

Exemptions to Private Companies as per Companies Act, 2013

A Private Company (PC) was entitled to various exemptions under Companies Act, 1956 (1956 Act). Companies Act, 2013 (2013 Act) has brought in lot of changes including withdrawal/reduction of exemptions which were earlier available to PCs. After several representations pointing out the difficulties which PCs may face in the 2013 Act, the Ministry of Corporate Affairs (MCA) has vide the Companies (Amendment) Act, 2015 and notification dated 5th June 2015 provided several relaxations for PCs. Given below is an updated list of exemptions available to PCs vis-à-vis the 1956 Act.

Sr. No	Provisions under Companies Act, 1956	Provisions under Companies Act, 2013	Exemptions/Remarks/ Implications
1	<p><u>Minimum paid up capital</u> Under Section 3(1)(iii), a PC can be incorporated with a minimum paid up share capital of Rs. 1 lakh</p>	Under Section 2(68), a PC can be incorporated with a minimum paid up share capital of Rs. 1 lakh	There is no requirement of a minimum paid up share capital for a PC
2	<p><u>Related Party Transactions(RPT)</u> 1956 Act does not define RP.</p> <p>Section 297 (1)of the Act states that except with the consent of the Board of directors of a company, a director of the company or his relative, a firm in which such a director, or relative is a partner, any other partner in such a firm, or a PC of which the director is a</p>	<p>Section 2(76)(viii) states that RP ,with reference to a company means any company which is -</p> <ul style="list-style-type: none"> ▲ a holding, subsidiary or an associate company of such company; or ▲ a subsidiary of a holding company to which it is also a subsidiary <p>Second proviso to Section 188(1) restricts a member to vote on special resolution, or approve any contract or arrangement entered into by any company, if such a member is a RP.</p>	<p>Section 2(76)(viii) will not apply Therefore, any transactions with the companies mentioned in that clause will not be a RP.</p> <p>Second proviso to Section 188(1) will not apply therefore a member may vote on a resolution to approve any contract or arrangement even if such member is a RP.</p>

Sr. No	Provisions under Companies Act, 1956	Provisions under Companies Act, 2013	Exemptions/Remarks/ Implications
	<p>member or director, shall not enter into any contract with the company-</p> <ul style="list-style-type: none"> ▲ for the sale, purchase or supply of any goods, materials or services; or ▲ after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the company: <p>Section 314(1) states that except with the consent of the company accorded by a special resolution,</p> <ul style="list-style-type: none"> ▲ no director of a company shall hold any office or place of profit, and ▲ no partner or relative of such director, no firm in which such director, or a relative of such director, is a partner, no PC of which such director is a director or member, and no director or manager of such a PC shall hold any office or place of profit carrying a total monthly remuneration of such sum as may be prescribed 		
3	<p><u>Formation of a company</u> Under Section 12(1) a PC may be formed by 2 or more persons</p>	Under Section 3(1)(b) a PC may be formed by 2 or more persons	A new concept of One Person Company (OPC) has been introduced where a company may be formed by one person.

Sr. No	Provisions under Companies Act, 1956	Provisions under Companies Act, 2013	Exemptions/Remarks/ Implications
4	<p><u>Restrictions on commencement of business:</u> Under 149(7) a PC is not required to comply with the provisions regarding commencement of business and is not required to obtain a certificate to commence business, from the Registrar. It can, therefore, commence business forthwith on incorporation.</p>	<p>Under Section 11, a company having a share capital cannot commence any business unless—</p> <ul style="list-style-type: none"> ▲ a declaration is filed by a director 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 Rs. 5 lakh in case of a public company and not less than Rs. 1 lakh rupees in case of a PC on the date of making of this declaration; and ▲ the company has filed with the Registrar a verification of its registered office as provided Section 12(2). 	<p>Section 11 has been omitted therefore; a PC can commence business immediately on incorporation.</p>
5	<p><u>Types of share capital and further issue of share capital to be of only of two kinds:</u> Under Section 90(2) read with (r.w.) Section 85 & 86, the definitions of "preference share capital" and "equity share capital" are not applicable to a PC and a PC is free from the restriction that a company limited by shares shall have only two kinds of shares (equity and preference)</p>	<p>Section 43 states that a company limited by shares should have 2 types of share capital and also specifies conditions for issue of shares with differential rights as regards dividend, voting etc.</p>	<p>Section 43 & 47 will not apply if Memorandum of Association (MoA) or Articles of Association (AoA) provides that Section 43 & 47 will not apply. Thus, a PC may issue differential shares with differential voting rights provided its MoA and AoA so provide</p>

Sr. No	Provisions under Companies Act, 1956	Provisions under Companies Act, 2013	Exemptions/Remarks/ Implications
	<p><u>Voting rights:</u> Under Section 90(2) r.w. Section 87, the voting rights of members of a PC need not be in conformity with the applicable provisions of the Act</p>	<p>Section 47 deals with rights of equity and preference shareholders. It also states that preference shareholders would get a right to vote on all resolutions if dividends are not paid for a period of 2 years or more.</p>	
6	<p><u>Further issue of share capital</u> Under Section 81(3)(a), provisions prescribing the manner of further issue of share capital a not applicable to a PC.</p>	<ul style="list-style-type: none"> ▲ Section 62(1) states a time limit for rights offer which should be not less than 15 days and not more than 30 days from the offer date and if the offer is not accepted within the specified time limit, it would be deemed to have been declined. ▲ Section 62(2) states that the letter of offer should be dispatched 3 days before the opening of the issue. ▲ Section 62(1)(b) states that a special resolution has to be passed for issue of shares to employees of the company under a scheme of employee stock option (ESOP) 	<ul style="list-style-type: none"> ▲ A PC can reduce the time limit if 90% of the members have given their consent in writing or in electronic mode. ▲ A PC can pass an ordinary resolution for issue of shares to its employees under ESOP scheme.

Sr. No	Provisions under Companies Act, 1956	Provisions under Companies Act, 2013	Exemptions/Remarks/ Implications
7	<p><u>Restrictions on purchase by company or giving of loans by it for purchase of its shares</u></p> <p>Under Section 77(2) a PC is not prohibited from giving financial assistant to any person for purchasing its own shares of its holding company.</p>	<p>Under Section 67 no company including a PC can buy its own shares unless the consequent reduction of share capital is effected under the provisions of the Act or give loan/ financial assistant for purchase of its shares or its holding company.</p>	<p>Section 67 will not apply to a PC-</p> <ul style="list-style-type: none"> ▲ In whose share capital no body corporate has invested any money ▲ If the borrowings of a PC from banks or financial institutions or anybody corporate is less than twice its paid up share capital or Rs. 50 crore, whichever is lower; and ▲ The company is not in default in repayment of such borrowings subsisting at the time of making transactions under this Section.
8	<p><u>Acceptance of Deposits from public</u></p> <p>Section 58A states that no company can invite any deposit unless—</p> <ul style="list-style-type: none"> ▲ such deposit is invited or is caused to be invited in accordance with the rules made under sub-section (1), ▲ an advertisement, including a statement showing the financial position of the company, has been issued by the company, and ▲ the company is not in default in the payment of any deposit or part thereof and 	<p>Section 73(2)(a) to (e) states that a company may accept deposits from its members subject to the following conditions-</p> <ul style="list-style-type: none"> ▲ issuance of a circular to its members; ▲ filing a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular; ▲ depositing at least 15% of the amount of its deposits maturing during a financial year and the following financial year in a scheduled bank in a separate bank 	<p>Provision of Section 73(2) (a) to (e) will not apply to a PC –</p> <ul style="list-style-type: none"> ▲ which accepts from its members monies not exceeding 100% cent, of aggregate of the paid up share capital and free reserves; and ▲ files the details of monies so accepted to the Registrar

Sr. No	Provisions under Companies Act, 1956	Provisions under Companies Act, 2013	Exemptions/Remarks/ Implications
	any interest thereupon in accordance with the terms and conditions of such deposit.	account; ▲ providing such deposit insurance; ▲ certifying that the company has not committed any default in the repayment of deposits.	
9	<p><u>Annual General Meeting (AGM):</u> As per proviso to Section 166(2) a PC may fix the time as well the place for its AGM either by its AoA or by passing a resolution agreed to by all the members.</p>	<p>Under Section 96, every company other than OPC should in each year hold in addition to any other meetings, a general meeting as its AGM and should, and not more than 15 months should elapse between the date of one annual general meeting of a company and that of the next.</p> <p>Every AGM should be called during business hours, on any day that is not a National Holiday and should be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.</p>	<p>Exemption has been withdrawn since Section 96 is applicable to all companies other than OPC</p>
10	<p><u>Notice, quorum, voting, poll etc. for meeting</u> Section 170(1)(ii) r.w. Section 171-186 states that a PC can make it's AoA, provisions relating to meetings, which may be different from those contained in Sections 171-186 of</p>	<p>PC are governed by the following provisions pertaining to Section 101- notice of meeting, 101-statement to be annexed to notice, 103-quorum for meetings, 104- chairman of</p>	<p>The AoA can provide for lenient provisions in respect of the matters governed by Section 101-107 and 109.</p>

Sr. No	Provisions under Companies Act, 1956	Provisions under Companies Act, 2013	Exemptions/Remarks/ Implications
	the Act, i.e. length of notice for calling meeting, contents and manner of service of notice, explanatory statement to the notice, quorum for meeting, chairman of meeting, proxies, voting rights etc.	meetings, 105- proxies, 106- restrictions on voting rights, 107- voting by show of hands and 109- demand for poll. It's AoA cannot prescribe lenient provisions in respect of the above matters.	
11	<p><u>Registration of certain resolutions and agreement</u></p> <p>Under Section 192 , following resolutions passed by the Board of Directors should be registered with the Registrar of Companies-</p> <ul style="list-style-type: none"> ▲ to make calls on shareholders in respect of money unpaid on their shares; ▲ to authorise buy-back of securities under first proviso to Section 77A(2)(b) ▲ to issue debentures. ▲ to borrow moneys otherwise than on debentures; ▲ invest the funds of the company; and ▲ to make loans 	<p>Under Section 117(3)(g), following resolutions passed by the Board of Directors should be registered with the Registrar of Companies –</p> <ul style="list-style-type: none"> ▲ to make calls on shareholders in respect of money unpaid on their shares; ▲ to authorise buy-back of securities under Section 68; ▲ to issue securities, including debentures, whether in or outside India; ▲ to borrow monies; ▲ to invest funds of the company; ▲ to approve financial statement and the Board's report; ▲ to diversify the business of the company; ▲ to approve amalgamation, merger or reconstruction; ▲ to take over a company or acquire a controlling or substantial stake in another company; ▲ to make political contribution 	A PC is not required to file the resolutions passed in the Board Meeting in respect of the matters mentioned under Section 117(3)(g)

Sr. No	Provisions under Companies Act, 1956	Provisions under Companies Act, 2013	Exemptions/Remarks/ Implications
		<ul style="list-style-type: none"> ▲ to appoint or remove key managerial personnel (KMP) ▲ to appoint internal auditors and secretarial auditor 	
12	<p><u>Appointment of Auditors</u> The provisions of Section 224(1B) as regards the maximum number of audits of companies are not applicable in respect of audits of PCs</p>	Under Section 141(3)(g) PCs, OPC, dormant companies, small companies are required to adhere to the limits prescribed for specified number of companies (20) that can be audited by a firm/partner.	The limit of 20 companies excludes OPCs, dormant companies, small companies and PCs having paid up share capital less than Rs. 100 crores
13	<p><u>Auditors to attend general meetings</u> Under Section 231, all notice of any general meeting should be forwarded to the auditor and the auditor is entitled to attend any general meeting.</p>	Under Section 146, all notices of any general meeting should be forwarded to the auditor of the company, and the auditor should, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who should also be qualified to be an auditor, any general meeting.	Attendance at the general meeting for an auditor has become mandatory.
14	<p><u>Minimum no. of directors:</u> As per Section 252(2) a PC company needs minimum 2 directors</p>	As per Section 149, a PC should have minimum 2 directors	Exemption is available
15	<p><u>Rotation of directors:</u> Under Section 255(1) the requirement that at least 2/3rd of the total number of directors being liable to retirement by rotation at AGM is not applicable to PCs.</p>	Section 152 requires that at least 2/3 rd of the total number of directors of a public company are liable for retirement by rotation	Exemption is available

Sr. No	Provisions under Companies Act, 1956	Provisions under Companies Act, 2013	Exemptions/Remarks/ Implications
16	<p><u>Directors retiring by rotation and filling of vacancies:</u> Provision of Section 256(1) pertaining to the mode of appointment of directors at an AGM in place of those retiring by rotation does not apply to PCs.</p>	<p>As per Section 152, at the AGM at which a director of a public company retires by rotation, the company may fill up the vacancy by appointing the retiring director or some other person thereto.</p>	<p>Exemption is available</p>
17	<p><u>Consent of candidate for directorship to be filed with the Company and to act as a director to be filed with Registrar and restriction on appointment or advertisement of director:</u> Under Section 264(3) and Section 266(5) a director of a PC need not file consent with the Company and the Registrar to act as director</p>	<p>Under Section 152(5), even director of a PC has to file consent with the registrar within 30 days of the appointment</p>	<p>Exemption has been withdrawn</p>
18	<p><u>Appointment of directors and restrictions on powers of Board</u></p> <ul style="list-style-type: none"> ▲ Under Section 257(2) the formalities to be complied for the purpose of appointing a person as a director who is not a retiring director need not be followed by a PC ▲ Under Section 263(1) 2 or more directors of a PC may be appointed by a single resolution at an AGM. ▲ Under Section 293(1) consent of shareholders by way of an ordinary 	<ul style="list-style-type: none"> ▲ Under Section 160 a person other than retiring director may stand for directorship after submitting a notice in writing by him or some member intending to propose him as a director along with a sum of Rs. 1 lac is deposited with the company. ▲ Under Section 162 at a general meeting of a company, a motion for the appointment of 2 or more persons as directors of the 	<p>Section 160, 162 and 180 is no longer applicable. Therefore, requirement to deposit Rs. 1 lakh with the company will also not apply. More than 1 director may be appointed vide a single resolution. Approval of members is not required for exercising powers mentioned in Section 180.</p>

Sr. No	Provisions under Companies Act, 1956	Provisions under Companies Act, 2013	Exemptions/Remarks/ Implications
	resolution need not be obtained by the Board for exercising the powers specified	<p>company by a single resolution cannot be moved unless a proposal to move such a motion has first been agreed to at the meeting unanimously.</p> <p>▲ Under Section 180 the Board of a company can exercise the following powers only with the consent of the company by a special resolution such as selling, leasing or disposing of an undertaking, investing in trust securities the amount of compensation received by a merger or amalgamation or borrowing monies above certain limits, remitting or giving time for repayment of debt due from a director.</p>	
19	<p><u>Filling of a casual vacancy among directors:</u></p> <p>As per Section 262(1) a PC need not follow the procedure prescribed in the Act for filling casual vacancies in the Board</p>	As per Section 161(4), in case of a public company, if the office of any director appointed is vacated before his term of office expires in the normal course, the resulting casual vacancy may, be filled by the Board of Directors at a meeting of the Board:	Exemption is available
20	<p><u>Increase in the number of Directors</u></p> <p>Under Section 259 approval of the Central Government (CG) is not required for a PC to increase the number of its directors beyond 12</p>	Under Section 162, a PC is required to pass a special resolution for increase in number of directors beyond 15	Under 2013 Act it is 15, instead of 12 under 1956 Act

Sr. No	Provisions under Companies Act, 1956	Provisions under Companies Act, 2013	Exemptions/Remarks/ Implications
21	<p><u>Disqualifications of directors:</u> As per Section 274(3) a PC may in its AoA provide for grounds for disqualification of a director in addition to those laid down in Section 274(1)</p>	Under Section 164(3), a PC may by its AoA provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2).	Exemption is available
22	<p><u>Exclusion of certain directorship for maximum no. of directorship:</u> Under Section 278(1), in calculating the number of companies of which a person may be a director at a time (i.e. 20) the directorships in PCs are to be excluded (directorships in a PC which is neither a subsidiary or a holding company of a public company are also to be excluded)</p>	Under Section 165(1), a director can hold directorship in maximum of 10 Public Companies (including a PC which is holding/ subsidiary of a public company) out of maximum limit of 20 companies.	In reckoning the maximum limit directorship on 10 public companies, PC which is holding/ subsidiary of a public company has to be included.
23	<p><u>Vacation of office by directors:</u> As per Section 283(1) a PC may in its AoA provide for grounds for vacation of office of a director in addition to those laid down in the Act.</p>	Under Section 167(4) a PC may, by its AoA, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).	Exemption is available
24	<p><u>Register of directors:</u> Under Section 303(1)(a) the date of birth of a director of a PC need not be entered in the register of directors.</p>	Under Section 170, date of birth of a director has to be entered in the register of directors.	Exemption has been withdrawn

Sr. No	Provisions under Companies Act, 1956	Provisions under Companies Act, 2013	Exemptions/Remarks/ Implications
25	<p><u>Audit Committee:</u> Under Section 292(A) a PC need not have an Audit Committee</p>	Under Section 177 ,only listed companies and some public companies are required to form an Audit Committee	Exemption is available
26	<p><u>Interested director not to participate or vote in Board's proceedings</u> Under Section 300(2), directors of PCs are not debarred from taking part in discussion and voting and from being excluded for the purpose of quorum in respect of resolutions in which they are interested</p>	Under Section 184(2), every interested director of a PC is required to disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and should not participate in such meeting.	An interested director may participate in the meeting after disclosure of his interest.
27	<p><u>Loan to directors etc.:</u> Under Section 295(2) no approval of the CG is required for giving a loan, guarantee or security to a director of the Company or any other person in whom he is interested</p>	Under Section 185, a PC shall not advance any loan including any loan represented by book debt to any of its directors or to any other person in whom the director is interested or give any guarantee or security in connection with any loan taken by to a director or such other person.	<p>Section 185 will not apply to a PC-</p> <ul style="list-style-type: none"> ▲ in whose share capital no other body corporate has invested any money ▲ whose borrowings from banks or financial institutions or any body corporate is less than twice of its paid-up share capital or Rs. 50 crore, whichever is lower and ▲ which has not defaulted in repayment of such borrowings subsisting at the time of making transactions under this Section

Sr. No	Provisions under Companies Act, 1956	Provisions under Companies Act, 2013	Exemptions/Remarks/ Implications
28	<p><u>MD, WTD or Manager not to be appointed for more than 5 years at a time:</u> Section 317(4) and 388 states that a PC can appoint a person as its MD, WTD or Manager for a period of more than 5 years</p>	<p>Under Section 196, no company can appoint or re-appoint any person as its MD, WTD or manager for a term exceeding 5 years at a time</p>	<p>Exemption has been withdrawn.</p>
29	<p><u>Appointment of Managing Director (MD), Whole time Director (WTD) or Manager</u> Under Section 267, 317, 388, 197A, 269, 384 and 385 of the Act, for a PC, no approval is necessary for such appointment / effecting an amendment to the MoA, AoA or an agreement relating to appointment or re-appointment of a MD or WTD or a director not liable to retire by rotation (if it is not in accordance with Schedule XIII).</p>	<p>▲ Section 196(4) states that subject to the provision of Section 197 and Schedule V, a MD, WTD or manager should be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which should be subject to approval by a resolution at the next general meeting of the company and by the CG in case such appointment is at variance to the conditions specified in Schedule V</p> <p>▲ Section 196(5) states that where an appointment of a MD, WTD or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.</p>	<p>Provisions of Section 196(4) & (5) are not applicable therefore, the remuneration and terms and conditions of appointment of a MD, WTD or manager of a PC need not be subject to Section 197 provisions, Schedule V and approval in general meeting.</p>

Sr. No	Provisions under Companies Act, 1956	Provisions under Companies Act, 2013	Exemptions/Remarks/ Implications
30	<p><u>Limits for Managerial Remuneration:</u></p> <p>Restrictions and ceiling on remuneration under Section 198(1), to be paid to directors, MD, WTD and manager imposed by the Act are not applicable to PCs</p>	<p>Section 197 states that total managerial remuneration payable by a public company, to its directors, including MD and WTD, and its manager in respect of any financial year shall not exceed 11% of the net profits of that company for that financial year computed in the manner laid down in Section 198 except that the remuneration of the directors shall not be deducted from the gross profits</p>	<p>Exemption is available</p>
31	<p><u>Limits on Maximum Managerial Remuneration:</u></p> <p>Restrictions and ceiling on remuneration under Section 309(9) to be paid to directors, MD, WTD and manager are not applicable to PCs</p>	<p>Section 197 pertaining to overall managerial remuneration and managerial remuneration in case of absence or inadequacy of profits are applicable to public companies.</p>	<p>Exemption is available</p>
32	<p><u>Increase in remuneration of MD,WTD, or directors etc.:</u></p> <p>As per Section 310,311,388 and 388A an increase (not in accordance with Schedule XIII) in the remuneration of directors, MD, WTD or manager of a PC does not require approval of the CG</p>	<p>Section 197 pertaining to overall managerial remuneration and managerial remuneration in case of absence or inadequacy of profits are applicable to public companies.</p>	<p>Exemption is available</p>

Sr. No	Provisions under Companies Act, 1956	Provisions under Companies Act, 2013	Exemptions/Remarks/ Implications
33	<p><u>Determination of Net Profit:</u> Section 355 states that the provisions of Sections 349 and 350 regarding manner of computation of net profits are not applicable to a PC</p>	Section 198 pertains to calculation of profits for the purpose of Section 197.	Exemption is available
34	<p><u>Number of companies of which one person may be appointed as MD/Manager:</u> Under Section 316(1) and 388A a PC may appoint a person as its MD/Manager, without complying with the conditions prescribed in the Act i.e. a person who is already a MD or manager of one or more other companies.</p>	As per provisions of Section 203 every listed company and every other public company having a paid-up share capital of Rs. 10 crore rupees or more should appoint a MD, or Chief Executive Officer or Manager and in their absence, a whole-time director;	Exemption is available
35	<p><u>Restriction on appointment of firm or body corporate to office or place of profit:</u> Under Section 204(6) restrictions on appointment of a firm or body corporate to an office or place of profit in the company are not applicable to PCs</p>	Under the Act, there is no corresponding provision	Exemption has been withdrawn.
36	<p><u>Prohibition of allotment in certain cases unless Statement in lieu of prospectus is delivered to the Registrar:</u> Under Section 70(3) a PC is not required to file statement in lieu of prospectus to the Registrar on allotment of shares/debentures</p>	There is no corresponding provision	Exemption has been withdrawn

Sr. No	Provisions under Companies Act, 1956	Provisions under Companies Act, 2013	Exemptions/Remarks/ Implications
37	<p><u>Statutory Meeting and Statutory Reports:</u> Under Section 165(10) a PC is not required to hold a statutory meeting.</p>	There is no corresponding provision	Exemption has been withdrawn
38	<p><u>Share qualification:</u> Under Section 270,272, and 273 the restrictions on the time within which share qualification of a director should be obtained and maximum amount thereof as contained in the Act are not applicable to directors of PCs</p>	There is no corresponding provision.	Exemption is available

DISCLAIMER AND STATUTORY NOTICE

This e-publication is published by CNK & Associates LLP, solely for the purposes of providing necessary information to employees, clients and other business associates. This publication summarises the important provisions of the Companies Act 1956 and Companies Act 2013 and any amendments pertaining to Private Companies. Whilst every care has been taken in the preparation of this publication, it may contain inadvertent errors for which we shall not be held responsible.

This document is a proprietary material created and compiled by CNK & Associates, LLP. All rights reserved. This newsletter or any portion thereof may not be reproduced or sold in any manner whatsoever without the consent of the publisher.

This publication is not intended for advertisement and/or for solicitation of work.