

## Exemptions for Private Limited Companies – Companies Act 2013 – Amended Notification dated 13<sup>th</sup> June 2017

Vide notification no. 464 (E) dated 5<sup>th</sup> June 2015, certain exemptions were provided to Private Limited companies relaxing provisions of the Act. These exemptions were modified or extended vide amendment order dated 13<sup>th</sup> June 2017 to the original notification.

In addition to certain exemptions the amended notification has also inserted a condition vide Para 2A, restricting the exemptions to companies which has not committed any default in filing its Annual Return and Financial Statements.

### Impact of Inclusion of Para 2A of the notification date 13<sup>th</sup> June 2017 – to the principal notification 464 (E) dated 5<sup>th</sup> June 2015.

*"2A. 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."*

The exemptions available to private companies as per the principal notification dated 5<sup>th</sup> June 2015 and amended vide notification dated 13<sup>th</sup> June 2017, cannot be availed by the companies which have defaulted in filing annual returns (**Sec.92**) or financial statements (**Sec.137**)

#### Relevant Provisions:

##### Section 92 (4): Annual Return

*"Every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year **within sixty days from the date on which the annual general meeting** should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed, **within the time as specified, under section 403.**"*

##### Section 137(1): Financial Statements

*"A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar **within thirty days of the date of annual general meeting** in such manner, with such fees or additional fees as may be prescribed **within the time specified under section 403...."***

##### Section 403:

*"(1) Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed*

*Provided that any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing, registering or recording, within a period of **two hundred and seventy days** from the*

*date by which it should have been submitted, filed, registered or recorded, as the case may be, on payment of such additional fee as may be prescribed*

*(2) Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the first proviso to that sub-section with additional fee, the company and the officers of the company who are in default, shall, without prejudice to the liability for payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.”*

**What does default mean?**

Any Company that has not filed the Annual Return and Financial Statements, within the due date of say 60 days and 30 days from the date of AGM, shall file the same within a period of 270 days from such due dates (say 60 and 30), with additional fees. However, failing to file the same within the extended period of 270 days, the company and the officers of the company shall be deemed to be in default.

**Example:**

<b>Filing Requirement</b>	<b>Date of AGM</b>	<b>Filing Period</b>	<b>Due Date</b>	<b>Last date as per Sec.403 (+270 days)</b>
Financial Statement	28-09-2016	30 Days from AGM	28-10-2016	25-07-2017
Annual Return	28-09-2016	60 Days from AGM	27-11-2016	24-08-2017

Assuming an AGM date of 28<sup>th</sup> September 2016, if the company has not filed its Financial Statements on or before 25<sup>th</sup> July 2017, or its Annual Return on or before 24<sup>th</sup> August 2017, or both, the Company and officers of the Company shall be deemed to be in default. And hence, as per the amended notification, such private companies will not be eligible for any of the exemptions provided by the Principal and amended notification 463(E).

**Exemptions List:**

A summary of the exemptions provided under the Original and Amended notification is tabulated below:

S. No	Chapter/ Section number/ Sub-section(s) in the Companies Act, 2013	Topics of the Act	Exceptions/Modifications/Adaptations  Original Notification dated 5th June 2015	Exceptions/Modifications/Adaptations  Original Notification dated 13th June 2017
1A	Chapter I, sub clause (viii) of clause (76) Of section 2.		Shall not apply with to section 188.	No Change
1	Chapter I, clause (40) of section 2.		Newly Inserted - Not in original Notification	<p>For the proviso, the following shall be substituted, namely:</p> <p>Provided that the financial statement, with respect to One person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement;</p> <p>Explanation. - For the purposes of this Act, the term 'start-up' or "start-up company" means a private company incorporated under the Companies Act, 2013 (18 of 2013) or the Companies Act, 1956 (1 of 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."</p>

S. No	Chapter/ Section number/ Sub-section(s) in the Companies Act, 2013	Topics of the Act	Exceptions/Modifications/Adaptations  Original Notification dated 5th June 2015	Exceptions/Modifications/Adaptations  Original Notification dated 13th June 2017
2	Chapter IV, section 43 and section 47.	Kinds of Share Capital, Nature of Shares & Debentures, Numbering of Shares, Certificate of shares, Voting Rights	Shall not apply where memorandum or articles of association of the private company so provides.	
3	Chapter IV, sub-clause (i) of clause (a) Of sub section (1) and sub-section (2) of section 62	Further Issue of Share Capital – <b>Fresh Offer Notice</b>	Shall apply with following modifications:  In clause in sub clause (i), the following proviso shall be inserted, namely:  Provided that notwithstanding anything contained in this sub-Clause and sub—section (2) of this section, in case ninety per cent of the members of a private company have given their consent in writing or electronic mode, the periods lesser than those specified in the said sub-clause or sub-section shall apply.	

S. No	Chapter/ Section number/ Sub-section(s) in the Companies Act, 2013	Topics of the Act	Exceptions/Modifications/Adaptations  Original Notification dated 5th June 2015	Exceptions/Modifications/Adaptations  Original Notification dated 13th June 2017
4	Chapter IV, clause (b) of sub-section (l) of section 62	Further Issue of Share Capital – <b>Employees under ESOP</b>	In clause (b) for the words "special resolution", the words "ordinary resolution" shall be substituted.	
5	Chapter IV, section 67.	Restrictions on purchase by company or giving of loans by it for purchase of its shares.	Shall not apply to private companies - (a) in whose share capital no Other body corporate has invested any money;  (b) 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 fifty crore rupees, whichever is lower; and  (c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section,	

6	Chapter V, clauses (a) to (e) of sub-section (2) of section 73	Prohibition on acceptance of deposits from public.	Shall not apply to a private company which accepts from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.	<p>Shall not apply to a private company-</p> <p>(A) which accepts from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account; or</p> <p>(B) which is a start-up, for five years from the date of its incorporation; or</p> <p>(C) which fulfils all of the following conditions, namely:-</p> <p>(a) which is not an associate or a subsidiary company of any other company;</p> <p>(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</p> <p>(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deosits under this section:</p> <p>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."</p>
---	--	--	---	--

S. No	Chapter/ Section number/ Sub-section(s) in the Companies Act, 2013	Topics of the Act	Exceptions/Modifications/Adaptations  Original Notification dated 5th June 2015	Exceptions/Modifications/Adaptations  Original Notification dated 13th June 2017
6A	Chapter VII, clause (g) of sub section (1) of section 92	Annual Return	Newly Inserted - Not in original Notification	Shall apply to private companies which are small companies, namely:- "(g) aggregate amount of remuneration drawn by directors;".
6B	Chapter VII, proviso to sub-section (1) of section 92		Newly Inserted - Not in original Notification	For the proviso, the following proviso shall be substituted, namely:- 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.".
7	Chapter VII, sections 101 to 107 and section 109.	Notice of Meeting, Statement to be annexed to notice, Quorum for meetings, Chairman of meetings, Proxies, Restriction on voting rights, Demand for Poll	Shall apply unless otherwise specified in respective sections or the articles of the company provide otherwise.	

S. No	Chapter/ Section number/ Sub-section(s) in the Companies Act, 2013	Topics of the Act	Exceptions/Modifications/Adaptations  Original Notification dated 5th June 2015	Exceptions/Modifications/Adaptations  Original Notification dated 13th June 2017
8	Chapter VII, clause (g) of sub-section (3) of section 117	Resolutions and agreements to be filed.	Shall not apply.	
9	Chapter X, Clause (g) of sub- section (3) of section 141.	Eligibility, qualifications and disqualifications of auditors – <b>Ceiling Limit on Number of Audits</b>	Shall apply with the modification that the words "other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than one hundred crore rupees" shall be inserted after the Words "twenty Companies"	
9A	Chapter X, clause (i) of sub-section (3) of section 143.	Powers and duties of auditors and auditing standards. – <b>Internal Control over Financial Reporting</b>	<b>Newly Inserted - Not in original Notification</b>	Shall not apply to a private company:- (i) which is a one person company 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."



S. No	Chapter/ Section number/ Sub-section(s) in the Companies Act, 2013	Topics of the Act	Exceptions/Modifications/Adaptations  Original Notification dated 5th June 2015	Exceptions/Modifications/Adaptations  Original Notification dated 13th June 2017
10	Chapter XI, section 160.	Right of persons other than retiring directors to stand for directorship.	Shall not apply.	
11	Chapter XI, section 162.	Appointment of directors to be voted individually.	Shall not apply.	

S. No	Chapter/ Section number/ Sub-section(s) in the Companies Act, 2013	Topics of the Act	Exceptions/Modifications/Adaptations  Original Notification dated 5th June 2015	Exceptions/Modifications/Adaptations  Original Notification dated 13th June 2017
11A	Chapter XII, sub-section (5) of section 173.	Meetings of Board.	Newly Inserted - Not in original Notification	<p>For sub-section (5), the following sub-section shall be substituted, namely:-</p> <p>(5) 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:</p> <p>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.</p>
11B	Chapter XII, sub-section (3) of section 174.	Quorum for meetings of Board.	Newly Inserted - Not in original Notification	<p>Shall apply with an exception that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184.</p>

S. No	Chapter/ Section number/ Sub-section(s) in the Companies Act, 2013	Topics of the Act	Exceptions/Modifications/Adaptations  Original Notification dated 5th June 2015	Exceptions/Modifications/Adaptations  Original Notification dated 13th June 2017
12	Chapter XII, section 180.	Restrictions on powers of Board	Shall not apply	
13	Chapter XII, sub—section (2) of section 184	Disclosure of interest by director.	Shall apply with the exception that the interested director may participate in such meeting after disclosure of his interest.	
14	Chapter XII. section 185	Loan to directors, etc.	<p>Shall not apply to private company</p> <p>(a) in Whose share capital no other body corporate has invested any money,</p> <p>(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</p> <p>(c) such a company has no default in repayment of such borrowings subsisting at the time Of making transactions under this section.</p>	

S. No	Chapter/ Section number/ Sub-section(s) in the Companies Act, 2013	Topics of the Act	Exceptions/Modifications/Adaptations  Original Notification dated 5th June 2015	Exceptions/Modifications/Adaptations  Original Notification dated 13th June 2017
15	Chapter XII; second proviso to sub-section (l) of section 188	Related party transactions.	Shall not apply.	
16	Chapter XIII, sub-sections (4) and (5) of section 196.	Appointment of Managing Director, Whole-time director or manager	Shall not apply.	