

# The MCA proposes to ease certain norms for private companies

27 June 2014



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## Transition:

Immediately

Within the next 3 months

Post 3 months but within 6 months

Post 6 months

The Companies Act, 2013 (the Act) is largely operationalised with effect from 1 April 2014. The Act contains a number of provisions which, hitherto, did not apply to private companies.

The Ministry of Corporate Affairs (MCA) on 24 June 2014 vide section 462(1) of the Act has issued a draft notification which proposes a number of modifications with respect to certain sections of the Act that would apply to a private company.

The modifications as per the draft notification may be classified into three categories:

- sections/sub-sections that would be amended for private companies

- sections/sub-sections that would not apply to any private company
- sections/sub-sections that would apply to certain class of private companies.

The MCA has invited public comments on this draft notification by 1 July 2014. The said notification is required to be laid before the Houses of Parliament.

## Sections/sub-sections that would be amended for private companies

As per the draft notification, the following sections/sub-sections would be amended:

- Section 62(1) deals with 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. The draft notification proposes to reduce the time limit for the rights offer to be 'not less than seven days and not exceeding 15 days'.
- 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 Act requires that such offer is subject to, *inter alia*, special resolution passed by the company. The draft notification suggests that for private companies an ordinary resolution would suffice.

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

As per the draft notification, following sections/sub-sections will not apply to any private company:

- Section 43 with respect to the kinds of share capital namely equity and preference shares.
- Section 47 on voting rights attached to shares.
- Section 141(3)(g) that deals with a person who is in full time employment elsewhere or a person or a partner or 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.
- Section 160 in relation to rights of persons other than retiring directors to stand for directorship.
- Section 162 on the manner of appointing two or more persons as directors of the company by a single resolution.
- Section 188 relating to related party transactions.
- Section 196(4) which concerns with the provisions relating to obtaining approval of shareholders and the Central Government in case of appointment of a managing director, whole-time director or manager, has been made at variance to conditions prescribed in schedule V of the Act.
- Section 196(5) that deals with impact of acts done in situations when the appointment of a managing director, whole-time director or manager is not approved at a general meeting.
- Section 203(3) that deals with a whole-time key managerial personnel shall not hold office in more than one company, except in its subsidiary company, at the same time.

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

As per the draft notification, following sections/sub-sections would apply only to certain specified class of private companies:

- Section 73(2) dealing with conditions to be fulfilled for accepting public deposits would not apply to private companies having 50 or less number of members if they accept monies from their members:
  - not exceeding 25 per cent of the aggregate of the paid up capital and free reserves, or 100 per cent of the paid up capital, whichever is more, and
  - inform the details of such monies to the Registrar in the prescribed manner.
- Following sections would apply to all 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.
- Section 180 that deals with the restrictions on the powers of the Board. As per the draft notification, this section will not apply to private companies having 50 or less number of members.
- Section 185 that deals with loans to directors and companies in which directors are interested will not apply to private companies:
  - which have borrowings from banks or financial institutions or any bodies corporate not more than twice of their paid up share capital or INR500 million, whichever is lower, and
  - in whose share capital no other body corporate has invested any money.

### Our comments

- The Act, for most part, treated private companies at par with public companies. Through the proposed notification, the MCA proposes to provide significant relaxations to private companies from certain requirements of the Act. These proposals, if approved, will go a long way in removing hardships and cost of compliance for private companies.
- Through this draft notification, the MCA has once again reaffirmed that they are willing to suggest changes to the Act in order to address concerns of various constituents.

### The bottom line

The relaxations proposed are a step in the right direction and will bring in administrative ease to private companies. We would encourage that comments are sent before 1 July 2014 to assist the MCA to constructively address the concerns of private companies.



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In our call this month, we provided practical insights on steps that companies are taking in implementing the requirements under the Companies Act, 2013 that are now effective. We also discussed the key changes that were made in the gazetted version of the rules.

Additionally, we discussed the recent opinion issued by the Expert Advisory Committee of the Institute of Chartered Accountants of India (ICAI) on accounting for 'principal only currency swaps' as well as cover a clarification issued by the ICAI with respect to creation of deferred tax liability on 'special reserves' created by banks. Further, we briefly touched upon the proposed new roadmap for adoption of Ind-AS.

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