KPMG

First Notes

MCA issues further relaxations from certain provisions of the Companies Act, 2013

23 June 2017

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

The Ministry of Corporate Affairs (MCA) through its notifications dated 5 June 2015, provided certain exceptions/modifications/adaptations to some of the provisions of the Companies Act, 2013 (2013 Act) for the following class of companies:

- Private companies
- Companies formed with the charitable objects, etc. (Section 8 companies)
- Government companies.

New development

The MCA through its notifications dated 13 June 2017 and 22 June 2017, provided further exceptions/modifications/adaptations to the provisions of the 2013 Act for the above mentioned class of companies (i.e. private companies, Section 8 companies and government companies).

These exceptions/modifications/adaptations would be available to the companies which have not defaulted in filing of its financial statements under Section 137 or annual returns under Section 92 of the 2013 Act with the Registrar of Companies (ROC).

This issue of First Notes provides an overview of the exceptions/modifications/adaptations made to the 2013 Act for private companies, Section 8 companies and government companies.

Overview of the exceptions/modifications/adaptations to the 2013 Act

Private companies

The table provides an overview of the exceptions/modifications/adaptations made to the 2013 Act for private companies:

Sections	Particulars
Sections/sub-sections that are amended for private companies which are start-up companies	
Section 2(40)	**Definition of financial statements:** Financial statements, in relation to a company, include: a) A balance sheet as at the end of the Financial Year (FY) b) A statement of profit and loss, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the FY c) Cash flow statement for the FY

Sections	Particulars
Sections/sub-sections that are amended for private companies which are start-up companies (cont.)	
	d) A statement of changes in equity, if applicable and e) Any explanatory note annexed to, or forming part of, any document referred to in (a) to (d) above. However, as per the current provisions, financial statements of a one person company, small company and dormant company are not required to include a cash flow statement. *Amendment* As per the amendment, apart from the financial statements of a one person company, small company, dormant company, **a private company which is a start-up company[1]** is not required to include a cash flow statement. *(Emphasis added to highlight the change)*
Section 92(1)(g) and proviso to Section 92(1)	**Annual return:** Currently, every company is required to prepare an annual return in the prescribed form and contain the particulars as they stood on the close of the FY which, *inter alia,* include details of remuneration of directors and key managerial personnel of the company. Further, in case of one person company and small company, such a return is required to be signed by the company secretary, or where there is no company secretary, by the director of the company. *Amendments* Private companies which are small companies[2] are required to provide details of **aggregate amount of remuneration drawn by directors** instead of providing details of remuneration of directors and key managerial personnel of the company. Additionally, apart from the one person company and small company, the annual return is required to be signed by the company secretary, or where there is no company secretary, by the director of the company of **private company which is a start-up[1]**. *(Emphasis added to highlight the changes)*
Section 173(5)	**Meetings of board:** Currently, every company is required to hold first meeting of its board of directors (board) within 30 days of the date of its incorporation and thereafter required to hold a minimum number of four board meetings every year in such a manner that not more than 120 days should intervene between two consecutive board meetings. However, in case of a one person company, small company and dormant company, holding of at least one board meeting in each half of a calendar year with the gap between two meetings being not less than 90 days would be deemed to be in compliance with the provisions of the Section 173. *Amendment* As per the amendment, apart from the one person company, small company, dormant company, a **private company which is a start-up[1]** would also be deemed to have complied with the provision of Section 173, if at least one board meeting has been conducted in each of a calendar year and the gap between two meetings is not less than 90 days. *(Emphasis added to highlight the change)*

[1]Start-up or start-up company means a private company incorporated under the 2013 Act or the Companies Act, 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.

[2]Small company means a company, other than a public company which meets both the given conditions:

a) Paid-up share capital does not exceed INR50lakh or such higher amount as may be prescribed which should not be more than INR5 crore and

b) Turnover as per last statement of profit and loss does not exceed INR2 crore or such higher amount as may be prescribed which should not be more than INR20 crore.

However, these conditions would not be applicable to the following class of companies:

a) A holding company or a subsidiary company

b) A company registered under Section 8 of the 2013 Act or

c) A company or body corporate governed by any special Act.

Sections	Particulars
Sections/sub-sections that are amended for all private companies	
Section 139(2) read with Rule 5 of the Companies (Audit and Auditors) Rules, 2014	**Mandatory rotation of auditors:** As per Section 139(2) of the 2013 Act read with Rule 5 of the Companies (Audit and Auditors) Rules, 2014 (Audit Rules), following class of companies cannot appoint or reappoint an audit firm as an auditor for more than two consecutive terms of five years each (in case of an individual, there would be one term of five years): a) Listed companies b) All unlisted public companies having paid-up share capital of INR10 crore or more c) All private limited companies having paid-up share capital of **INR20 crore** or more d) All companies having paid-up share capital of below threshold limit mentioned in (b) and (c) above, but having public borrowings from financial institutions, banks or public deposits of INR50 crore or more. The mandatory rotation of auditors' requirements is not applicable to small companies and one person companies. *Amendment* As per the recent notification, all private limited companies having paid-share capital of **INR50 crore** or more cannot appoint or reappoint an audit firm as an auditor for more than two consecutive terms of five years each. *(Emphasis added to highlight the change)*
Section 174(3)	**Quorum for meetings of board:** As per the current provisions, the quorum for a meeting of the board of a company should be higher of the following limits: a) One-third of the total strength of the board or b) Two directors. Additionally, the participation of the directors by video conferencing or by other audio visual means should also be counted for the purposes of quorum. However, where at any time the number of interested directors exceeds or becomes equal to two-thirds of the total strength of the board, the number of directors who are not interested directors and present at the meeting, being not less than two, should be the quorum during such time. *Amendment* The provisions of Section 174(3) would apply to the private companies with the exception that the **interested director could also be counted towards quorum** in such a meeting after disclosure of his/her interest in accordance with Section 184 of the 2013 Act. *(Emphasis added to highlight the change)*
Sections/sub-sections that would not apply to certain class of private companies	
Section 73(2)(a) to Section 73(2)(e)	**Prohibition on acceptance of deposits from public:** Clauses (a) to (e) of the Section 73(2) deal with the conditions to be fulfilled by the companies for accepting deposits from the public or from its members. The MCA through its circular dated 5 June 2015, provided exemption to private companies from complying with the provisions of the clauses (a) to (e) of Section 73(2), if they meet both of the criteria given below: a) They accept monies from their members not exceeding 100 per cent of aggregate of the paid-up share capital, free reserves and securities premium and b) Inform the details of such monies to the ROC in the prescribed manner. *Amendment* As per the amendment, more conditions have been added and therefore, the provisions of clauses (a) to (e) of Section 73(2) of the 2013 Act would not be applicable to a private company,

Sections	Particulars
Sections/sub-sections that would not apply to certain class of private companies (cont.)	
Section 73(2)(a) to Section 73(2)(e)	if it meets **any** of the given criterion: a) It accepts monies from its members not exceeding 100 per cent of aggregate of the paid-up share capital, free reserves and securities premium **b) It is a start-up company[1] for five years from the date of its incorporation, or** **c) It fulfils all the following conditions:** **i. The private company is not an associate or a subsidiary company of any other company** **ii. 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 INR50 crore, whichever is lower and** **iii. Such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under Section 73.** Additionally, the private company would be required to file the details of monies accepted to the ROC in such a manner as may be specified. *(Emphasis added to highlight the changes)*
Section 143(3)(i)	*Amendment* **Internal Financial Controls (IFC):** An auditor of a private company is not required to report on the adequacy and operating effectiveness of IFC in the auditor's report provided such a private company meets either of the given conditions: a) It is a one person company or a small company, or b) It has a turnover of less than INR50 crore as per the latest audited financial statements or the borrowings of such a company from banks or financial institutions or any body corporate at any point of time during the FY is less than INR25 crore.

(Source: KPMG in India's analysis, 2017 based on the provisions of the 2013 Act and MCA notifications dated 5 June 2015, 13 June 2017 and 22 June 2017)

Section 8 companies

The table provides an overview of the exceptions/modifications/adaptations made to the 2013 Act for companies covered under Section 8 of the 2013 Act:

Sections	Particulars
Section/sub-section that is amended for Section 8 companies	
Section 186(7)	**Loan and investment by company:** Currently, a company is not allowed to give a loan to any person at a rate of interest lower than the prevailing yield of one year, three year, five year or 10 year government security closest to the tenor of the loan. *Amendment* A company which meets all the given requirements is allowed to give loans at a rate of interest lower than the prevailing yield of government security: a) A company in which 26 per cent or more of the paid-up share capital is held by the central government or one or more state governments or both and b) Loans have been provided by such company for funding industrial research and development projects in furtherance of its objects as stated in its memorandum of association.

Sections	Particulars
Section/sub-section that would not apply to Section 8 companies	
Section 149(1)(b)	**Minimum and maximum number of directors:** Depending upon the class of a company, following are the minimum number of directors required under the 2013 Act: • A public company - Three directors • A private company - Two directors • A one person company - One director. The maximum number of directors would be 15. However, such a number could be increased after passing a special resolution. The MCA through its notification dated 5 June 2015 provided that the above given provisions would not be applicable to Section 8 companies. *Amendment* As per the amendment, provisions relating to maximum limit of directors (15) and increase in the limit by special resolution would not be applicable to Section 8 companies. This implies that the Section 8 companies would be required to have following minimum number of directors: • A public company - Three directors • A private company - Two directors • A one person company - One director.

(Source: KPMG in India's analysis, 2017 based on the provisions of the 2013 Act and MCA notifications dated 5 June 2015 and 13 June 2017)

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Government companies

The table provides an overview of the exceptions/modifications/adaptations made to the 2013 Act for the government companies:

Sections	Particulars
Sections/sub-sections that are amended for government companies	
Section 96(2)	**Annual General Meeting (AGM):** As per the current provisions, every AGM of a company should be held either at the registered office of the company or at **some other place within the city, town or village in which the registered office of the company is situated**. The MCA through its notification dated 5 June 2015 amended the section for government companies and provided that the AGM should be held either at the registered office of the company or **such other place as the central government may approve in this behalf.** *Amendment* The recent notification further amends the Section and provides that in case of government companies, the AGM should be held at the registered office of the company, or **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.** *(Emphasis added to highlight the changes)*
Sections 230 to 232	**Provisions relating to compromise, arrangements, merger or amalgamation:** Section 230, 231 and 232 deals with the provisions relating to power to compromise or make arrangements with creditors and members, power of Tribunal to enforce compromise or arrangement and merger and amalgamation of companies. *Amendment* The amendment allows that in case of government companies, these provisions should be governed by central government instead of Tribunal (i.e. the word Tribunal should be replaced with central government in Section 230, 231 and 232).

Sections	Particulars
Sections/sub-sections that would not apply to government companies	
Section 152(6) and 152(7)	**Retirement of directors and manner of filling vacancy in place of retiring directors:** • *Section 152(6), inter alia*, provides that not more than two-thirds of the total number of directors (excluding independent directors) of a public company should be the persons whose period of office is liable to determination by retirement of directors by rotation and could be appointed by the company in a general meeting. However, the articles of a company could provide for retirement of all directors at every AGM. Further, the company may fill up the vacancy by appointing the retiring director or some other person at every AGM at which a director retires. • *Section 152(7)* provides that in case the vacancy of director does not get filled in the AGM then the meeting would get adjourned and the vacancy would get filled in the manner specified therein. The MCA through its circular dated 5 June 2015, provided exemption from complying with the provisions of Section 152(6) and 152(7) to the following class of government companies : a) Government company in which the entire 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 b) Subsidiary of a government company, referred to in (a) above, in which the entire paid-up share capital is held by that government company. *Amendment* The recent notification made an amendment to the exemption provided earlier and states that the provisions of Section 152(6) and 152(7) would not be applicable to the following class of government companies: a) Government company, **which is not a listed company, in which not less than 51 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 b) Subsidiary of a government company, referred to in (a) above. *(Emphasis added to highlight the change)*

(Source: KPMG in India's analysis, 2017 based on the provisions of the 2013 Act and MCA notifications dated 5 June 2015 and 13 June 2017)

Applicability: The notifications providing exemptions/modifications/adaptations to the provisions of the 2013 Act relating to private companies (other than amendment in Audit Rules*), Section 8 companies and the government companies have been published in the official gazette on 13 June 2017.

*(*The notification on amendment in Audit Rules for private companies came into force from the date of its publication in the official gazette i.e. 22 June 2017.)*

Our comments

The recent MCA notifications provide additional relaxations for private companies, companies covered under Section 8 of the 2013 Act and government companies. In case of private companies, the relaxation relating to audit rotation has changed the threshold of companies covered for audit rotation from the paid-up share capital of 'INR20 crore or more' to INR50 crore or more'. Further, most of the other relaxations are towards start-ups. These are as follows:

- **Cash flow statement not required:** A private start-up company is not required to include cash flow statement in its financial statements.
- **Conditions for acceptance of deposits not applicable:** Clauses (a) to (e) of the Section 73(2) which deals with the conditions to be fulfilled by companies for accepting deposits from its members or public would not apply to a private company which is a start-up for five years from the date of its incorporation.
- **Deemed compliance with the requirements of board meetings:** A private start-up company would be deemed to have complied with the provision of Section 173, if at least one board meeting has been conducted in each calendar year and the gap between two meetings is not less than 90 days.

Our comments (cont.)

Other significant changes with respect to the 2013 Act are as follows:

- **Interested directors to form part of quorum of board meetings:** In case of private companies, an interested director could also be counted towards quorum in a board meeting subject to disclosure of his/her interest in accordance with Section 184 of the 2013 Act.

  As per the provisions of Section 184(2) of the 2013 Act, directors are required to disclose their interest at the board meeting but are not allowed to participate in such a meeting. As there is no amendment to Section 184(2), this implies that the interested directors are allowed to be included in the meeting of private companies for the purpose of maintaining the required quorum, however, they would not be entitled to participate or vote on the resolutions taken in the meeting.
- **Auditor's report not to include report on IFC:** Auditors of the prescribed class of private companies (i.e. one person company, small company, companies having turnover less than INR50 crore or borrowings less than INR25 crore) are not required to report on the adequacy of the IFC and its operating effectiveness in the auditor's report. The drafting of the condition relating to turnover and borrowings in its current form is likely to allow a company with turnover higher that INR50 crore but borrowing less than INR25 crore to avail an exemption from IFC reporting by auditors.

  Basis this, a company with large turnover but with little or no borrowings would be able to benefit from the relaxation. It is unclear if that is the intent of MCA. Therefore, it would be helpful if MCA clarifies its intent to help resolve the matter.
- **Minimum number of directors for Section 8 companies:** The MCA through its notification dated 5 June 2015 stated that the provisions of the following section would not be applicable to companies covered under Section 8 of the 2013 Act.
  - **Section 149(1)**: Deals with minimum and maximum number of directors and
  - **First proviso to Section 149(1)**: Provides that maximum number of directors could be enhanced (currently 15) by passing a special resolution.

  However, the recent notification requires that only the provisions relating to maximum number of directors would not be applicable to such companies i.e. Section 8 companies would now be required to have the following minimum number of directors:
  - A public company - Three directors
  - A private company - Two directors
  - A one person company - One director.

Applicability of the provisions of the notifications

The notifications making amendments to the provisions of the 2013 Act for private companies (other than amendment in Audit Rules*), Section 8 companies and government companies have been published in the official gazette i.e. 13 June 2017. As the intent of MCA is to provide relief to these classes of companies, we expect that these notifications to be applicable to the financial statements for the period ended 31 March 2017. However, MCA should provide clarity on the applicability date of these notifications to avoid any ambiguity.

*(*The notification on amendment in Audit Rules for private companies came into force from the date of its publication in the official gazette i.e. 22 June 2017.)*

The bottom line

The exemptions/modifications/adaptations are expected to be welcomed by the eligible companies as these are likely to help in easing out the functioning and reporting requirements of the affected companies.

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Visit KPMG in India's IFRS institute - a web-based platform, which seeks to act as a wide-ranging site for information and updates on IFRS implementation in India.

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.

IFRIC 23 clarifies the accounting treatment for uncertain income tax treatments

13 June 2017

On 7 June 2017, the International Financial Reporting Standards (IFRS) Interpretations Committee of the International Accounting Standards Board (IASB) issued IFRS Interpretation, IFRIC 23, *Uncertainty over Income Tax Treatments* (the Interpretation) which seeks to bring clarity to the accounting for income tax treatments that have yet to be accepted by tax authorities.

The Interpretation is applicable for annual periods beginning on or after 1 January 2019. Early application is permitted.

Our issue of IFRS Notes provides an overview of IFRIC 23.

Missed an issue of Accounting and Auditing Update or First Notes

Issue no. 10/2017 – May 2017

The topics covered in this issue are:

- Accounting treatment of enabling assets
- Computation of EIR for loans advanced by banks
- Independent directors – An insight into the role and responsibilities
- Application of substance over form under Ind AS – sale and leaseback arrangements
- Regulatory updates.

MCA issues draft Companies (Registered Valuers and Valuation) Rules, 2017

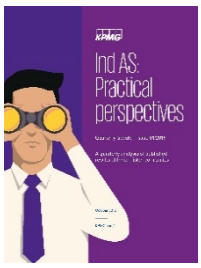
9 June 2017

Section 247 of the Companies Act, 2013 (2013 Act) governs the provisions relating to the valuation by registered valuers under the 2013 Act. It requires that wherever valuation with respect to any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities is required to be made under the provisions of the 2013 Act, it should be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed.

On 26 May 2017, the MCA has issued the draft Companies (Registered Valuers and Valuation) Rules, 2017 (Valuation Rules). The Valuation Rules provide detailed guidance on various aspects of a registered valuer.

Comments on the draft Valuation Rules could be submitted up to 27 June 2017.

This issue of First Notes provide an overview of the key requirements of the Valuation Rules.



Ind AS - Practical perspectives

KPMG in India's Ind AS - Practical perspectives through aims to put a finger on the pulse of India Inc's adoption of Ind AS and capture emerging trends and practices.

Our impact assessment is based on Nifty 50 companies which would be the first group of companies to report Ind AS results. The Nifty 50 companies have started reporting their financial results for the year ended 31 March 2017.

Out of the companies comprising Nifty 50 index, eight companies are banks, one is Non-Banking Financial Company (NBFC) and two companies follow a different date of transition to Ind AS. Therefore, our analysis would comprise the remaining 39 companies.

This can be accessed on KPMG in India website - **'Ind AS- Practical perspectives' webpage**

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