

Proposed recommendations of The Companies Law Committee for Small Companies / Private Limited Companies.

As we are aware that on 1st February 2016, Ministry of Corporate Affairs uploaded the report of Companies Law Committee on its website. In this post, we will discuss recommendations of the committee related to Small Companies / Private Limited Companies. Committee recommended many more new relaxations for Small Private Companies for ease of doing business.

Definition of Small Company:

(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 ¹**AUDITED** 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;

Annual Return ^{(Section 92):}

The Committee recommended that separate Annual Return format for small companies and one person companies, with lesser details be included in the Section.

Board Report ^{(Section 134):}

For small companies, separate format for the Board's Report may be prescribed.

Like: there are many provisions under Companies Act, 2013 which are not applicable on Small Companies. Therefore, separate annual return/ board report formats with lesser information as per requirement of Small Companies are recommended for ease of doing business.

¹In Section 2(85) of the Act, the Committee recommended the replacement of the words "last profit and loss account" with the words "last audited profit and loss account"

Further, it was noted that a review of the thresholds for small companies would be done by MCA, at an appropriate time.

Fees/ Additional Fees:

The Committee is of the view that a more liberal regime for fees/ additional fees be laid down for one person companies and small companies, it is recommended that the fees prescribed in Table A pursuant to Rule 12 of the Companies (Registration of Offices and Fees) Rules, 2014 should be halved (divide into two parts) for such companies.

As under Companies Act, 2013 fees and additional fees drastically increased. For small scale Companies it is very difficult to make such payments and because of these expenses it is hurdle to carry on business by small entrepreneurs. It is not in favor of ease of doing business. Therefore committee recommended lesser of fees for the e-forms of small Companies.

Penalty for failure in filing Resolutions and agreements to be filed (Section 117):

Thus, the Committee recommends that the minimum fine for both company and officer in default be reduced to rupees one Lakh and rupees fifty thousand respectively, and a proviso be inserted in sub-section (2) of Section 117, wherein the punishment prescribed for one person companies and small companies may be halved to that under sub-section (2).

PRIVATE COMPANY:

Deposit for the Company engaged in infrastructure sector:

The suggestion to allow private companies engaged in the infrastructure sector to take deposits from their individual members without any upper limit was considered. In this regard, the Committee agreed to recommend for allowing exemptions to such private companies from the upper limit, as promoters or their relatives or 'Qualified Institutional Buyers' (QIB), who had invested in the risk capital would already be aware of the business prospects of the company.

Maximum amount of deposit expect from Members:

At present, private companies are permitted to accept deposits from their members' deposits which amount shall not exceed 100% of their paid up capital and free reserves with relaxed compliance requirements. With a view to ease raising of funds for start-ups without additional compliance costs, the Committee recommended that limits with regard to raising of deposits from members for 'Start-ups' which are private companies

may be removed for the first five years from their incorporation by using section 462 of the Act.

Place of holding of AGM:

The suggestions to allow private limited companies and wholly owned subsidiaries of unlisted companies to convene the AGMs at any place in India provided approval of 100% shareholders is obtained in advance, is recommended by the Committee with a view to ease doing business.

Constitution of CSR Committee:

Rule 5(1) of CSR Policy Rules, 2014, allows Private Companies, and foreign companies, to have the Committee with less than three directors, and without Independent Directors, where they were not required to be appointed.

In this regard, the Committee recommended that, the composition of CSR Committee for companies not required to appoint Independent Directors be prescribed as 'having two or more Directors'.

Counting of interested Director for quorum:

Private Companies have been exempted from the prescription under Section 184(2) barring participation of interested directors in Board meetings. The Committee recommended that since Section 184(2) and Section 174(3) are related sections with respect to interested directors, related exemption under Section 174(3) to enable such participating interested Directors for the purposes of quorum, should be given to private companies using the power to exempt under Section 462 of the Act.

Note: under the Act interested directors are allowed to attend the Board Meeting of Private Company and to vote in the Meeting but will not count in the quorum for the purpose of section 173. But as per recommendation of Committee interested director will allowed to attend the Board meeting and will count for the quorum also.

Rotation of Auditor:

It was also suggested to the Committee that private companies ought to be exempted from the provisions governing the rotation of auditors. The Committee, therefore, decided against increasing this threshold to reduce the coverage of private companies.

Filing of casual Vacancy:

Section 161(4) authorizes the Board of a public company to fill a vacancy caused by vacation of the office of any director before the expiry of his term, however subject to the

AOA of the company. The Committee was of the view that this right should be available to the Boards of private companies as well.

Loan to Director:

The Committee, therefore, recommended, that it may be considered to allow companies to advance a loan to any other person in whom director is interested subject to prior approval of the company by a special resolution.

As all of us aware that Companies Act, 2013 restricted the transactions of loan between Company and director. Even the committee acknowledged that there are difficulties being faced in genuine transactions due the complete embargo on providing loans to subsidiaries with common directors. As the limited relaxations has already been provided to private Companies not having other body corporates invested in them. But still committee recommended that loan to any other person in whom director are interested allowed by passing of special resolution in general meeting.

Section 194/195:

Sections 194 and 195 may be omitted from the Act.

The securities in private companies would not be marketable, as a market in securities in the absence of an alternative market platform would mean a stock market on which securities of different companies are listed for the purpose of trade, they would not qualify as securities within the meaning of Section 195, and thus would exclude private companies from the ambit of the said provision.

Exemption Section 73(2) (a) to (e)

Private companies have been exempted from complying with the provisions of Section 73(2) (a) to (e), while accepting deposits from its members, provided that the deposit monies shall not exceed 100 percent of aggregate of paid up share capital and free reserves. It has been suggested that some of the Deposits Rules are not in harmony with such exemptions provided. The exemptions given under Section 462 of the Act would override the Deposit Rules. However, the Committee recommended that, with a view to provide clarity, the Deposit Rules may be amended to align with exemptions/modifications provided for private companies.

Provisions for Private Listed Company:

Relaxation in Corporate Governance requirements:

The Committee felt that while the definition of the term 'listed company' need not be modified, the thresholds prescribed for private companies for corporate governance requirements may be reviewed. In addition, specific exemptions under section 462 of the Act could also be given to listed companies, other than the equity listed companies, from certain corporate governance requirements prescribed in the Act (paragraph 12.9 of Part I and 12.3 of Part II of the report may also be referred to).

Note:

Private Companies, which listed their privately placed debentures/preference shares, had to comply with some of the corporate governance requirements made applicable to listed companies under the new Act. In other cases, these requirements are applicable to private companies owing to the thresholds prescribed in the Rules under Companies Act, 2013. But committee recommended that they can reviewed the thresholds for the corporate governance requirements for such listed private limited Companies.

Exemption from section 177 & 178:

The Committee also considered the suggestion to modify Section 177 and 178 to provide exemptions to private companies, which have listed their debt instruments as per SEBI Debt Listing Regulations.

Deemed Public Company:

The Committee noted that despite the restrictions on the number of members and transferability of shares (which are the inherent features of a private company) in a private company, the legislative intent was clear that such private companies should also be subject to the additional obligations and restrictions which apply to public companies under the Act. The Committee, therefore, felt that a subsidiary of a public company needed to be regulated in the same manner as a public company.

Penalty for retiring Auditor:

Section 140(3) prescribes a minimum fine of Rupees fifty thousand in case the auditor does not file the statement with regard to his resignation. This fine was considered as onerous for auditors of small companies. The Committee recommended that the minimum fine may be reduced to Rupees fifty thousand or the audit fees, whichever is lesser.

At the end, I would like to disclose that I was part of; "Research Group on Companies Law" constituted by the Institute of Company Secretaries of India. All view here are personal and not of these groups or ICSI.