

Info Capsule

MCA ISSUED EXEMPTION TO SECTION 8 COMPANIES UNDER SECTION 462 OF THE COMPANIES ACT, 2013¹

The Ministry of Corporate Affairs vide its notification dated June 13, 2017 has amended the notification no. G.S.R. 466 (E) dated June 5, 2015 (hereinafter referred as principal notification) in respect of the Section 8 Companies as under:

1. In the principal notification, in the Table, for the serial number 8 and the entries relating thereto,

8	sub-section (1) of section 149 and the first proviso to Sub section (1)	Shall not apply.
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The serial number and the entries relating thereto has been substituted as under

8	Clause (b) and first proviso to subsection(1) of Section 149	Shall not apply.
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2. In the principal notification, after serial No. 19 the following serial number and the entries relating thereto has been inserted as under:

19A	Sub-section (7) of section 186.	In sub-section (7), the following proviso has been inserted, namely:- Provided that nothing contained in this sub-section shall apply to a company in which twenty-six per cent or more of the paid-up share capital is held by the Central Government or one or more State Governments or both, in respect of loans provided by such company for funding Industrial Research and Development projects in furtherance objects as stated in its memorandum of association."
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In the principal notification, after paragraph 2, the following paragraph has been inserted, namely:-

"2A' The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a company covered under section 8 of the said Act which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.

MCA ISSUED EXEMPTION TO GOVERNMENT COMPANIES UNDER SECTION 462 OF THE COMPANIES ACT, 2013²

The Ministry of Corporate Affairs *vide* its notification dated June 13, 2017 has amended the notification no. G.S.R. 463 (E) dated June 5, 2015 (hereinafter referred as principal notification) in respect of the Government Companies as under:

(1) In the principal notification, in the Table, for serial number 5 and the entries relating thereto,

5	Chapter VII, sub-section (2) of section 96	In sub-section (2), for the words "such other place within the city, town or village in which the registered office of the company is situate", the words "such other place as the Central Government may approve in this behalf" has been substituted."
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The serial number and the entries relating thereto has been substituted, as under:

5	Chapter VII, sub-section (2) of section 96	In sub-section (2), for the words "such other place as the Central Government may approve in this behalf", the words "such other place within the city, town or village in which the registered office of the company is situate or such other place as the Central Government may approve in this behalf" has been substituted."
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(2) In the principal notification, in the Table, for serial number 15 and the entries relating thereto,

15	Chapter XI, sub-section (6) and (7) of section 152.	Shall not apply to - (a) a Government company, in which the entire paid up share 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) a subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by that government company.
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The following serial number and the entries relating thereto has been substituted, namely:-

15	Chapter XI, sub-section (6) and (7) of section 152.	Shall not apply to (a) a Government company, which is not a listed company, in which not less than fifty-one per cent 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) a subsidiary of a Government company, referred to in (a) above."
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(3) In the principal notification, in the Table, after serial number 29, the following serial number and the entries relating thereto has been substituted, namely:-

29A	Chapter XV, section 230 to 232.	For the word "Tribunal, wherever it occurs, the words "Central Government," has been substituted.
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(4) In the principal notification, after paragraph 2, the following paragraph has been inserted, namely:-

"2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a Government company which has not committed a default in filing its financial statements under section 137 of the said Act **or** annual return under section 92 of the said Act with the Registrar.

MCA ISSUED EXEMPTION TO PRIVATE COMPANIES UNDER SECTION 462 OF THE COMPANIES ACT, 2013³

The Ministry of Corporate Affairs *vide* its notification dated June 13, 2017 has amended the notification no. G.S.R. 464(E) dated June 5, 2015 (hereinafter referred to as the principal notification) in respect of the Private Companies as under:

I. Chapter I, clause (40) of Section 2:

In the principal notification, in the Table, the existing serial number 1 and the entries relating thereto has been re-numbered as serial number 1-A, and before the serial number 1-A as so re-numbered and the entries relating thereto, the following serial number and the entries relating thereto has been inserted, namely-

"For the proviso, the following proviso has been substituted namely:

Provided that the financial statement, with respect to one person company, small company, dormant company private company (if such private company is a start-up) may not include the cash flow statement;

Explanation - For the purposes of this Act, the term 'start-up' or "start-up company" means a private company incorporated under the Companies Act, 2013 (18 of 2013) or the Companies Act, 1956 (1 of 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."

II. Chapter V, clauses (a) to (e) of sub-section (2) of section 73

In the principal notification, in the Table, for serial number 6 and the entries relating thereto, the following entries has been substituted, namely:-

Shall not apply to a private company-

- (A) which accepts from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account; or
- (B) which is a start-up, for five years from the date of its incorporation; or
- (C) which fulfils all of the following conditions, namely:-

³ Available at: <http://www.mca.gov.in/Ministry/pdf/ExemptionPrivateCompanies.pdf>

- which is not an associate or a subsidiary company of any other company;
- if the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and
- such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:

Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.

III. Chapter VII, Clause (g) of sub-section (1) of section 92

(A) In the principal notification, in the table, after serial number 6 and the entries relating thereto, the following entries has been inserted at serial number **6A**:-

“Shall apply to private companies which are small companies, namely:-

“(g) Aggregate amount of remuneration drawn by directors.”

(B) In the principal notification, in the table, after serial number 6 and the entries relating thereto, the following entries has been inserted at serial number **6B**:-

For the proviso, the following proviso has been substituted, namely:-

Provided that in relation to One Person Company, small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.”

IV. Chapter X, Clause (I) of sub-section (3) of section 143

In the principal notification, after serial number 9 and the following serial number and the entries relating thereto has been inserted at serial number **9A**, namely:-

“For the proviso, the following proviso has been substituted, namely:-

Shall not apply to a private company:-

- (i) which is a one person company or a small company; or
- (ii) which has turnover less than rupees fifty crores as per latest audited financial statement or which has aggregate borrowings from banks or financial institutions or anybody corporate at any point of time during the financial year less than rupees twenty five crore.”

V. Chapter XII, sub-section (5) of section 173

In the principal notification, after serial number 9 and the following serial number and the entries relating thereto has been inserted at serial number **11A**, namely:-

“For sub-section (5), the following sub-section has been substituted, namely:-

(5) A One Person Company, small company, dormant company and a private company (if such private company is a start-up) shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors shall be conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days:

Provided that nothing contained in this subsection and in section 174 shall apply to one person Company in which there is only one director on its Board of Directors.”

VI. Chapter XII, sub-section (3) of section 174

In the principal notification, after serial number 9 and the following serial number and the entries relating thereto has been inserted at serial number **11B**:-

Shall apply with the exception that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184.”

I. *In the principal notification, after paragraph 2, the following paragraph has been inserted, namely:-*

"2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table has been applicable to a private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.

Team ICSI

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