

The MCA issues relaxations for private companies from certain provisions of the Companies Act, 2013

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First Notes on:

Financial Reporting
Corporate law updates
Regulatory and other information
Disclosures

Sector:

All
Banking and Insurance
Information, Communication, Entertainment
Consumer and Industrial Markets
Infrastructure and Government

Relevant to:

All
Audit committee
CFO
Others

Transition:

Immediately
Within the next 3 months
Post 3 months but within 6 months
Post 6 months

Background

On 24 June 2014, the Ministry of Corporate Affairs (MCA) vide Section 462(1) of the Companies Act, 2013 (2013 Act) issued a draft notification proposing a number of modifications with respect to certain Sections of the 2013 Act that would be applicable to a private company. The comment period ended on 1 July 2014.

After nearly one year, on 5 June 2015 the MCA issued a final notification which provides exceptions/modifications/adaptations to some of the provisions of the 2013 Act for private companies. These notifications would come into force from the date of their publication in the Official Gazette.

This issue of First Notes provides an overview of the key exceptions/modifications/ adaptations made to the 2013 Act for private companies.

Sections/sub-sections that are amended for private companies

As per the MCA notification, the following sections/sub-sections have been amended/ modified:

- **Further issue of share capital**
 - Section 62(1) deals with the rights issue. Section 62(1)(a) provides time limit for rights offer that is ‘not less than 15 days and not exceeding 30 days’ from the date of offer. It further states that offer not accepted within the specified time period would be deemed to have been declined. The MCA has now added a proviso to the Section 62(1)(a)(i) which requires

that in case a private company wants to reduce the time period for the rights issue less than the period prescribed in Section 62(1)(a) and Section 62(2), it can do so provided 90 per cent of its members have given their consent in writing or in electronic mode.

- Section 62(1)(b) deals with a situation when a company proposes to increase its subscribed capital by the issue of further shares, and the shares are offered to employees under a scheme of employees’ stock option. Currently, the 2013 Act requires that such offer is subject to, *inter alia*, special resolution being passed by the company.

The MCA has now modified Section 62(1)(b) and provides that for private companies passing of an ordinary resolution would be sufficient.

▪ **Eligibility/qualifications/disqualifications of auditors**

Section 141(3)(g) currently states that a 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 companies.

The MCA has now modified the limit of 20 companies and has excluded following companies for calculating limit of 20 companies:

- one person company
- dormant companies
- small companies, and
- private companies having paid-up share capital less than INR100 crore.

Sections/sub-sections that would not apply to any private company

As per the MCA notification, certain sections/sub-sections will not apply to a private company. They are as follows:

• **Related party transactions**

Section 2(76)(viii) provides definition of a 'related party'. Section 188 requires that specified transactions with related parties that are not in the ordinary course of business and which are not at an arm's length would require consent of the Board of Directors of the company.

The MCA has modified the definition of related party under Section 2(76)(viii) and made the following parties outside the scope of the related party transactions under Section 188:

- Any company which is a holding, subsidiary or an associate company of such company, or
- Any company which is a subsidiary of a holding company to which it is also a subsidiary.

Further, second proviso to Section 188(1) restricts a member to vote on a special resolution, or approve any contract or arrangement entered into by a company, if such a member is a related party. The second proviso to Section 188(1) will not apply to private companies.

• **Resolutions and agreements to be filed**

Section 117 pertains to resolutions and agreements to be filed with the Registrar of Companies. Section 117(3)(g) states that resolutions passed in pursuance of Section 179(3), Powers of the Board, should follow the requirements of Section 117.

Private companies are no longer required to file with

the Registrar of Companies resolutions passed by the Board which are covered in Section 179(3) of the 2013 Act which are as follows:

- a) to make calls on shareholders in respect of money unpaid on their shares
- b) to authorise buy-back of securities under Section 68
- c) to issue securities, including debentures, whether in or outside India
- d) to borrow monies
- e) to invest the funds of the company
- f) to grant loans or give guarantee or provide security in respect of loans
- g) to approve financial statements and the Board's report
- h) to diversify the business of the company
- i) to approve amalgamation, merger or reconstruction
- j) to take over a company or acquire a controlling or substantial stake in another company,
- k) any other matter which may be prescribed.

• **Rights of persons other than retiring directors to stand for directorship**

Section 160 relates to right of persons other than retiring directors to stand for directorship. This Section will not apply to private companies.

• **Appointment of directors to be voted individually**

Section 162 on the manner of appointing two or more persons as directors of a company by a single resolution will not apply to private companies.

• **Restrictions on powers of Board**

Section 180 that deals with the restrictions on the powers of the Board. This Section will not apply to private companies.

• **Appointment and remuneration of managerial personnel**

- Section 196(4), *inter alia*, states that subject to the provisions of Section 197 and Schedule V, a managing director, whole-time director or manager should be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which should be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in the Schedule V.
- Section 196(5) states that where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval should not be deemed to be invalid.

Section 196(4) and (5) will not apply to private companies.

Sections/sub-sections that *would apply to certain class of private companies*

• **Kinds of share capital**

Section 43 with respect to the kinds of share capital namely equity and preference shares will not apply to a private company if memorandum or articles or association of the private company provide that Section 43 does not apply.

• **Voting rights**

Section 47 on voting rights attached to shares would not apply to a private company if memorandum or articles or association of the private company provides that Section 47 does not apply.

• **Restrictions on purchase by company or giving of loans by it for purchase of its shares**

Section 67 provides certain restrictions on companies for buyback of its shares or giving of loans by it for purchase of its shares.

The MCA notification provides certain exemptions for private companies to apply this Section provided that:

- a) no other body corporate has invested in its share capital
- 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 INR50 crore, whichever is lower, and
- c) If such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this Section.

• **Prohibition on acceptance of deposits from public**

Clauses (a) to (e) of the Section 73(2) deals with conditions to be fulfilled for accepting public deposits.

The MCA notification provides that clauses (a) to (e) of the Section 73(2) will not apply to private companies:

- if they accept monies from their members not exceeding 100 per cent of aggregate of the paid-up share capital and free reserves and

- inform the details of such monies to the Registrar in the prescribed manner.

• **Management and administration**

Following Sections will apply to private companies unless otherwise specified in respective Sections, or unless articles of the private company otherwise provide:

- Section 101 – notice of meeting
- Section 102 – statement to be annexed to notice
- Section 103 – quorum for meetings
- Section 104 – chairman of meetings
- Section 105 – proxies
- Section 106 – restriction on voting rights
- Section 107 – voting by show of hands
- Section 109 – demand for poll.

• **Disclosure of interest by director**

Section 184(2) relates to disclosure of interest by a director.

The MCA notification provides that an interested director of a private company could participate in the Board meeting after disclosure of his interest, wherein contract or arrangement or proposed contract or arrangement entered into or to be entered into would be discussed.

• **Loans to directors, etc.**

Section 185 that deals with loans to directors and companies in which directors are interested. This Section will not apply to private companies provided that:

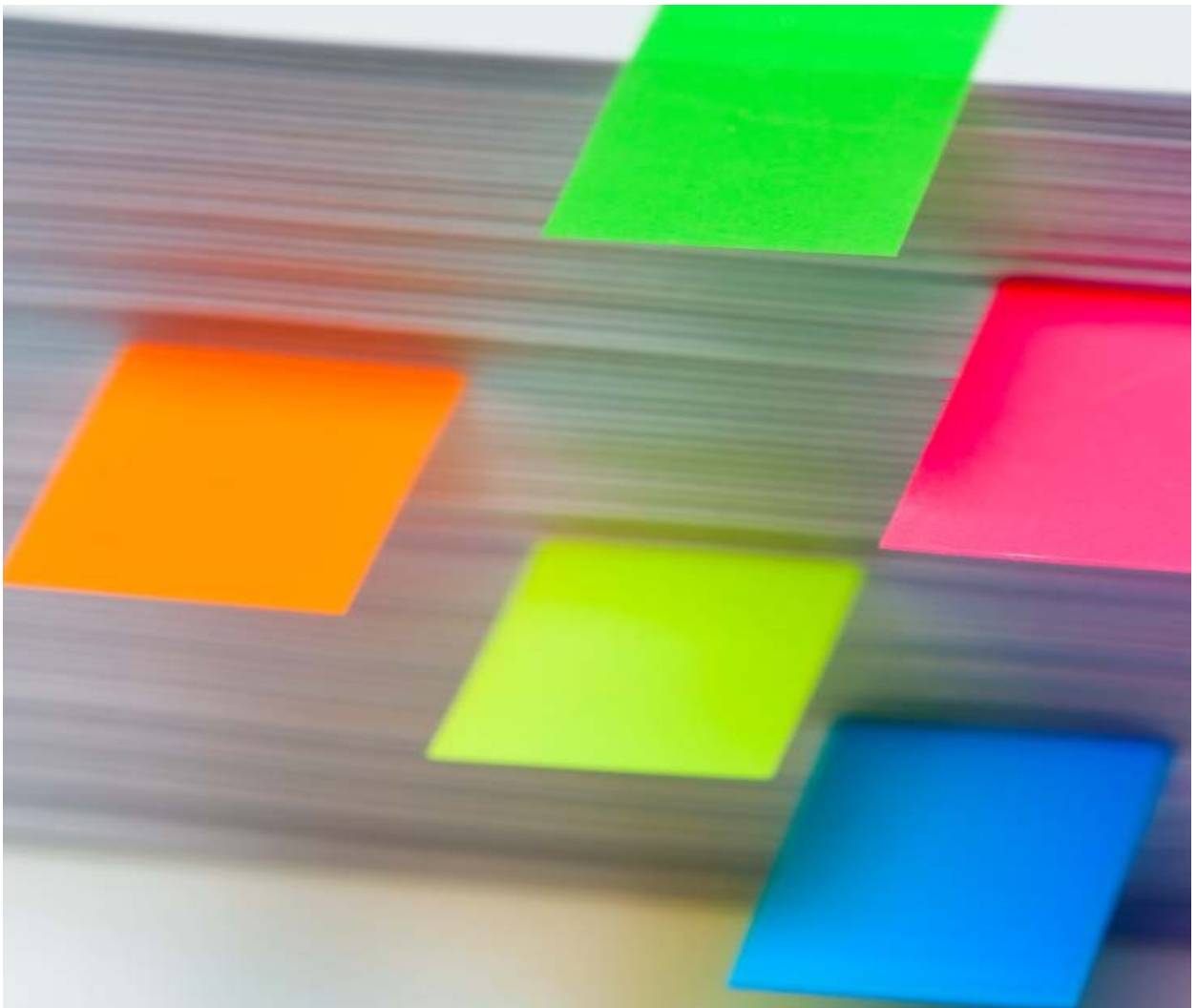
- no other body corporate has invested in its share capital
- which have borrowings from banks or financial institutions or any bodies corporate is less than twice of their paid-up share capital or INR50 crore, whichever is lower, and
- such a company has not defaulted in repayment of such borrowings subsisting at the time of making transactions under this section.

Our comments

- The MCA issued significant relaxations for private companies in the areas of prohibition on acceptance of deposits from public, shareholders' approval in certain cases, eligibility of auditors, loans to directors, granting of ESOPs, etc. These relaxations are expected to do away with hardships faced by private companies and reduce costs of compliance.
- Private companies were expecting that they would be entirely exempted from approvals for related party transactions but the exemption has been provided only partially.
- Exemptions which require no body corporate as shareholders will provide relief to only a select set of private companies as several private companies have corporate shareholders.
- Private companies may be required to amend certain provisions of the memorandum/articles of association in order to avail certain exemptions given by the MCA.

The bottom line

Corporate India would welcome the steps initiated by the MCA in providing these relaxations to private companies which are expected to bring administrative and management ease to some extent.



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The website provides information and resources to help board and audit committee members, executives, management, stakeholders and government representatives gain insight and access to thought leadership publications that are based on the evolving global financial reporting framework.

IFRS Notes



The IASB issues a formal proposal to defer the effective date of the new revenue standard

On 19 May 2015, the IASB published an ED of proposed amendments to IFRS 15 to change the effective date of IFRS 15. It proposes that IFRS 15 would apply for annual reporting periods beginning on or after 1 January 2018. Earlier application would continue to be permitted. Entities would also continue to be permitted to choose between applying the standard either retrospectively to each prior reporting period presented or retrospectively with the cumulative effect of initially applying the standard recognised at the date of initial application.

The IASB also received a number of unsolicited comment letters from stakeholders, e.g. telecommunication and software industries, supporting a deferral of the effective date of IFRS 15. In their view, a one-year deferral would improve the quality of implementation, particularly in the light of the availability (or lack thereof) of information technology systems. Therefore, the IASB holds a view that a one-year deferral would be sufficient in terms of providing additional time to implement IFRS 15

Missed an issue of Accounting and Auditing Update or First Notes?



May 2015

The May 2015 edition of the Accounting and Auditing Update captures the recent issue of the application guide on the provisions of Schedule II to the Companies Act, 2013. This month we cover an overview of the Real Estate Investment Trust (REIT) Regulations issued by the Securities and Exchange Board of India (SEBI) and also discuss the relevant accounting requirements for an investment property under Ind AS. We also highlight the requirements of the Companies Act, 2013 with respect to the share application money and bring out key differences vis-à-vis Companies Act, 1956. The Institute of Chartered Accountants of India (ICAI) recently issued a guidance note on accounting for rate regulated activities. We have provided an overview of the requirements of the guidance note in this issue. In addition, we cast our lens on the recently issued ICAI's Expert Advisory Committee's opinion on accounting of discounts by a company. We also provide a perspective as per Ind AS 115, *Revenue from Contracts with Customers*, on the accounting treatment of discounts.

Finally, in addition to our regular round up of regulatory updates, we have also provided an update on the proposed amendment on accounting for income taxes on intercompany transfers and balance sheet classification of deferred tax asset and liability including transition guidance under the U.S. GAAP.



The MCA amends the Companies Act, 2013

The Union Cabinet on 2 December 2014 introduced an amendment bill in the Parliament proposing certain amendments to the Companies Act, 2013 (2013 Act). Subsequently, on 29 April 2015 certain additions were made in the amendment bill. Post approval from the Lok Sabha and the Rajya Sabha, the amendment bill was finally assented by the President of India on 25 May 2015. These amendments are called as the Companies (Amendment) Act, 2015 (Amendment Act, 2015) and have been published in the Official Gazette on 26 May 2015. The Central Government has appointed 29 May 2015 as the date on which Section 1 to 12 and 15 to 23 of the Amendment Act, 2015 would come into force. Additionally, on 29 May 2015, the Ministry of Corporate Affairs (MCA) has issued certain amendments to some of the provisions contained in (a) Companies (Registration Offices and Fees) Rules, 2014 (b) Companies (Share Capital and Debentures) Rules, 2014 (c) Companies (Declaration and Payment of Dividend) Rules, 2014, and (d) Companies (Incorporation) Rules, 2014. The amendments to these Rules would be effective from the date of its publication in the Official Gazette. Our issue of First Notes provides an overview of the key amendments made in the 2013 Act and to the aforesaid Rules.



KPMG in India is pleased to present Voices on Reporting – a monthly series of knowledge sharing calls to discuss current and emerging issues relating to financial reporting.

On 20 May 2015, we covered following topics :

- (1) salient features of Indian Accounting Standard (Ind AS) 16, *Property, Plant and Equipment*, and Ind AS 38, *Intangible Assets*, along with key differences from AS 10, *Accounting for Fixed Assets* and AS 26, *Intangible Assets*
- (2) the key aspects of the application guide on the provisions of Schedule II to the Companies Act, 2013 issued by the Institute of Chartered Accountants of India (ICAI).

Feedback/queries can be sent to aaupdate@kpmg.com

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