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AMENDMENTS IN COMPANIES ACT 2013

1. INTRODUCTION

The Ministry of Corporate Affairs (MCA) has recently issued a notification bringing certain amendments under the Companies Act 2013 (CA 2013). These exemptions are largely in line with those available to the private companies under the erstwhile Companies Act 1956 (CA 1956).

2. KEY AMENDMENTS

Section	Existing Provision	Amendment	Effect
2 (68)	<u>Definition of "Private Company"</u> - a company having a minimum paid up capital <i>of INR one lakh or such higher paid-up share capital</i> as may be prescribed.	The expression " <i>of INR one lakh or such higher paid-up share capital</i> " is omitted.	Pursuant to the amendment, a private company need not have any minimum paid-up share capital. Resultantly, a private company may be incorporated with any amount of paid-up share capital. However, it is important to note here that the amended definition continues to retain the expression " <i>as may be prescribed</i> ", which means the Government may prescribe a minimum paid-up share capital requirement for private companies.
2 (71)	<u>Definition of "Public Company"</u> – a company which:  (a) is not a private company; and  (b) has a minimum paid-up share capital of <i>INR five lakh or such higher paid-</i>	The expression " <i>of INR five lakh or such higher paid-up share capital</i> " is omitted.	Pursuant to the amendment, a public company need not have any minimum paid-up share capital. Resultantly, a public company may be incorporated with any amount of paid-up share capital.



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	<i>up share capital</i> , as may be prescribed.		
9	<u>Effect of Registration</u> - From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession <i>and a common seal</i> with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.	The expression " <i>and a common seal</i> " is omitted.	The amendment has removed the requirement of having a common seal by companies. However, a company may voluntarily have a common seal. Consequently, pursuant to the amendment, if a company does not have a common seal, then:  (a) the authorization by the company for execution of bills of exchange under Section 22 will be made by two directors, or by a director and the company secretary (where the company has appointed a company secretary); and  (b) the share certificates may be issued without common seal if two directors, or a director and the company secretary (where the company has appointed a company secretary) have signed the share certificates.
11	<u>Commencement of Business</u> – Once the company is incorporated, the company can commence its business or borrow money only if: (a) a declaration from the directors is filed with the ROC regarding payment by the subscribers to	Entire Section 11 is omitted.	A private or a public company can commence its business or exercise its borrowing power immediately upon incorporation.



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	MOA, and (b) the company has filed with the ROC, a verification of its registered office.		
117 (3) (g)	<u>Registration of resolutions</u> – Resolutions passed by a company under Section 179(3) are required to be registered with the ROC.	A proviso to the effect that no person will be entitled ( <i>under Section 399</i> ) to inspect or obtain copies of resolutions ( <i>passed under Section 179(3)</i> ).	Resolutions passed under Section 179 (3) relate to those matters in which the Board is permitted to take decisions only in a Board meeting. These resolutions are quite important which include <i>approval for borrowings, diversification of business, amalgamation, merger or acquisition</i> , which might carry certain sensitive information. The amendment has been brought to address the concerns raised by several corporate houses as key business decisions were being made public. The amendment is aimed to protect the confidentiality of strategic business decisions of the company.
177 (4)	<u>Audit Committee</u> – The audit committee of a company is required to act in accordance with the terms of reference specified in writing by the Board of directors.	Additional power has been vested upon the audit committee of accompany. An audit committee now may make omnibus approval for related party transactions proposed to be entered into by the company.	The amendment is made in order to align with the Equity Listing Agreement issued by the SEBI. Clause 49 of the said agreement provides that an audit committee may grant an omnibus approval for a related party transactions proposed to be entered into by the company.
185 (1)	<u>Loans to Directors</u> – A company is prohibited to advance any loan to its directors or to any other entity in which such director is interested, or give any guarantee or security in	Exemptions provided to certain transactions on which the prohibition under Section 185 (1) is not applicable. These transactions are:	The amendment is basically to rectify the overreach by the Companies (Meetings of Board and its Powers) Rules. The exempted transactions inserted in Section 185 (1) through the amendment were provided under Rule 10 of

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	connection with loan taken by him or such other entity.	<p>(a) any loan made by a holding company to its wholly owned subsidiary company, or any guarantee or security provided by a company in relation to loan taken by its wholly owned subsidiary company; and</p> <p>(b) any guarantee given or security provided by a holding company, in respect to a loan made by a bank or financial institutions, to its subsidiary company.</p> <p>Provided that the loans are utilized by the subsidiary company for its principal business activities.</p>	the aforesaid Rules.
188 (1)	<u>Related Party Transactions</u> – A company cannot enter into certain specified arrangement or contract with its related party without passing a special resolution.	<p>(a) The requirement of special resolution is removed.</p> <p>(b) Additional exemption is inserted.</p>	<p>(a) Any related party transaction does not need special resolution, and an ordinary resolution by the shareholders is sufficient for such transaction.</p> <p>(b) No shareholders resolution is required for a transaction between a holding company and its wholly owned subsidiary company whose accounts are consolidated with the holding company.</p>



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We have highlighted only key amendments provided, please visit at the following address to read the full notification.  
[http://www.mca.gov.in/Ministry/pdf/AmendmentAct\\_2015.pdf](http://www.mca.gov.in/Ministry/pdf/AmendmentAct_2015.pdf)

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