



**PRIVILEGES OF A PRIVATE  
COMPANY NOT BEING A SUBSIDIARY  
OF A PUBLIC COMPANY UNDER  
COMPANIES ACT, 1956  
VIS-À-VIS  
THE COMPANIES ACT, 2013**



**By CA Abhay Vasant Arolkar**

# PRIVATE COMPANY

- Private Company
- Section 2(68) defines “private company” means a company and which by its articles,—
  - (i) restricts the right to transfer its shares;
  - (ii) limits the number of its members to two hundred:
    - Joint holders treated as one
    - Employees/ex-employees who have taken shares while in employment excluded.
  - (iii) prohibits any invitation to the public to subscribe for any securities of the company; and
  - having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed,



# SMALL COMPANY

- **Small Company [Section 2(85)]**
  - “small company” means a company, other than a public company,—
  - (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
  - (ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:
  - Provided that nothing in this clause shall apply to—
  - (A) a holding company or a subsidiary company;
  - (B) a company registered under section 8; or
  - (C) a company or body corporate governed by any special Act;



## PRIVILEGES OF A SMALL COMPANY

- The financial statements shall not include the cash flow statement [proviso to Section 2(40)]
- The annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company [proviso to Section 92(1)]
- Small company can hold only one Board Meeting in each half of calendar year and the gap between the two meetings is not less than ninety days [Section 173(5)]



# ONE PERSON COMPANY AND THE PRIVILEGES OF AN OPC

- One Person Company means a company which has only one person as a member. [Section 2(62)]
- The financial statements shall not include the cash flow statement [proviso to Section 2(40)]
- Can have less than two members [Section 2(68) read with Section 3(1)]
- The Memorandum of Association shall contain a name of the person, who in the event of the death of the subscriber or his incapacity to contract, shall become the member of the company. [Section 4(f)]
- OPC member shall intimate to the Registrar change in the name of such nominated person. [fourth proviso to Section 3(1)]



## THE PRIVILEGES OF AN OPC (CONTD.)

- The words – ‘One Person Company’ shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.
- The annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company [proviso to Section 92(1)]
- OPC not required to hold a general meeting as its annual general meeting [Section 96(1)]



## THE PRIVILEGES OF AN OPC (CONTD.)

- Exempted from the applicability of the following provisions [Section 122] :-
  - Section 98 : Power of Tribunal to call meetings of members
  - Section 100: Calling of an extr-ordinary general meeting
  - Section 101/102 : Notice of Meeting and the Statement to be annexed to notice
  - Section 103 : Quorum for meetings
  - Section 104 : Chairman of meetings
  - Section 105 : Proxies
  - Section 106 – 108 : Restriction on voting rights and the voting by show of hands or through electronic means
  - Section 109 : Demand for poll
  - Section 110 : Postal ballot
  - Section 111 : Circulation of members' resolution.



## THE PRIVILEGES OF AN OPC (CONTD.)

- In case of an OPC, the ordinary businesses/ special business to be conducted at the general body meetings, shall be deemed to have been passed by ordinary/special resolution if, the resolution is communicated by the member to the company and entered in the minutes book required to be maintained u/s Section 118 and signed and dated by the member (director, in case of OPC with one director) [Section 122(3) and 122(4)]
- The report of the Board of Directors to be attached to the financial statements shall mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor [Section 134(4)]





## THE PRIVILEGES OF AN OPC (CONTD.)

- OPC shall file a copy of the financial statements duly adopted by its member, alongwith all the documents, which are required to be attached thereto, within 180 days from the closure of the financial year.
- OPC shall have minimum one director [Section 149(1)(a)]
- Subscriber to the Memorandum of Association shall be the first director of the company until the directors are appointed. [Section 152(1)]
- Nothing contained in sections 173 and 174 (regarding Board Meetings etc.,) is applicable to an OPC having one director [proviso to Section 173(5)]



## THE PRIVILEGES OF AN OPC (CONTD.)

- An OPC having more than one director, can hold only one Board Meeting in each half of calendar year and the gap between the two meetings is not less than ninety days [Section 173(5)]
- The terms of the contract, not being in the ordinary course of business, unless the same is in writing, with the sole member/director of an OPC shall be as contained in its Memorandum of Association or as recorded in the minutes of the Board meeting held immediately after the contract is entered into. [Section 193(1)]
- The details of the contracts shall be informed to the Registrar within fifteen days [Section 193(2)]



# DORMANT COMPANY/INACTIVE COMPANY

- **Dormant Company [Section 455]**
  - Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
- **Inactive Company**
  - “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;



## DORMANT COMPANY

- **Significant Accounting transaction means** any transaction other than:
  - (a) payment of fees by a company to the Registrar;
  - (b) payments made by it to fulfil the requirements of this Act or any other law;
  - (c) allotment of shares to fulfil the requirements of this Act;
  - (d) payments for maintenance of its office and records



# DORMANT COMPANY

- Other provisions relating to Dormant company
- Register of Dormant Companies
- To retain the status
  - Have minimum number of directors
  - File such documents as may be prescribed
  - Pay such annual fees as may be prescribed
- To convert into Active status
  - Make an application and file such documents as may be prescribed and pay such annual fees as may be prescribed
- ROC shall have power to strike off the name of a dormant company



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 12(1) : A minimum of two persons may form a private company.
- Section 3(1)(b) : two or more persons, where the company to be formed is to be a private company;
- Section 3(1)(c) : one person, where the company to be formed is to be One Person Company that is to say, a private company,



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- *Section 70 : Filing of statement in lieu of prospectus before allotment of shares is not required.*
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- No corresponding provision for filing of SLP



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 77(2) : A private company which is not a subsidiary of a public company is not prohibited from giving financial assistance to any one for purchasing or subscribing for shares of the company or its holding company.
- Section 67(2) : No public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.
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# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- *Section 81 : Restrictions envisaged requiring allotment of shares on pre-emptive basis to the existing shareholders are not applicable.*
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- Section 62(1) : Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—
  - (a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, .....



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 85 – 90 : The provisions of these sections requiring that there should be only two kinds of share capital and that voting rights should be proportional to the capital paid up and prohibiting and terminating disproportionately excessive voting rights are not made applicable to a private company which is not a subsidiary of a public company and such company may issue share capital of such kinds, in such forms and with such proportionate or disproportionate or other voting rights as it may think fit.
- **43.** The share capital of a company limited by shares shall be of two kinds, namely:—
  - (a) equity share capital—
    - (i) with voting rights; or
    - (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and
  - (b) preference share capital:



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 111(11) and (13) : The right of appeal to the Company Law Board against rejection of a transfer of shares is not available as long as the private company is only enforcing the provisions of its Articles in rejecting a particular transfer. It appears that a right of appeal will be available where rejection is outside the provisions of the private company's Articles. The right of appeal is also available where there is transmission by court sale or sale by other public authority.
- Section 58(1) : If a private company limited by shares refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company, it shall within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- *Section 149 : A commencement of business certificate is not necessary.*
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- Section 11(1) : A company having a share capital shall not commence any business or exercise any borrowing powers unless—
- (a) a declaration is filed by a director in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him and the paid-up share capital of the company is not less than five lakh rupees in case of a public company and not less than one lakh rupees in case of a private company on the date of making of this declaration; and
- (b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.



- *Section 165 : Holding of statutory meeting and filing of statutory report are not required.*
- No corresponding provision for holding of Statutory Meeting



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Sections 170 -186 : The provisions of these section relating to general meetings, unless the provisions of any section are expressly made applicable by the company's Articles, do not apply to such private company to the extent to which the company makes its own provisions by its Articles. In particular, it is not bound by the prescribed 21 days' notice for general meeting required by the section and may make its own regulation by its Articles as regards the contents and manner of service of notice and persons on whom it is to be served, election of chairman, proxies, manner of taking votes, restrictions as regards exercise of voting rights by members who have not paid calls etc., and the manner of exercising of voting rights, taking of polls, etc.
- **Section 96(1)** : Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:
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- **Section 103(1)(b)** : in the case of a private company, two members personally present, shall be the quorum for a meeting of the company.



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 198 : Such a private company is not controlled by the provisions of fixing overall maximum remuneration of 11 % of net profits for the management of a company and the limit of minimum managerial remuneration ranging between Rs. 75,000 and Rs. 400,000 per month depending upon the effective capital of the company, in the event of no profits or inadequate profits. It may remunerate those in management by such higher percentage of profits as it may think fit.
- Section 197 : applicable to public companies only



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 204 : Such private company is not governed by the restrictions as to duration etc., imposed by this section as regards appointment of a firm or body corporate to any office or place of profit.
- No corresponding provision in the new Act





# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- *Section 219 : Provisions as to right of a member to copies of Balance Sheet and Auditor's Report in relation to Balance Sheet laid before the company.*
- *No such corresponding exemption to private companies.*
- *Section 220 : The profit and loss account of such company though filed with the Registrar are not to be disclosed to the public, unlike in the case of a private company which is a subsidiary of a public company, whose balance sheet, profit and loss account and other financial particulars are open to public.*
- *No such corresponding exemption to private companies.*



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- **Section 252: Such a private company need not have more than two directors**
- In view of the extinction of Section 43A [deemed public companies] this section was irrelevant after Companies (Amendment) Act, 2000 became operative. No corresponding provision under the new Act.



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 255 and 256 : The provisions relating to appointment, retirement, re-appointment etc., of directors who are to retire by rotation and the procedure relating thereto are not applicable to such a company.
- *Section 152(6) states that retirement of directors, unless the Articles otherwise specify, shall be applicable to public companies only.*
- Section 257 : The provisions requiring giving of fourteen days' notice by new candidates seeking election as directors and deposit of Rs. 500 are not applicable to such companies.
- *Section 160 specifies the mode to contest election for directors retiring u/s 152 of the Act*



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- **Section 259** : The provision requiring Central Government sanction for increasing the number of directors (by way of amendment of the articles or otherwise) beyond the maximum fixed in the existing Articles does not apply.
- *Section 149(1)(b) states every company shall have a maximum of fifteen directors*
- *Proviso 1 to the said section 149(1) (b) states that a company may appoint more than fifteen directors after passing a special resolution*



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 261 :Provisions regarding the appointment of certain persons with the Managing Agents or holding certain offices , as directors except by sanction of a special resolution of the company, does not apply to such companies.
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- *The above section was deleted by Companies Amendment Act, 2000. Hence not relevant now.*



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 262 : The provisions relating to the manner of filling up casual vacancies among directors.
- Private companies will continue to enjoy the privilege.
- Section 264 : The duration of the period of office of those so appointed, the provision requiring that the appointment of directors should be voted individually and the requirement that the consent of each candidate for directorship should be filed with the Registrar do not apply to such private companies.
- As per Section 162, the exemption is no longer extended to private companies.



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 266(5) Provision relating to the filing of consent with Registrar before a person's name is included in the prospectus or advertised as director is not applicable.
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- No corresponding provision in the new Act.
- Section 268 and 269 : Central Government's approval is not required in the case of such company either for appointment of or for amending any provisions relating to the appointment or re-appointment of a managing director or whole-time director of the company.
- Section 2(94) read with Section 203 : Applicable to all companies



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Sections 270 to 273 : The provisions requiring the holding of a share qualification by directors and fixing the time within which such qualification is to be acquired and the filing with the Registrar of a declaration of his share qualification by each director are also not applicable.
- No corresponding provision in the new Act.





# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 274 : Such a company may by its articles , provide special disqualifications for appointment of directors.
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- Section 164(3) : Private companies will continue to enjoy the privilege.
- Section 275 to 279 : The restrictive provisions as regards the total number of directorships which any person may hold do not include any directorship held in a private companies, are not applicable.
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- Section 165 : maximum directorships allowed are twenty companies of which public companies shall not exceed ten.



## PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 283 : Such companies may provide special grounds for vacating office of a director.
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- Section 167(4) : Private companies will continue to enjoy the privilege.
- *Section 284 : Provision for removal of directors in case of director holding office for life on April 1, 1952 is not applicable*
- No corresponding provision in the new Act.



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 293 : The restrictions imposed on the powers of the Board of Directors as regards selling, leasing, remitting or giving time for payments of debts, investing or borrowing moneys or contributing to charities other than for political purposes, are extended to such companies.
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- Section 180 : No exemption to private companies.



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 295 : Provisions prohibiting loans to directors do not apply such companies.
- Section 185 : No exemption to private companies.



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 300 : Provisions prohibiting an interested director from participating or voting in Board proceedings relating to his concern or interest in any contract arrangement does not apply.
- Section 2(49) read with Section 174 : Exemption to OPC only.



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 303(1) : Such a company is not required to enter the date of birth in the register of directors.
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- No such exemption in the Act. Position will be clear after Rules are finalised.



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 309 to 311 : The provisions relating to the extent and manner of payment of remuneration to directors and the requirement that any increase in the remuneration of a director including a managing or whole-time director and any amendment of any provision relating thereto must have for their validity the approval of the Central Government are not applicable to such companies.
- Section 197 applicable to public companies.



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 316 and 317 : The restrictions as to the number of companies of which a person may be appointed a managing director and prohibition of such appointment for more than five years at a time do not extend to such companies.
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- *Section 196 and 203: The exemptions does not include private companies*





# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 349 and 350 : The provisions relating to percentage of quantum of remuneration payable to a managing agent; method of determination of net profits and provision for depreciation for determining such percentage or quantum; prohibition of office allowance; payment of additional remuneration and time and manner of payment of remuneration are not applicable to such companies.
- Section 198 is applicable to all companies



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 372A : The section relating to Inter-corporate loans and investments do not apply to such companies.
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- *Section 186 : The exemptions does not include private companies*



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 386 and 388 : The provisions restricting the number of companies for which a person may be appointed as Manager and remuneration of manager and the relevant provisions including Section 312 regarding assignment of office by director in relation to the Manager are not applicable to such companies.
- Section 196 states that no company shall appoint or employ at the same time a managing director and a manager.



# PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 409 : The special powers of interference given to CLB to prevent change in the Board of Directors of a company where in the opinion of the Board(CLB) such change will be prejudicial to the interests of the company are not applicable to such companies.
- No corresponding provision in the new Act.



## PRIVILEGES OF PRIVATE COMPANIES UNDER THE COMPANIES ACT, 1956

- Section 416 : Contracts entered into by an agent of private company not being a subsidiary of a public company, if entered into by him on behalf of the company as undisclosed principal, need not be recorded by a memorandum in writing
- No corresponding provision in the new Act.





- **Privileges** of a Private Company, not being a subsidiary of a Public Company,
- **Under Companies Act, 1956**  
vis-à-vis  
**the Companies Act, 2013**
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