Exemptions and Privileges Available to a Private Company Under The Companies Act, 1956

Act: The Companies Act, 1956


1. Preliminary

No Private Limited Company should contravene the provisions of Section 3(1) (iii) (a) (b) and (c) of the Companies Act, 1956.

2. Application

I) The following are the exemptions, which are available to all the Private Limited Companies:-

a. A private company may be formed with only two persons at the time of incorporation of the company [section 12].

b. A statement in lieu of prospectus need be delivered to the Registrar before allotment of any shares in the company [section 70].

c. The provisions of sub-sections (1), (1A), and (2), of section 81 prescribing the manner of further issue of share capital, are not applicable to a private company [section 81 (3) (a)].

d. A private company need not comply with the provisions of section 149(1) or regarding commencement of business and need not obtain a certificate to commence business, from the Registrar. It can, therefore, commence business forthwith on incorporation [section 149(7)].

e. A private company can commence its business operations immediately on obtaining the Certificate of Incorporation from the Registrar of Companies [Section 149 (7)]

f. A private company need not comply with the formalities stipulated in subsection (2A) of section 149 for commencing a new business activity at any time [section 149(7)].

g. A private company need not hold a statutory meeting [section 165]

h. A private company can make in its articles provisions relating to meetings, which may be different from those contained in sections 171 to 186 of the Act [section 170].

i. A private company can have only two directors [section 252(2)].

j. The provisions regarding consent to act as director to be filed with the Registrar and qualification shares are not applicable to a private company [section 266(5)]

k. A director of a private company holding office for life on 1-4-1952 cannot be removed under section 284 [first proviso to section 284(1)].

II) The following exemptions and privileges are not applicable to those private companies which are subsidiaries of a public company, but are available to all other private companies:-

a. A private company is not prohibited from giving financial assistance for purchasing its own shares or shares of its holding company [section 77].

b. The definitions of "preference share capital" and "equity share capital" as given in section 85 of the Act are not applicable to a private company [section 90(2)].

c. A private company is free from the restriction contained in section 86 that a company limited by shares shall have only two kinds of shares (equity and preference) [section 90(2)].

d. The voting rights of members of a private company need not be in conformity with the provisions of section 87 [section 90(2)].

e. The prohibition of issue of shares with disproportionate rights as contained in section 88 does not apply to a private company [section 90(2)].

f. The provision contained in section 89, requiring termination of disproportionately excessive voting rights attached to equity shares in existing companies, if they are in excess of those specified in section 87, is not applicable to private companies [section 90(2)].
g. A private company may fix the time as well the place for its annual general meeting(s) either by its articles or by passing a resolution agreed to by all the members [section 166(2)].

h. A private company need not file with the Registrar a copy of an explanatory statement along with a special resolution, if its articles provide that section 173 shall not apply to it [section 192(1) with section 170(1(ii)].

i. A private company need not file resolutions passed in general meetings pursuant to clauses (a), (d) and (e) of section 293(1) since that section does not apply to private companies [section 192(4) (ee)].

j. Restrictions and ceiling on remuneration to be paid to directors, managing director, whole-time director and manager imposed by section 198 are not applicable to private companies [see respective section 198(1)].

k. Restrictions on appointment of a firm or body corporate to an office or place of profit in the company, as contained in section 204 of the Act, are not applicable to private companies [section 204(6)].

l. A person who is not a member of the company is not entitled to inspect, or obtain copies of the profit and loss account of a private company under section 610. This equally applies in the case of a private company of which the entire paid-up share capital is held by one or more bodies corporate incorporated outside India [second proviso to section 220(1) (a)].

m. The requirement that at least two-thirds of the total number of directors being liable to retirement by rotation at annual general meetings is not applicable to private companies [section 255(1)].

n. The mode of appointment of directors at an annual general meeting in place of those retiring by rotation as prescribed in section 256 does not apply to private companies [section 256(1)].

o. The formalities to be complied with for the purpose of appointing a person as a director who is not a retiring director need not be followed by a private company [section 257(2)].

p. Approval of the Central Government is not required for a private company to increase the number of its directors beyond 12 [section 259].

q. A private company need not follow the procedure prescribed in section 262 for filling casual vacancies in the Board, nor is the restriction contained in subsection (2) is applicable [section 262].

r. Two or more directors of a private company may be appointed by a single resolution [section 263(1)].

s. A director of a private company need not file with the company and the Registrar consent to act as director [section 264(3)].

t. No approval of the Central Government is necessary for effecting an amendment to the memorandum, articles or an agreement relating to appointment or reappointment of a managing or whole-time director or a director not liable to retire by rotation [section 268].

u. No approval of the Central Government is necessary for appointing or reappointing a managing or whole-time director or manager [sections 269, 388].

v. Such a company need not comply with the provisions of Schedule XIII.

w. The restrictions on the time within which share qualification of a director should be obtained and maximum amount thereof as contained in sections 270 and 272 are not applicable to directors of a private company [section 273].

x. A private company may in its articles provide for grounds for disqualification of a director in addition to those laid down in section 274(1) [section 274(3)].

y. In calculating the number of companies of which a person may be a director at a time (i.e. twenty) the directorships in private companies are to be excluded (directorships in a private company which is not a holding company of a public company are also to be excluded) [section 278(1)].

z. A private company may in its articles provide for grounds for vacation of office of a director in addition to those laid down in section 283(1) [section 283(3)].

aa. Consent of shareholders by way of an ordinary resolution need not be obtained by the Board for...
exercising the powers specified in clauses (a) to
(e) of sub-section (1) of section 293 [section
293(1)].

bb. No approval of the Central Government is
required for giving a loan, guarantee or security
to a director of the company [section 295(2)].

c. Directors of private companies are not debarred
from taking part in discussion and voting and
from being excluded for the purpose of quorum
in respect of resolutions in which they are
interested [section 300(2)].

dd. The date of birth of a director need not be
entered in the register of directors required to be
maintained under section 303 of the Act [section
303(1)].

ee. Restrictions and ceiling on remuneration to be
paid to directors, managing director, whole-time
director and manager imposed by section 309 are
not applicable to private companies [see
respective section 309(1)].

ff. An increase in the remuneration of directors,
managing director, whole-time director or
manager of a private company does not require
approval of the Central Government [section
310, 388].

gg. An increase in the remuneration of a managing
director, whole-time director or manager of a
private company on re-appointment does not
require approval of the Central Government
[section 311, 388].

hh. A private company may appoint as its managing
director, without complying with the conditions
prescribed in section 316(1) and (4), a person
who is already holding the post of managing
director or manager in one or more other
companies [section 316(1), (4)].

ii. A private company can appoint a person as its
managing director or manager for a period of
more than five years [section 317, 388].

jj. The provisions of sections 349 and 350
regarding manner of computation of net profits
are not applicable to a private company [section
355].

kk. A private company can make loans, give
 guarantees or provide securities or acquire by
way of subscription, purchase or otherwise
secu

ll. A person may be appointed as a manager of a
private company without complying with the
formalities prescribed in section 386 if he is already
a managing director or manager of any other
company/companies [section 388A].

mm. Section 409 conferring on the Central Government
the power to order prevention of a change in the
Board of directors likely to affect the company
prejudicially, does not apply to a private company
[section 409(3)].

nn. The making of a memorandum of the terms of a
contract in which the company is an undisclosed
principal, is not necessary where the company
involved is a private company [section 416(1)].

oo. The provisions of the Companies (Acceptance of
Deposits) Rules, 1975, are not applicable to the
deposits accepted by a private company from its
shareholders [Rule 2(b) (ix) of the said Rules].

3. Filing And Fees

4. Follow Up

5. MISCELLANEOUS

Other provisions of the Act affecting private companies.

Apart from the aforesaid exemptions and privileges, the
Companies Act also contains certain specific provisions
which only affect private companies, namely:-

a. A private company being a subsidiary of a body
corporate incorporated outside India which, if
incorporated in India, would be a public company within
the meaning of the Companies Act, shall be deemed for
the purpose of companies Act to be a subsidiary of a
public company if the entire share capital in that private
company is not held by that body corporate whether
alone or together with one or more other bodies
corporate incorporated outside India [section 4(7)].

b. The name of a private limited company should contain
the words "Private Limited" as the part of its name
[section 13(1) (a)].

c. No approval of the Central Government is required for
the change of name of a private company if it only
involves deletion of the word 'Private' consequent upon conversion of a private company into a public company or a [proviso to section 21].

d. No approval of the Central Government is required for the change of name of a public company if it only involves addition of the word 'Private' in its name consequent upon conversion of a public company into a private company [proviso to section 21].

e. The procedure set out in the Notification No. 1649 dated 13-11-1965, shall be followed by a private company being a Government company on change of its name if it only involves deletion of the word 'Private' from its name [section 23(1A)].

f. The Central Government may, by licence, direct that the words "Private Limited" need not be added in the name of a private limited company, which is of a kind specified in Sub-section (1) or (3) of section 25. Such company shall also stand exempt from such provisions of the Act as may be directed by the Central Government by a general or special order [section 25(6)].

g. Every private company limited by shares must register with the Registrar, at the time of incorporation, its own articles of association signed by the subscribers of the memorandum [section 26].

h. Articles of association of every private company having a share capital should contain the matters specified in sub-clauses (a), (b) and (c) of clause (iii) of section 3(1) and that of every private company not having a share capital the matters specified in sub-clauses (b) and (c) of clause (iii) of section 3(1) [section 27(3)].

i. The approval of the Central Government shall be necessary for converting a public company into a private company [proviso to section 31(1)].

j. A private company shall cease to be a private company and thereby lose the privileges and exemptions available to private companies, if a default is made in complying with any provisions of section 3(1) (iii) as contained in its articles [section 43].

k. A private company shall become a public company if any of the criteria prescribed in sub-sections (1), (1A), (1B) and (1C) of section 43A is attracted [section 43A].

l. A private company shall attach to every annual return to be filed with the Registrar a certificate as indicated in clause (b) of sub-section (2) of section 161, in addition to the certificates indicated in clauses (a) to (d) of subsection 8 of Section 43A alongwith the certificate under sub-section 9 and 10 of Section 43A. [Section 43A]

m. A statement in lieu of prospectus shall be filed with the Registrar on converting a private company into a public company, within 30 days of passing of a special resolution for that purpose [section 44].

n. If the number of members of a private company (other than a company which has become a public company under section 43A) is reduced, at any time, below two, the remaining member(s) shall be personally liable for the company's debts contracted after six months from the date of reduction in the number of members [section 45].

o. Sections 55 to 74 of the Act which deal with various matters relating to public issue of shares or debentures, prospectus and allotment, cannot apply except sections 58A and 58B dealing with public deposits, to a private company, as private companies are prohibited from issuing any prospectus for inviting subscriptions to shares or debentures, although no express exemption from the provisions of these sections is provided for except in section 70.

p. A private company is not prohibited from giving financial assistance for purchasing shares of the company or of its holding company [section 77(2)].

q. A transferor or transferee of shares of a company shall have the right to appeal to the Company Law Board against the refusal to register the transfer. However, it will not affect any power given to the Board of a private company by its articles to enforce the restrictions contained therein against the right to transfer the shares of such company [section 111(13)].

r. A private company is restrained from issuing share warrants [section 114].

s. At general meetings of a private company only one member or one person holding the proxy can demand poll if not more than seven members are personally present and two members or two persons holding the proxies can demand it, if more than seven members are personally present [section 179(1) (b)].

t. Private companies are required to file with the Registrar, copies of balance sheet and profit and loss account separately [first proviso to section 220(1) (a)].
u. A private company can hold an office or place of profit in a public company or in another private company only after such other public/private company has complied with the formalities laid down in sub-sections (1) or (1B) of section 314 of the Act.

v. A private company may be ordered to be wound up by the court if the number of its members is reduced below two [section 433(d)].

w. The words "Private Limited" need not be included in the name of a private limited company which is a Government Company [section 620].

x. Neither special resolution, nor the approval of the Central Government is required (under section 21) for change of name of a Private company, which is a Government company, if it only involves deletion of the word 'Private' [section 620].