2) of section 73 in respect of acceptance of deposits** by companies from members by passing a special resolution and by complying with such terms and conditions as are prescribed in section 73(2)(a) to (f) of the Act shall not be applicable to specified private companies

Earlier Provision: Shall not apply to a private company:

A) Which accepts from its members' monies not exceeding one hundred per cent, of aggregate of the paid-up share capital and free reserves.

B) Such company shall file the details of monies so accepted to the Registrar in such manner, as may be specified.

Revised Provision: Shall not apply to a private company:

(i) Which accepts from its member's monies not exceeding one hundred per cent, of aggregate of the 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:-

(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 any body 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 subsisting at the time of accepting deposits under this section:

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."

(c) **Clause (g) of sub-section (1) of section 92 in respect of Annual Return:**

Earlier Provision: Section 92(1) clause (g) included remuneration of directors and key managerial remuneration

Revised Provision: (1) Sub- clause (g) of section 92 substituted by adding word aggregate in beginning shall apply to private companies which are small companies "(g) **aggregate** amount of remuneration drawn by directors".

(d) **Signing of Annual return:**

Earlier Provision: Provided that in relation to One Person Company and small company the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company."

Revised Provision: (2) Proviso to sub-section (1) of



section 92 has been substituted by adding the word private company  
“Provided that in relation to 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.”



(e) CLAUSE (i) of section 143(3) in respect of Auditor report:

Earlier Provision: (i) The auditor report shall also state whether the company has adequate internal financial controls systems in the place and the operative effectiveness of such controls

Revised Provision: The provision shall not apply to a private company:-

(i) which is a one person company (OPC) or a **small company**; or

(ii) which has **turnover less than rupees fifty 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 twenty five crore.**”

(f) In sub-section (5) of section 173 (5) related to meetings of Board: word private company has been added

Earlier Provision: A One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one 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 ninety days:

Provided that nothing contained in this subsection and in section 174 shall apply to One person Company in which there is only one director on its Board of Directors.

Revised Provision: “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 one 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 ninety days:

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.

(g) In sub-section (3) of section 174 related to quorum for meetings of Board

Earlier Provision: Where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board, the number of remaining directors, being not less than two, shall be the quorum during such time

Revised Provision: The provision would be applicable on private companies with the exception that **the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184.**”

The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.”



## Exemption to Section 8 Companies

MCA in its notification dated 13<sup>th</sup> June'17 has provided following exemptions to the Section 8 companies:

(a) Clause (b) and first proviso to sub-section (1) of section 149 related to number of Board of Directors:

Earlier Provision: Every company shall have a Board of Directors consisting of individuals as directors and shall have a maximum of 15 directors provided that appointment takes place after passing a special resolution.

Revised Provision: Now section 8 company is **not required to pass special resolution** in meeting of members for appointment of directors more than 15.



(b) Sub-section (7) of section 186 related to Loan and investment by company

Earlier Provision: No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, five year or ten year Government Security closest to the tenor of the loan.

Revised Provision: The provisions with respect to minimum rate of interest shall not apply to a company in which twenty-six per cent or more of the paid-up share capital is held by the Central Government or one or more State Governments or both, in respect of loans provided by such company for funding Industrial Research and Development projects in furtherance of its objects as stated in its memorandum of association.”

The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a company covered under section 8 of the said Act which has not committed a default in

filing its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar.”.

## Exemption to Government Companies

MCA in its notification dated 13<sup>th</sup> June has provided following exemptions to Government companies:

(a) In sub-section (2) of section 96 related to place of Annual general meeting:

Earlier Provision: A government company can hold an annual general meeting either at its registered office or such other place, as may be approved by the central government.

Revised Provision: The Annual General Meeting can be held at registered office of the company or such other place such other place within the city, town or village in which the registered office of the company is situated or such other place as the Central Government may approve in this behalf.”

(b) Sub-sections (6) and (7) of section 152 related to retirement of director at every annual general meeting.

Earlier Provision: The directors to retire by rotation at every annual general meeting shall be those who have been longest in office.

At the annual general meeting at which a director retires, the company shall fill up the vacancy by appointing the retiring director or some other person thereto.

If the vacancy of the retiring director is not so filled up and the meeting had been adjourned and if at the adjourned meeting also the vacancy of the retiring director is not filled up, then the retiring director shall be deemed to have been re-appointed at the adjourned meeting.





Revised Provision: The requirement related to rotation of director along with manner of filling vacancy arising due to retiring director shall not apply to:

- (a) a Government company, which is not a listed company, in which not less than fifty-one per cent of paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments
- (2) a subsidiary of a Government company, referred to in (a) above.

(c) Sections 230 to 232 related to Power to compromise or make arrangements with creditors and members:

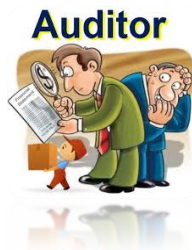
For the word “Tribunal”, wherever it occurs, the words “Central Government” shall be substituted.”

The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a Government company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.”

### **Relaxation on auditor’s term for Private Companies**

MCA vide notification dated 22nd June has amended rule 5 of the Companies (Audit and Auditors) Rules, 2014, as follows:

In accordance with the amendment, the paid-up share capital limit for rotation of auditors in case of private companies has been increased from rupees twenty crore to rupees “fifty crore or more”. Thus with the following amendment, no private limited



companies having paid up share capital of rupees fifty crores or more shall appoint or re-appoint:

- (a) An individual as auditor for more than one term of five consecutive years.
- (b) An audit firm as auditor for more than two terms of five consecutive years.

Applicability of Class of companies as defined under rule 5 of the Companies (Audit and Auditors) Rules, 2014, on other section of the Companies Act, 2013, as previously, still continues to be applicable.

### **Transfer of pending proceedings to the Tribunal**

With the amended of the Companies (Transfer of Pending Proceedings) Rules, 2016 cases related to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer. Only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government. The proceedings relating to cases of voluntary winding up of a company where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the Companies Act, 1956 but the company has not been dissolved before the 1st April, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.”



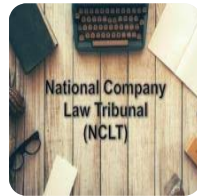
## Surrender of DIN and filing of e-form DIR-5 at MCA portal

Form DIR-5 has been deployed by MCA as an E-Form for all those Stakeholders who wish to surrender their DINs. Stakeholders who wish to surrender their DINs are required to file this Form DIR-5 instead of it being filed as an attachment to Form RD-1. Currently Form DIR-5 is required to be filed under Rule 11 of the Rules which deals with Cancellation, Surrender or Deactivation of DIN. Form DIR-5 is a separate E-form instead of an attachment to existing Form RD-1.



## Division of work between Division and Single Bench of NCLT

NCLT has amended the division of work between Division and Single Bench of NCLT vide its Order dated 12-06-2017. Accordingly all benches of NCLT, whether Division or Single Bench shall exercise equal powers for disposing the cases related to the Companies Act, 2013 and Insolvency & Bankruptcy Code, 2016. Further, the cases shall be equally distributed among the Benches at the same station.



## Fast Track Insolvency Resolution process for Corporate Persons Regulations, 2017

Fast Track Insolvency Resolution Process for Corporate Persons Regulations has been notified by Insolvency and Bankruptcy Board of India which shall come into force on June 14, 2017. These regulations provide the process from initiation of insolvency resolution of eligible corporate debtors till its conclusion with

approval of the resolution plan by the Adjudicating Authority. The process in these cases shall be completed within a period of 90 days, as against 180 days in other cases. However, the Adjudicating Authority may, if satisfied, extend the period of 90 days by a further period up to 45 days for completion of the process. The Ministry of Corporate Affairs has also notified that fast track process shall apply to the following categories of corporate debtors, a small company, a Startup or an unlisted company with total assets, not exceeding Rs.1 crore.



## Insolvency Professional under IBBI

IBBI has issued a Public Notice to clarify the position under the Code as to who can render services as Insolvency Professionals. Accordingly, no person can function as an Insolvency Professional without obtaining Certificate of Registration from IBBI. Section 206 prohibits a person from rendering services as IP under the Code unless he is enrolled as a member of an IPA, and is also registered with the IBBI. Section 207 requires a person first to obtain membership of an IPA and then register himself with the IBBI. It empowers the IBBI to specify the categories of professionals or persons possessing such qualifications to be eligible for registration as IPs. No person other than persons registered as IPs with the IBBI can act as IP. Further, Insolvency Professional Entities are neither enrolled as member of an IPA nor registered as IP with the IBBI and cannot act as IPs under the Code.



## Submission of un-audited financial results on a half-yearly basis to the Stock Exchange and Debenture Trustee

SEBI has issued a Circular regarding continuous disclosures and compliance's by issuers under SEBI (Issue and Listing of Debt Securities by Municipalities) Regulations, 2015.

Therefore now an issuer of debt securities under SEBI ILDM Regulations shall prepare and submit un-audited financial results on a half yearly basis to the stock exchange and debenture trustee, as soon as the same is available but not later than three months from the end of the half year and annual audited financial results with the stock exchange and debenture trustee, as soon as the same is available but not later than six months from the end of the financial year. The audited financial results shall be accompanied by the annual report of the issuer.



An issuer shall enter into listing agreement, with all the Stock Exchanges where it proposes to list debts securities. The issuer shall disclose to stock exchange(s) all events or information related to the performance/operation of the listed entity, material or price sensitive information or any action that shall affect payment of interest or redemption of debt securities not later than twenty four hours from the occurrence of event or information. Every credit rating, obtained by an issuer shall be reviewed at least once a year, by the registered credit rating agency.

## Exemption to a person who is a party to a combination under CCI

Ministry of Corporate Affairs in its notification has exempted every person or enterprise who is a party to a combination from giving notice within 30 days for a period of 5 years from the date of publication of the notification.



Competition Commission of India  
प्रतिस्पर्धा आयोग

Measure has been taken to alleviate the concerns of stakeholders who felt constrained by 30 days deadline stipulated in the Act for submission of notices of combination to the Competition Commission of India.

## Filing of appeal and Jurisdiction of Banking Ombudsman

The Reserve Bank of India has widened the scope of its Banking Ombudsman Scheme 2006. Now a customer can lodge a complaint against the bank for its non-adherence to RBI instructions with regard to Mobile Banking/ Electronic Banking services in India.

The pecuniary jurisdiction of the Banking Ombudsman to pass an Award has been increased from existing rupees one million to rupees two million. Compensation not exceeding rupees hundred thousand can also be awarded by the Banking Ombudsman to the complainant for loss of time, expenses incurred as also, harassment and mental anguish suffered by the complainant.

The procedure for complaints settled by agreement under the Scheme has also been revised. Appeal can now been allowed for the complaints closed under Clause 13 (c) of the existing Scheme relating to rejection, which was not available earlier.



## Sale of shares through Stock Exchange Mechanism

SEBI has issued a Circular regarding Review of Offer for Sale (OFS) of Shares through Stock Exchange Mechanism. In order to streamline the process of Offer for Sale (OFS) with an objective to encourage greater participation by employees, the existing provision with respect to restriction on sale of shares by promoters post OFS is modified. Now, Promoters of eligible companies shall be permitted to sell shares within a period of 2(two) weeks from the OFS transaction to the employees of such companies. The offer to employee shall be considered as a part of the said OFS transaction. The promoters may at their discretion offer these shares to employees at the price discovered in the said OFS transaction or at a discount to the price discovered in the said OFS transaction. Promoters shall make necessary disclosures in the OFS notice to the exchange including number of shares offered to employees and discount offered if any.





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