



## ***Exemptions to Private Companies***

The Central Government in interest of the public has provided exemptions to the private companies vide the notification no. G.S.R. (E) dated 05<sup>th</sup> June, 2015 regarding the applicability of certain provisions of the Companies Act, 2013. *This notification will come into force on the date of publication in the official gazette of India.*

The key highlights of such exemption are as follows:

1. Section 2(76) of the Act has been amended to exempt related party transactions entered by the private companies with its holding, subsidiary or an associate company; or a subsidiary of its holding company to which it is also a subsidiary for the purposes of section 188 of the Act.
2. Now, private companies can have distinct provisions in its Memorandum and Articles of Association with regard to following:
  - Kinds of share capital (section 43 of the Act); and
  - Voting Rights (section 47 of the Act)
3. Now private companies upon receiving the consent of 90% of its members in writing or in electronic mode can prescribe lesser period for:
  - opening of issue pursuant to dispatch of offer letter; and
  - acceptance of offer made to the existing shareholders of such company
4. Issue of further shares to employees under Employees Stock Option scheme (ESOP) can be approved by ordinary resolution instead of special resolution;

5. In accordance with section 67 of the Act, a company limited by shares or by guarantee and having its share capital cannot buy its own shares unless consequent reduction of capital is effected under the provisions of the Act. Now section 67 shall not apply to the private companies upon fulfilling following criteria:
- in whose share capital no other body corporate has invested any money;
  - 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
  - such company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section;
6. Now private companies can accept deposits from its members not exceeding 100% of its aggregate paid up share capital and free reserves without attracting the provisions of section 73 (2) (a) to (e) regarding public deposits but has to file the details of monies so accepted to the Registrar in such manner as may be specified;
7. MCA has exempted the private companies from filing of board resolutions in pursuance of section 179(3) and rules made there under;
8. The provisions enumerated under section 160 of the Act i.e. the deposit of 1 lakh rupees for proposal of candidature as director, shall not be applicable to private companies;

9. Provisions of section 162 of the Act i.e. Appointment of directors to be voted individually are not applicable to private companies;
10. The provisions of section 180 i.e. prior approval of shareholders by special resolution regarding selling of any undertaking, borrowing of monies etc. shall not apply to private companies;
11. In case of a private company, interested director may participate in such meeting after disclosure of his interest under provisions of section 184(2) of the Act;
12. The provisions of section 185 i.e. loan to directors shall not apply to the private companies upon fulfilling the following criteria:
  - in whose share capital no other body corporate has invested any money;
  - 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
  - such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section;
13. In case of private companies a member of the company can vote on a resolution to approve any contract or arrangement even if such member is a related party;
14. Appointment of managerial personnel is subject to the approval by the shareholders in next general meeting and also by the Central Government if

the appointment is in variance with the conditions as specified in Schedule V. Further, where an appointment of managerial personnel is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid. *Now these provisions are not applicable to private companies;*

We at **RNM** have an expert dedicated team of Chartered Accountants & Company Secretaries which offer advisory services and give effect to the various changes, amendments required in the Articles of Association, Memorandum of Association and maintenance of Fixed Assets Register (FAR) pursuant to the Companies Act 2013.