

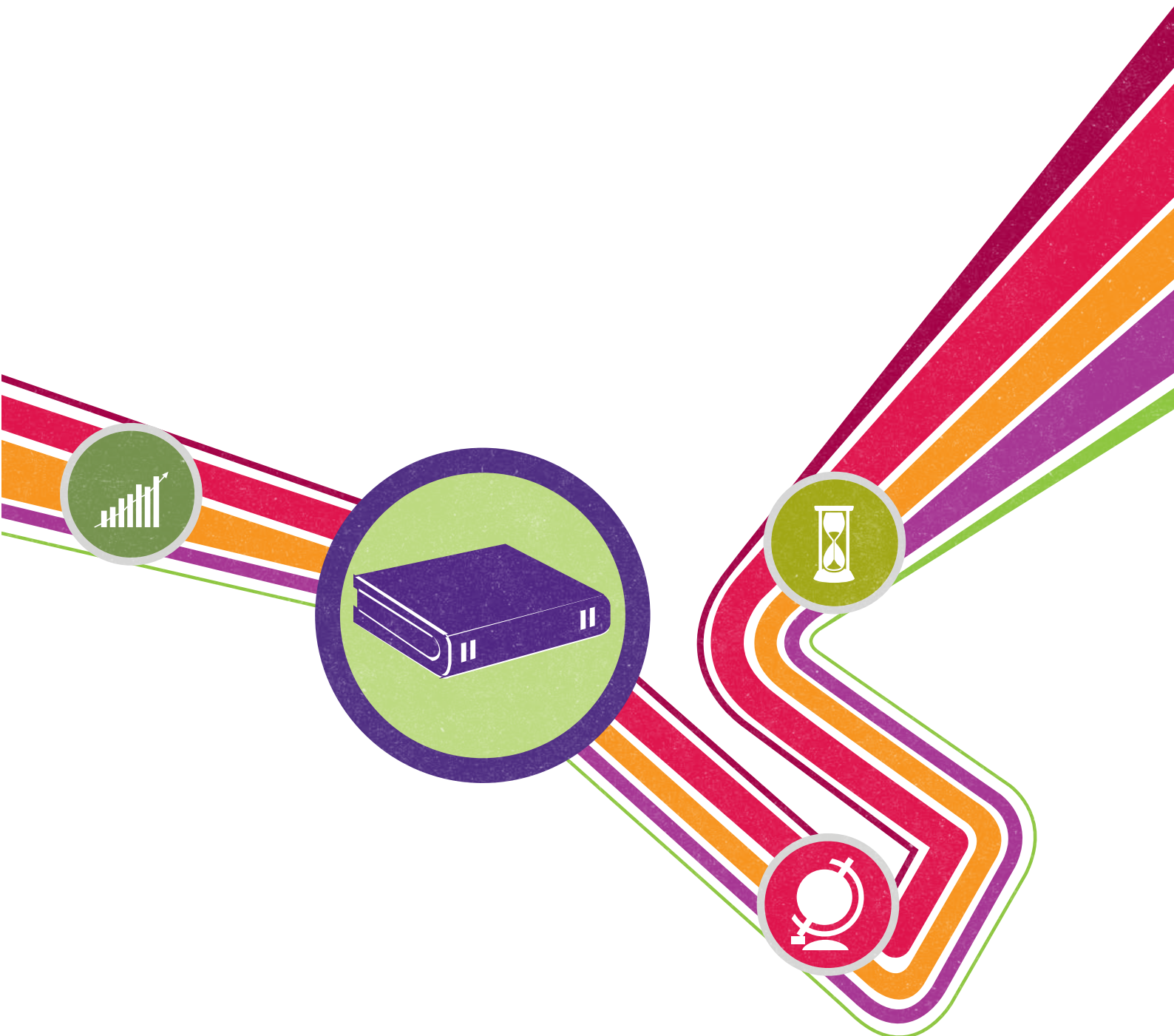


Grant Thornton

An instinct for growth™

October 2015

# Status of Private Companies under the Companies Act, 2013



# Acknowledgements

---

## Team leaders

Yogesh Sharma  
Ashish Chhawchharia  
Sarika Gosain

## Authors, contributors and reviewers

Vishwas Panjjar  
Amitava Banerjee  
Sandeep Mehra  
Divya Malhotra

## Design and production team

Vimarsh Bajpai  
Rakshit Dubey  
Mrityunjay Gautam

## Contents

- 03 | I. Background
- 03 | II. Definition of a Private Company under the Companies Act, 2013
- 04 | III. List of exemptions available to a Private Company under the Companies Act, 1956 and now stands withdrawn
- 05 | IV. List of exemptions available to a Private Company under the Companies Act, 1956 and continues to be available to them
- 05 | V. List of exemptions which were available to a Private Company under the Companies Act, 1956 and now there are no corresponding provisions under the Companies Act, 2013 (implying that exemption continues)
- 06 | VI. List of new relaxations available to a Private Company (which is not a subsidiary of Public Company) under the Companies Act, 2013
- 06 | VII. List of exemptions available to a Private Company under the Companies Act, 2013 which will stand withdrawn in case it becomes the subsidiary of a Public Company
- 06 | VIII. Analysis- Compliance requirements under the new law pursuant to the exemptions withdrawn and new/amended provisions
- 10 | IX. Appendix - Notification issued by MCA granting exemptions to Private Companies dated 5 June 2015

## I. Background

The Companies Act, 2013 ('2013 Act'), being revolutionary on almost all the corporate concepts; has also entirely reformed the manner in which the private companies ('Pvt Co.') have ever been seen and considered in past. Barring a very few in count, all of the exemptions which were available to these companies under the erstwhile law, i.e. the Companies Act, 1956 ('1956 Act') have been taken away under the 2013 Act. Later, the Ministry of Corporate Affairs ('MCA') realized the need to reinstate some of the exemptions available to Pvt Co. under the 1956 Act by granting exemptions to vide notification dated 5 June 2015 (refer 'Appendix') and the Companies (Amendment) Act, 2015 ('Amended Act'). While some of these compliances will go a long way in increasing the accountability of Pvt Co.; the concerns are also raised as to the need for increasing the complexities for Pvt Co., especially where public at large is not interested.

The 2013 act has introduced additional compliances and withdrawn several exemptions available to Pvt Co. under the 1956 Act. At the same time, it has provided relief from certain restrictive clauses for Pvt Co. such as amending the definition of a 'Pvt Co.' to increase the maximum number of members from 50 to 200.

Further, the 2013 Act introduced the new classes of Pvt Co. 'One Person Company' ('OPC') and 'Small Company' for facilitating the small entrepreneurs to conduct their business with limited liability. OPC as defined under the 2013 Act means a company which has only one member. OPC will give the small entrepreneurs all the benefits of Pvt Co. with lesser compliances burden. Small company is not a different form of Pvt Co. altogether rather it is a status accorded to a Pvt Co. based on level of its capital or turnover.

In this publication, our endeavour is to provide an impact analysis of the 2013 Act on Pvt Co., largely due to the exemptions withdrawn, the new reliefs available, the continuing exemptions, the exemptions newly provided by the MCA for such companies and the way forward.

## II. Definition of Private Company under the 2013 Act

Section 2(68) of the 2013 Act defines the term 'Pvt Co.' As per the revised definition (as amended by the Amended Act), the requirement of having minimum paid-up share capital of Rs. 1,00,000 or higher by Pvt Co. has now been taken away. As a result, the Pvt Co. can now be floated with any amount of paid up capital.

The definition restricts the right to transfer shares by its members to non-members, limits the maximum number of its members to 200 [except in case of OPC] and also

prohibits invitation to the public for subscription of any of the securities of the company.

The definition also provides clarifications on the following matters:

- 2 or more persons holding shares in a company jointly shall be treated as joint holders for those shares and would be counted as one.
- Present and the past employees of the company who were also the members of the company and have continued to be members on ceasing the employment, shall not be considered in counting the maximum number of the members.

## III. List of exemptions available to Pvt Co. under the 1956 Act and now stands withdrawn

- i. A Pvt Co. was not required to deliver statement in lieu of prospectus to the registrar of companies ('ROC') before allotment of any shares in the company [Section 70].
- ii. The provisions of further issue of share capital were not applicable to Pvt Co. as these are normally protected by appropriate clauses in the Articles of Association ('AOA') [Section 81].
- iii. A director of a purely private company ('PPC'), ie private company which is not a subsidiary of a public company, was not required to file with the company and the ROC consent to act as director [Section 264(3)].
- iv. A PPC was not required to maintain the details of date of birth of its directors, Managing Director ('MD'), manager and secretary containing along with other particulars e.g. present name, surname, nationality, usual residential address [Section 303 (1) (a)].
- v. A PPC was exempted to determine its net profits and depreciation in accordance with the provisions of the 1956 Act [Sections 349 & 350].
- vi. A PPC could make loans, give guarantees or provide securities or acquire by way of subscription, purchase or otherwise securities, in any other body corporate without any limit and without complying with the formalities as prescribed [section 372A].
- vii. In calculating the specified number of companies of which a person may be a director at a time the directorships in PPC were to be excluded. [Sections 275,276

& 277].

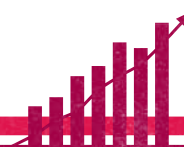
- viii. A PPC could fix the time as well as the place for its annual general meeting ('AGM') either by its articles or by passing a resolution agreed to by all the members [Second proviso to Section 166(2)].
- ix. The provisions relating to option to adopt principle of proportional representation for appointment of directors were not applicable to PPC [Section 265].

#### **IV. List of exemptions available to Pvt Co. under the 1956 Act and continues to be available to them**

- i. The provisions on kinds of share capital were not applicable to a PPC whereas under the 2013 Act the same exemption is available to a Pvt Co. where memorandum or AOA of the Pvt Co. so provides [Section 43 of 2013 Act vs Section 85 of 1956 Act].
- ii. The provisions relating to issue of equity shares with differential voting rights were not applicable to a PPC whereas under the 2013 Act the same exemption is available to Pvt Co. where memorandum or AOA of the Pvt Co. so provides [Section 43 of 2013 Act vs Section 86 of 1956 Act].
- iii. A PPC was free from the restriction, that a company limited by shares should have only two kinds of shares capital i.e. equity share capital and preference share capital whereas under the 2013 Act the same exemption is available to a Pvt Co. where memorandum or AOA of the Pvt Co. so provides [Section 43 of 2013 Act vs Section 86 of 1956 Act].
- iv. The voting rights of members of a PPC need not be in conformity with the provisions of 'voting rights' whereas under the 2013 Act the same exemption is available to a Pvt Co. where memorandum or AOA of the Pvt Co. so provides [Section 47 of 2013 Act vs Section 87 of 1956 Act].
- v. A transferor or transferee of shares of a company shall have the right to appeal to the Company Law Board against the refusal to register the transfer. However, it

will not affect any power given to the Board of a Pvt Co. by its articles to enforce the restrictions contained therein against the right to transfer the shares of such company. Under the 2013 Act, the exemption continues however Pvt Co. is required to send a notice of refusal to the transferor and the transferee or to the person giving reasons of such refusal [Section 58 (1) of 2013 Act vs Section 111 of 1956 Act].

- vi. The provisions on restriction on commencement of business were not applicable to Pvt Co. It could commence its business operations immediately on obtaining the certificate of incorporation from the ROC. Similar exemption continues under the 2013 Act by omitting the section 11 vide the Amended Act. [Section 11 of 2013 Act vs Section 149 of 1956 Act].
- vii. The provisions relating to right of persons other than retiring directors to stand for directorship by giving notice of not less than 14 days before the date of general meeting along with a deposit were not applicable to PPC. Similar exemptions continues under the 2013 Act [Section 160 of 2013 Act vs Section 257(1) & (1A) of 1956 Act].
- viii. Restrictions on the power of the board of directors were not applicable to PPC. Similar exemption continues under the 2013 Act [Section 180 of 2013 Act vs Section 293 of 1956 Act].
- ix. The provisions relating to obtaining previous Central Government ('CG') approval before giving a loan, guarantee or security to a director of the company or any other person did not apply to a PPC. Whereas under the 2013 Act restrictions on loans, guarantees, etc. to directors or companies with common directorships has been relaxed for specified Pvt Co. [Section 185 of 2013 Act vs Section 295 of 1956 Act].
- x. Directors of Pvt Co. which is neither a subsidiary nor a holding company of a public company were 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. Similar exemption continues under the 2013 Act [Section



184(2) of 2013 Act vs Section 300(1) of 1956 Act].

- xi. Under the 1956 Act, PPC was not required to obtain CG approval for any increase in the limit prescribed for remuneration to be paid to MD or Whole-Time Director ('WTD') or manager. Now under the 2013 Act, the requirement of obtaining CG approval has been dispensed for all companies [Section 197 of the 2013 Act vs Section 309, 310, 311 & 387 of 1956 Act]
  - xii. The MD of a PPC could be appointed for more than five years at a time and restriction as to the number of companies of which a person may be appointed managing director do not apply to PPC [Section 316 and Section 317].
  - xiii. A Pvt Co. was not required to have a director elected by small shareholders. Similar exemption continues under the 2013 Act [Section 151 of 2013 Act vs Proviso to section 252 (1) of 1956 Act].
  - xiv. A Pvt Co. was not prohibited from giving financial assistance for purchasing its own shares or shares of its holding company. Whereas under the 2013 Act, the provisions for such transactions do not apply to specified Pvt Co. [Section 67 of 2013 Act vs Section 77(2) of 1956 Act].
  - xv. PPC was given option to adopt the provisions related to general/shareholder's meetings as per the provisions of the 1956 Act or provide their own regulations by suitably providing for the same in its articles. Similar exemption continues under the 2013 Act [Section 101 to 107 and section 109 of 2013 Act vs Section 171 to 186 of 1956 Act].
  - xvi. Restrictions and ceiling on remuneration to be paid to directors, MD, WTD and manager imposed were not applicable to PPC. Similar exemption continues under the 2013 Act [Section 197 of 2013 Act vs Section 198 of 1956 Act].
  - xvii. The provisions relating to the appointment, retirement, re-appointment, etc., of directors who are to retire by rotation at an AGM and the procedure relating thereto were not applicable to a PPC. Similar exemption continues under the 2013 Act [Section 152 (6), (7) of 2013 Act vs Section 255, 256 of 1956 Act].
  - xviii. The provisions relating to the manner of filling up casual vacancies among directors and the duration of the period of office of those so appointed were not applicable to a PPC. Similar exemption continues under the 2013 Act [Section 161 (4) of 2013 Act vs 262 of 1956 Act].
  - xix. A PPC could appoint two or more directors by a single resolution. Similar exemption continues under the 2013 Act [Section 162 of 2013 Act vs Section 263 of 1956 Act].
  - xx. Under the 1956 Act, while calculating specified number of companies of which a person may be appointed or re-appointed as an auditor, the appointment held in PPC were to be excluded. Whereas under the 2013 Act, similar exemption continues for a PPC having paid-share capital less than Rs. 100 crore. [Section 224 (1B) vs Section 141 (3) (g)].
  - xxi. A PPC may by its AOA, provide additional grounds of disqualifications for appointment of directors and for vacating the office of director. Similar exemption continues under the 2013 Act [Section 164 (3) & 167 (4) of 2013 Act vs Section 274 (3) & 283 (3) of 1956 Act].
  - xxii. A Pvt Co. was not required to constitute a committee of board known as "Audit Committee". Similar exemption continues under the 2013 Act [Section 177 of 2013 Act vs section 292A of 1956 Act].
  - xxiii. In case of a PPC, where a person is already a MD or manager of any other company, there is no restriction for his appointment as a manager in any other PPC/PPCs [Section 203 of 2013 Act vs Section 386 of 1956 Act].
  - xxiv. A Pvt Co. was not mandated to appoint MD, WTD or manager etc. except whole-time company secretary in case of companies having paid up share capital of Rs. 5 crore or more. Similar exemption continues under the 2013 Act [Sections 269, 383A, 388 of 1956 Act vs Section 203 of 2013 Act].
- V. List of exemptions which were available to Pvt Co. under the 1956 Act and now there are no corresponding provisions under the 2013 Act (implying that exemption may continue)**
- i. A PPC was not required to terminate the disproportionately excessive voting rights attached to

equity shares in existing companies, if they are in excess of those specified in section 87 of the 1956 Act [Section 89 of 1956 Act].

- ii. A Pvt Co. was not required to hold the statutory meeting [Section 165 of 1956 Act].
- iii. A PPC could appoint a firm or body corporate to an office or place of profit in the company [Section 204 of 1956 Act].
- iv. Director of a Pvt Co. was not required to hold qualification shares [Section 266 of 1956 Act].
- v. The provisions relating to CG power to order prevention of a change in the board of directors likely to affect the company prejudicially were not applicable to a PPC [Section 409 of 1956 Act].
- vi. A Pvt Co. was not required to obtain approval of CG to increase the number of its directors beyond 12 [Section 259 of 1956 Act].
- vii. A Pvt Co. was not required to obtain approval of CG for effecting an amendment to the Memorandum, Articles or an agreement relating to appointment or reappointment of a MD or WTD or a director not liable to retire by rotation [Section 268 of 1956 Act].
- viii. The restrictions on the time within which share qualification of a director should be obtained and maximum amount thereof were not applicable to directors of a PPC [Section 270, 272 of 1956 Act].
- ix. The making of a memorandum of the terms of a contract in which the company is an undisclosed principal was not necessary where the company involved is a Pvt Co. [Section 416 of 1956 Act].

#### **VI. List of new relaxations available to Pvt Co. under the 2013 Act**

- i. There is no change in the minimum number of members which is 2. The maximum number of members in Pvt Co. has been increased from 50 to 200 members [Section 2(68)].
- ii. Pvt Co. is not required to keep a copy of contract of service with managing or WTD at its registered office. However, under the 1956 Act, all companies were required keep the copy of contract at the registered office of the company [Section 302(6) of the 1956 Act].

#### **VII. List of exemptions available to PPC under the 2013**

#### **Act which will stand withdrawn, in case it becomes the subsidiary of a public company**

- i. The provisions for entrenchment shall be made either on formation of a company or amendment in the articles by a special resolution in case of a public company [Section 5(4)].
- ii. A public company may issue securities to public through prospectus [Section 23(1)].
- iii. The securities or other interest of any member in a public company shall be freely transferable provided contract in respect of transfer of securities shall be enforceable as a contract [Section 58(2)].
- iv. Public company cannot give any financial assistance (directly or indirectly) by any means for purchase of own shares in the company or of the holding company [Section 67 (2)].
- v. A public company which meets specified conditions may accept deposits from persons other than its members subject to compliance of certain requirements [Section 76].
- vi. Every public company having such paid up capital shall prepare a statement indicating the manner in which formal annual evaluation has been made by boards of its own performance and committees [Section 134(3) (p)].
- vii. Prescribed class of public companies are required to appoint defined number of independent directors [Section 149 (4)].
- viii. At least two-thirds of the total number of directors of a public company shall be liable to retire by rotation at every AGM unless the articles provide for the retirement of all directors at every AGM [Section 152(6)].
- ix. If a director's office is vacated before his tenure expires, the resulting casual vacancy shall be filled by board of directors in the meeting of board [Section 161(4)].
- x. Public company is required to keep a copy of contract of service with MD or WTD at its registered office [Section 190].
- xi. The total managerial remuneration payable by a public company to its MD, WTD or manager shall not exceed 11% of the net profits of the company [Section 197].

#### **VIII. Analysis- Compliance requirements under the new law pursuant to the exemptions withdrawn and new/amended provisions**

## New Requirements

### Financial year for the financial statements

Financial year of every company, including Pvt Co. has to end on 31 March every year compulsorily, unless relaxed by the approving authority. There is a cooling period of two years (until 31 March 2016) available to the companies or body corporates to align its financial year in accordance with the above new requirement. [Section 2 (41)]

### Certification for Annual Return

Annual Return of a prescribed class of companies i.e. a company having paid up share capital of Rs. 10 crore or more or turnover of Rs. 50 crore or more shall be certified by a practicing company secretary ('PCS') and the certificate shall be in Form MGT 8. Certificate shall state that the annual return discloses the facts correctly and adequately and the company has complied with the provisions of the 2013 Act.

Under section 383A of the 1956 Act, every company having paid-up capital of Rs. 10 Lacs or more was required to file compliance certificate from a PCS in the prescribed manner to state whether the company has complied with all the provisions of the Act. While the thresholds for certification of Annual Return by PCS have been increased, the details to be provided therein have also been expanded substantially [Section 92 (2)].

### Corporate Social Responsibility

Every company having net worth of Rs. 500 crore or more or turnover of Rs. 1000 crore or more or a net profit of Rs. 5 crore or more during any financial year (i.e. during any of the 3 preceding financial years) shall constitute a Corporate Social Responsibility ('CSR') committee of board consisting of three or more directors, out of which at least one director shall be an independent director and 2 % of the average net profits of the immediately preceding three financial years should be spent for CSR. Schedule VII prescribes the activities to be included under CSR.

However, as per Companies (CSR) Rules, 2014, a Pvt Co. covered under above provisions, which is not required to appoint an independent director pursuant to section 149 (4) of the 2013 Act shall have its CSR committee without such director. Also, a Pvt Co. having only 2 directors on its board shall constitute its CSR committee with 2 such directors [Section 135]

### Director to Stay in India for 182 days

As per the new requirement under the 2013 Act, every company shall have at least one director who has stayed

in India for a total period of not less than 182 in the previous calendar year. For companies existing before the commencement of the 2013 Act, transitional provision of 1 year from the date of notification of the Rules has been provided to comply with the requirement of this provision.

With the implementation of this prerequisite, foreign companies doing business in India will now have to appoint at least one resident director or Indian national to act as director to comply with this qualification. Further, companies need to keep track of international travel of their resident directors to ensure that at resident director do not lose resident status during any of the calendar year [Section 149(3)].

### Internal Audit

The 2013 Act requires that the following class of Pvt Co. shall be required to appoint an internal auditor. Internal auditor shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the board.

- Pvt Co. having turnover of Rs. 200 crore or more during the preceding financial year or;
- Pvt Co. having outstanding loans/borrowings from banks or public financial institutions exceeding Rs. 100 crores at any point of time during the preceding financial year.

This requirement is likely to increase the compliance costs of a Pvt Co but is aimed at better corporate governance. [Section 138]

### Duties of Directors

Duties of directors have been set out for the first time in the 2013 Act. These duties appear to be quite onerous and in some cases open to wide interpretation. Complying with the requirement of this section will be very challenging for the directors of the Pvt Co. Some of the duties of directors are illustrated below as:

- A director of a company shall act in good faith in order to promote the object of the company.
- A director shall exercise his duties with due care, skill and diligence.
- A director shall not assign his office and any assignments so made shall be void.
- If a director contravenes the provisions of this section such director shall be punishable with fine which shall not be less than Rs.1, 00,000/- but which may extend to Rs.5, 00,000/-

This requirement is applicable to every company i.e. both Public company and Pvt Co. [Section 166].

### Consolidated Financial Statements ('CFS')

The 2013 Act now mandates every company having a subsidiary or an associate or a joint venture, to prepare and present CFS in addition to standalone financial statement. The requirement for Pvt Co. to prepare a CFS will substantially increase the time and cost of compliance specially if it has foreign subsidiaries [Section 129].

### Vigil Mechanism

Every listed company; or companies which accept deposits from the public; or the companies which have borrowed money from banks and public financial institutions in excess of Rs. 50 crore shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances. The provisions are also applicable to Pvt Co. meeting the prescribed criteria [Section 177(9)].

### Internal Financial Controls ('IFC')

The 2013 Act has introduced and defined the term 'internal financial control' for the first time. Under CARO, 2015, the term internal control systems have been used. Definition of IFC is very wide, it seems to cover 'business controls', together with 'financial reporting controls', the Rules however, refers to the adequacy of IFC with reference to financial statements. The scope for reporting on IFC is wider than the reporting on internal controls under the CARO, 2015.

The 2013 Act suggest IFC reporting of adequacy and effectiveness on IFC by the Board of the listed companies, however the Rules seems to extend the scope for unlisted companies as well. Board of directors are required to report on adequacy and operating effectiveness of IFC from FY 2014-15 whereas auditors to evaluate and report on adequacy and operating effectiveness of IFC from FY 2015-16 onwards [Section 134 (5) (e) & 143 (3) (i)].

### Rotation of Auditor

In accordance with the 2013 Act, all Pvt Co. having paid up share capital of Rs.20 crore or more or public borrowings from financial institutions, banks or public deposits of Rs.50 crore or more cannot appoint or reappoint the auditor for:

- a. More than two term of five years, if the auditor is the audit firm;
- b. More than one term of five years, if the auditor is an individual

Whilst auditor rotation improves independence, it also increases audit cost, imposes excessive burden on Companies. Globally, in countries where auditor rotation

is mandated e.g. Italy, Brazil etc. it was made applicable on listed companies, Banks and insurance companies. In India, the rotation mandate covers all companies above the prescribed thresholds [Section 139(2)].

### Amended Requirements

#### Related Party Transactions ('RPTs')

Section 188 of 2013 Act related to RPTs applies to both public company and Pvt Co. In our view, Section 188 provided a major relief to Pvt Co. as the requirement of obtaining the CG for the certain RPT has been done away. Under Section 188 the Pvt Co. are required to pass ordinary resolutions for certain RPT which are not conducted at arm's length price and are not conducted in ordinary course of business. In comparison to 1956 Act, Pvt Co. are now only burdened with screening of every related party through the arm's length test and various thresholds. MCA, vide exemption notification dated 5 June 2015, had provided certain relief by providing an exemption to Pvt Co. for entering into RPTs with its holding, subsidiary, joint venture and associate company. Further, the restriction for related party to vote on special resolution, to approve any contract or arrangement which may be entered into by the company has also been removed in case of Pvt Co. as per the same MCA notification dated 5 June 2015.

In our view, Pvt Co. represents a different set of relationship in terms of ownership, risk and reward as compared to public companies. Since Pvt Co. does not access capital markets they require less rigorous protection for their shareholder. While good corporate governance is important for success of Pvt Co., the obligation for dissemination of information of corporate process should be so structured that such enterprises do not lose the flexibilities in conduct of their business.

[Section 188]



### **Signing of Annual Return**

As per the provisions of the 2013 Act, annual return shall be signed by:

- i) A director and
- ii) The company secretary, or where there is no company secretary, by a PCS.

Whereas in the 1956 Act, a copy of annual return filed with the ROC shall be signed by:

- i) A director, and
- ii) A manager or Company secretary,

If there is no manager or no company secretary, then by 2 directors, one of whom shall be managing director if there is one in the company

The above requirements of signing the annual return by a PCS shall not be applicable on the One Person Company and Small Companies [Section 92 (1)].

### **Authentication of Financial Statements**

As per the provisions of section 134 (1) of the 2013 Act, financial statements including CFS shall be approved by:

- i) Chairperson, if he is authorized by board; or
- ii) 2 directors out of which one shall be MD or the CEO, if he is a director of the company, and
- iii) The CFO and the CS of the company, wherever they are appointed

Whereas as per section 215 of the 1956 Act balance sheet and profit and loss account was required to be approved by

- i) Two directors including managing director, if there is one and
- ii) Company secretary, if there is one

### **Compliance requirements pursuant to withdrawal of exemptions**

#### **Further issue of share capital**

.Section 62 of the 2013 Act contains provisions on ‘further issue of capital’, and enacts the principle of pre-emptive rights of shareholders of a company to subscribe to new shares of the company. A rights issue is directly offered to all existing shareholders of the Company in proportion to their current holding. Provisions of Section 62 of the 2013 Act are mandatory for all Pvt Co., public companies, and listed as well as unlisted companies. However, as per MCA notification Pvt Co. can now issue employee share option

plans (‘ESOPs’) by passing ‘ordinary resolution’ instead of ‘special resolution’.

The provisions in relation to further issue of share capital were applicable to only public companies as per section 81 of the 1956 Act also. In the case of Pvt Co. the matters of further issue were normally protected by appropriate clauses in the AOA under the 1956 Act [Section 62].

#### **Issue of shares with differential voting rights**

Under the erstwhile 1956 Act the provisions relating to issue of differential voting rights were not applicable to the Pvt Co. However, under the 2013 Act a Pvt Co. has to comply with the provisions contained in Section 43 read with rules issued thereunder to issue shares with differential voting rights [Section 43].

#### **Consent to act as director**

Under 1956 Act, in case of Pvt Co. consent to act as a director was not mandatory required to be filed with ROC whereas under the 2013 Act a person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with ROC within 30 days of his appointment [Section 152].

## Appendix

### X. Key Amendments provided in the Notification issued by MCA granting exemptions to Pvt Co. dated 5 June 2015

- i. The provisions of section 43 and 47 of the 2013 Act dealing with equity and preference share capital and voting rights shall not apply to Pvt Co. where memorandum or AOA so provides.
- ii. The restriction regarding minimum offer period and minimum notice period for sending offer letter prior to opening of issue will not apply to Pvt Co. if consent of ninety percent of members is obtained.
- iii. The requirement of a special resolution for issuing shares to employees under an ESOP scheme has been done away with. Pvt Co. may issue ESOP by way of an ordinary resolution of its members.
- iv. Restrictions are removed on purchase of own shares by Pvt Co. or giving of loans by it for purchase of its shares subject to fulfilment of certain conditions.
- v. A Pvt Co. can obtain deposits from its members to the extent of 100% of its paid and capital and free reserves.
- vi. Sections 101 to 107 and 109 that deal inter alia with notice of meetings, quorum, chairman, voting at meetings and poll, have now been made applicable only to public companies except in the event that:
  - t is otherwise specified in the section; or
  - unless the AOA of the Pvt Co. otherwise provide
- vii. Pvt Co. are no longer required to file with the ROC resolutions passed by the board which are covered in section 179 (3) of the 2013 Act.
- viii. The restriction contained in Section 141(3) (g) which disallows a person who is in full time employment elsewhere, or a person or a partner of a firm holding appointment as auditor, if such person is at the date of appointment holding appointment of more than 20 companies, shall not be applicable to a Pvt Co having paid up share capital less than Rs. 100 crore.
- ix. The provisions relating to right of persons other than retiring directors to stand for directorship by giving notice of not less than 14 days before the date of general meeting along with a deposit shall not apply to Pvt Co.
- x. Section 162 of the 2013 Act prohibits companies from passing a single resolution for appointment of 2 or more directors unless such a motion has first been agreed to unanimously by all the shareholders. The notification exempts a Pvt Co. from the applicability of section 162 of the 2013 Act.
- xi. Restriction on powers of the board, which were exercisable only with the consent of the company by special resolution have also been removed for Pvt Co.
- xii. Section 184 (2) relates to disclosure of interest by a director. The MCA notification provides that an interested director of a Pvt Co. could participate in the board meeting after disclosure of his interest, wherein contract or arrangement entered or to be entered into would be discussed.
- xiii. Section 185 of the 2013 Act prohibited companies from advancing loans to directors and to persons in whom directors are interested or give any guarantee or provide any security in connection with any loan taken by him or such other person. The MCA notification provides that the provisions of section 185 shall not apply to Pvt Co. satisfying certain specified conditions.
- xiv. The restriction for related party to vote on such special resolution, to approve any contract or arrangement which may be entered into by the company has been removed for Pvt Co.
- xv. The requirement of taking board of director approval and CG approval where the remuneration was in variance with Schedule V in case of managing directors, WTD and managers have sought to be done away with.
- xvi. Restrictions and rigorous approval requirements relating to related party transaction in Section 188 shall not apply to transactions by a Pvt Co. with its holding, subsidiary, associate or a fellow subsidiary.

# Contact us

To know more about Grant Thornton in India, please visit [www.grantthornton.in](http://www.grantthornton.in) or contact any of our offices as mentioned below:

---

## NEW DELHI

National Office  
Outer Circle  
L 41 Connaught Circus  
New Delhi 110001  
T +91 11 4278 7070

## AHMEDABAD

BSQUARE Managed Offices  
7th Floor, Shree Krishna  
Centre  
Nr. Mithakali Six Roads  
Navrangpura  
Ahmedabad 380009  
T +91 76000 01620

## BENGALURU

"Wings", 1st Floor  
16/1 Cambridge Road  
Ulsoor  
Bengaluru 560008  
T +91 80 4243 0700

## CHANDIGARH

B-406A, 4th Floor  
L&T Elante Office Building  
Industrial Area Phase I  
Chandigarh 160002  
T +91 172 4338 000

---

## CHENNAI

Arihant Nitco Park, 6th  
Floor  
No.90, Dr. Radhakrishnan  
Salai  
Mylapore  
Chennai 600004  
T +91 44 4294 0000

## GURGAON

21st Floor, DLF Square  
Jacaranda Marg  
DLF Phase II  
Gurgaon 122002  
T +91 124 462 8000

## HYDERABAD

7th Floor, Block III  
White House  
Kundan Bagh, Begumpet  
Hyderabad 500016  
T +91 40 6630 8200

## KOCHI

7th Floor, Modayil Centre  
point  
Warriam road junction  
M.G.Road  
Kochi 682016  
T +91 484 406 4541

---

## KOLKATA

10C Hungerford Street  
5th Floor  
Kolkata 700017  
T +91 33 4050 8000

## MUMBAI

16th Floor, Tower II  
Indiabulls Finance Centre  
SB Marg, Elphinstone (W)  
Mumbai 400013  
T +91 22 6626 2600

## MUMBAI

9th Floor, Classic Pentagon  
Nr Bisleri factory, Western  
Express Highway  
Andheri (E)  
Mumbai 400099  
T +91 22 6176 7800

## NOIDA

Plot No. 19A, 7th Floor  
Sector – 16A  
Noida 201301  
T +91 120 7109 001

---

## PUNE

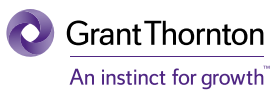
401 Century Arcade  
Narangji Baug Road  
Off Boat Club Road  
Pune 411001  
T +91 20 4105 7000

---

For more information or for any queries, write to us at [contact@in.gt.com](mailto:contact@in.gt.com)



Follow us @GrantThorntonIN



© 2015 Grant Thornton India LLP. All rights reserved.

"Grant Thornton in India" means Grant Thornton India LLP, a member firm within Grant Thornton International Ltd, and those legal entities which are its related parties as defined by the Companies Act, 2013 read in conjunction with the applicable Accounting Standards issued by the Institute of Chartered Accountants of India.

Grant Thornton India LLP (formerly Grant Thornton India) is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001.

References to Grant Thornton are to Grant Thornton International Ltd (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.