

# Company Law Refresher Course

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# Exemptions to Private Limited Companies under Companies Act, 2013 [CA 2013]

# Exemptions to a Private Limited Company

Section reference		Particulars of exemptions/relaxations
2 (40)	Financial Statement	A <b>Start up Private Company</b> is not required to prepare Cash flow statement as a part of its financial statement .
2 (76) (viii)	Related Party	Transactions entered by a Private Company with a body corporate which is a holding, subsidiary, associate of such company, a subsidiary of holding Company to which it is also a subsidiary and an investing Company of the company does not require to comply with the compliance of Section 188 of the CA, 2013.
43 and 47	Kinds of Share Capital and Voting Rights	A Private Company can have any kind of share capital in accordance with their Memorandum and Articles of Association .
62 (1) (a) (i) and 62 (2)	Further Issue of Capital	Relaxation has been provided in adhering the time limits mentioned for dispatch of notice and offer period, if consent of at least 90% of members is obtained .

# Exemptions to a Private Limited Company

Section reference		Particulars of exemptions/relaxations
62 (1) (b)	Further Issue of Capital	Ordinary Resolution sufficient for issue of shares to employees, special resolution not required .
67	Restrictions on purchase of company of its shares	<p>The prohibition of purchase of its own shares is not applicable to a Private Company:</p> <ul style="list-style-type: none"><li>▪ in whose share capital no other body corporate has invested any money;</li><li>▪ 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 fifty crore rupees, whichever is lower; and</li><li>▪ such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.</li></ul>

# Exemptions to a Private Limited Company

Section reference		Particulars of exemptions/relaxations
73 (2) (a) to (e)	Prohibition of acceptance of deposits from Public	<p>A Private Limited Company can accept deposits from public and provisions of Sec 73 (2) (a) to ( e ) shall not be applicable to such company :</p> <ul style="list-style-type: none"><li>▪ which accepts from its members monies not exceeding one hundred percent of aggregate of the paid-up share capital, free reserves and securities premium account; or</li><li>▪ which is a start-up, for five years from the date of its incorporation; or</li><li>▪ which fulfils any of the following conditions, namely :<ul style="list-style-type: none"><li>➤ which is not an associate or a subsidiary company of any other company;</li><li>➤ if 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 fifty crore rupees, whichever is lower; and</li><li>➤ such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section.</li></ul></li></ul>

# Exemptions to a Private Limited Company

Section reference		Particulars of exemptions/relaxations
92 (1)	Annual Return	The Annual return of a <b>Start up Private Company</b> shall be signed by a Director and a Company Secretary in Practise is not required to sign the same.
101 to 107 and 109	Meetings and Demand for Poll	Private Company may override, by amending their Articles provisions mentioned in these sections.
117 (3) (g)	Resolutions to be filed	Companies are required to file e form MGT 14 in case of resolutions passed u/s 179 (3) of the Act. Private limited companies are exempted from e filing of MGT 14.
143 (3) (i)	Powers and Duties of Auditors	Auditors are not required to report about the Internal Financial Controls system in Private Companies which are Small Companies, OPC and company with turnover less than 50 crore or aggregate borrowings less than 25 crore.
149	Board of Directors	Private Company is not required to appoint Woman Director or an Independent Director.

# Exemptions to a Private Limited Company

Section reference		Particulars of exemptions/relaxations
152 (6)	Appointment of Directors	One third of the directors of a Private Limited Company are not liable to retire by rotation.
160	Right of Directors other than retiring directors	Amount of Rs. 1 lakh not required to be deposited for proposing the appointment of a director in a private limited company.
162	Appointment of directors to be voted individually	More than 1 director can be appointed via single resolution,
173 (5)	Meetings of the Board	<b>Start up Private Companies</b> shall be deemed to have complied with the provisions of this section if at least 1 Board Meeting has been conducted in each half of a calendar year and the gap between the two meetings is not less than 90 days.
174 (3)	Quorum for meetings	The interested director may also be counted towards quorum in a meeting after disclosure of his interest pursuant to Section 184.

# Exemptions to a Private Limited Company

Section reference		Particulars of exemptions/relaxations
177 and 178	Audit/Nomination & Remuneration committee	The CA 2013 has casted certain duties to the Audit Committee/ Nomination and Remuneration Committee and such committees have to be constituted by certain class of companies. Private limited companies are exempted from constituting such committees.
180	Restriction on powers of the Board	The restriction of carrying out certain transactions in the company, without the approval of the members, is not applicable to a private company. Such transactions include borrowing money in excess of its paid up capital & free reserves, Sell/lease/dispose off undertaking etc.
185	Loans to Directors	Sec 185 is not applicable to a private company if: <ul style="list-style-type: none"><li>▪ There is no body Corporate as a Shareholder in that Private Company;</li><li>▪ It has not borrowed money from Bank/ Financial Institution/ Body Corporate exceeding lower of the following: Twice its Paid up share capital or Rs. 50 crore; and</li><li>▪ There is no repayment default subsisting of such borrowings at time of giving loan.</li></ul>



# Exemptions to a Private Limited Company

Section reference		Particulars of exemptions/relaxations
188 (1)– 2 <sup>nd</sup> Proviso	Related Party transactions	Member although being related party to the concerned resolution can still cast his vote at General Meeting.
196 (4) and (5)	Appointment of MD/WTD	<p>In a private limited company, for appointment of Managing Director/whole time director :</p> <ul style="list-style-type: none"> <li>▪ Shareholder’s Ratification is not required;</li> <li>▪ Central Government approval not required;</li> <li>▪ Schedule V is not applicable;</li> <li>▪ MR- 1 is not required to be filed.</li> </ul>
197	Overall Managerial Remuneration	The section pertaining to overall maximum Managerial remuneration and managerial remuneration in case of inadequate profits or inadequacy of profits shall not apply to a Private Limited company. A Private limited company can pay remuneration upto any limit and the provisions of inadequate profits are also not applicable to such a company.

# Exemptions to a Private Limited Company

Section reference		Particulars of exemptions/relaxations
203	Appointment of KMP	Private Companies are not mandatorily required to appoint whole -time Key Managerial Personnel [MD or CEO or WTD,CS and CFO]
204	Secretarial Audit	The Provisions of Secretarial audit are not applicable to a Private Limited company unless the private limited company has outstanding loans and borrowings from banks or financial institutions of one hundred crore rupees or more .
Rule 10 (1)	Companies (Management and Administration) Rules, 2014	Private Companies are not required to give notice by way of advertisement in Vernacular and English newspaper provided that the notice has been served on all members of the private company not less than seven days prior to closure of the register of members or debenture holders or other security holders .

# Difference between Private Placement, Preferential Allotment and Rights Issue

# Difference between Private Placement, Preferential Allotment and Rights Issue

Particulars	Rights issue	Private Placement	Preferential Allotment
<b>Governing Section</b>	Section 62(1)(a)	Section 42 read with Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules 2014	Section 62(1)(c) read with Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014
<b>Meaning</b>	Issue of further shares to existing shareholders in proportion of their existing shareholding	Offer or invitation of securities to selected group of persons identified by the Board which will not include qualified financial institutions/employees of the company	Issue of further shares to any persons whether or not it includes members and employees
<b>Securities</b>	Equity shares and Preference shares	Any Securities including equity, Preference and Debentures	Equity shares, fully or partly convertible debentures or any other convertible securities

## Difference between Private Placement, Preferential Allotment and Rights Issue

Particulars	Rights issue	Private Placement	Preferential Allotment
<b>Allottees</b>	Existing Equity shareholders	Persons identified by the Board not exceeding 200 in aggregate in a financial year	Existing shareholders, Employees and any other persons identified by the Board not exceeding 200
<b>Offer Letter</b>	No prescribed format	Form PAS-4	Form PAS-4
<b>Separate Bank Account</b>	Not required	Required	Required
<b>Shareholder's Approval</b>	Not required	Required	Required

## Difference between Private Placement, Preferential Allotment and Rights Issue

Particulars	Rights issue	Private Placement	Preferential Allotment
<b>Valuation Report by registered valuer</b>	Not required [Mandatory only in case the existing shareholders are non - residents]	Required	Required [Exception: Price of shares to be issued by a listed company not required to be determined by the valuation report of a registered valuer]
<b>Offer Period</b>	Minimum 15 days and Maximum 30 days (In case of Private Companies, period can be reduced with the consent of at least 90% of shareholders)	No Period specified	The whole process of allotment to be completed within 12 months from the date of passing Special Resolution
<b>Mode of Dispatch of offer letter</b>	Registered post, speed post, or through any electronic mode to all existing shareholders before 3 days of opening of the issue	In writing or in electronic mode, within thirty days of recording the name of persons	In writing or in electronic mode, within thirty days of recording the name of persons

## Difference between Private Placement, Preferential Allotment and Rights Issue

Particulars	Rights issue	Private Placement	Preferential Allotment
Authorization in Articles	Nothing specified	Nothing specified	Required
Return of allotment	PAS-3 to be filed within 30 days of the date of allotment - Section 39	PAS-3 to be filed within 15 days of allotment of securities	PAS-3 to be filed within 15 days of allotment of securities
Disclosures in Explanatory statement	No disclosures as shareholder's approval not required	Few Disclosures as specified in Rule 14	Detailed disclosures as specified in Rule 13. Company needs to additionally follow Rule 14.

## Difference between Private Placement, Preferential Allotment and Rights Issue

Particulars	Rights issue	Private Placement	Preferential Allotment
Right of Renunciation	Available	Not available	Not available [Exception: if the securities are offered only to the existing shareholders, Right of Renunciation available]
Utilization of money	Nothing specified	Money can be utilized only when Return of allotment (Form PAS-3) is filed	Money can be utilized only when Return of allotment (Form PAS-3) is filed
Forms to be filed with MCA	Form PAS-3	Form MGT-14 (Special Resolution) and Form PAS-3	Form MGT-14 (Special Resolution) and Form PAS-3





*Thank You*