

A WIRC Research and Publication Committee Initiative

*Analysis of Notification dated 5th June 2015 issued by Ministry of Corporate Affairs
pertaining to Private Companies*

The private companies while complying with such exceptions, modifications and adaptations, as specified here-in-below, shall ensure that the interests of their shareholders are protected. A copy of this notification has been laid in draft before both Houses of Parliament as required by sub-section (2) of section 462 of the Companies Act, 2013.

Sr. No.	Section	Exemption/ Modification/ Adaptions	Impact on Private Companies
1.	Section 2(76)(viii)	Definition of Related Parties	A holding, subsidiary or an associate company of such company; or a subsidiary of a holding company to which it is also a subsidiary shall not be treated as related parties.
2.	Section 43 and Section 47	Kinds of Capital and Voting Rights	Provisions of kinds of share capital and voting rights shall not be applicable subject to the condition that such a provision is provided in MoA and AoA of the Company.
3.	Section 62(1)(a)(i) and Section 62(2)	Further issue of share capital (pertaining to right issue)	In case ninety percent of the members of the Company gives their consent in writing or electronic mode then the right issue can be kept open for a period lesser than 15 days and the notice shall be dispatched through registered post or speed post or through electronic means to all the existing shareholders for a period lesser than three days before opening of the issue.
4.	Section	Further issue of	ESOS can be approved by way of



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	62(1)(b)	shares (pertaining to ESOS)	an ordinary resolution instead of a special resolution
5.	Section 67	Restrictions on purchase by company or giving of loans by it for purchase of its shares	<p>This section shall not be applicable to a private company if all of the following conditions are fulfilled: -</p> <ol style="list-style-type: none"> 1. In whose share capital no other body corporate has invested any money; 2. Borrowing from banks, FIs or any body corporate is less than <ol style="list-style-type: none"> a) twice of its paid up capital; or b) fifty crores rupees <p>Whichever is lower</p> 3. such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.
6.	Section 73(2)(a) to (e)	Prohibition on acceptance Of deposits from public	<p>Private Company may accept money from its members upto 100% of paid-up share capital plus free reserve.</p> <p>A return is to be filed to RoC in form which is to be prescribed.</p> <p>Clause (f) pertaining to creation</p>



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			of security on property or asset of the Company is to be provided as per the Act.
7.	Section 101 to 107 and Section 109	Provisions related to notice of meeting, explanatory statement, quorum for the meeting, chairman of the meeting, proxies, restrictions on voting rights, voting by show of hands and demand of poll	These provisions shall be governed by the Articles of the Company. In case nothing is prescribed in the Articles related to section 101 to 107 & 109, then provisions mentioned in these sections shall be applicable.
8.	Section 117(3)(g)	Resolutions and Agreement to be filed	Resolutions passed under section 179(3) is not required to be filed in Form MGT14 with the RoC.
9.	Section 141(3)(g)	Eligibility, qualification and disqualification of Auditors	one person companies, dormant companies, small companies and Private Companies having paid up share capital of less than Rs. 100/- Crore, are not to be counted in the maximum limit of audit which is twenty for Auditors.
10.	Section 160	Right of persons other than retiring directors to stand for directorship	Provisions pertaining to submission of candidature of directorship along with deposit of Rs.1,00,000 shall not be applicable to private companies.
11.	Section 162	Appointment of directors to be voted individually	Two or more directors can be appointed by way of single resolution.
12.	Section 180	Restrictions on	Certain powers are mentioned in



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		powers of Board	section 180 which can only be exercised after members' approval by special resolution. The whole section shall not be applicable to private companies. Hence for exercising all such powers, member's resolution shall not be required.
13.	Section 184(2)	Disclosure of interest by director	Interested director may participate in Board meeting in which such contract or arrangement is going to be discussed where he is interested after disclosure of his interest.
14.	Section 185	Loan to directors, etc.	This section shall not be applicable to a private company if all of the following conditions are fulfilled: - <ol style="list-style-type: none">1. In whose share capital no other body corporate has invested any money;2. Borrowings from banks, FIs or any body corporate is less than<ol style="list-style-type: none">a. twice of its paid up capital; orb. fifty crores rupeesWhichever is lower3. such a company is not in default in repayment of



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			such borrowings subsisting at the time of making transactions under this section.
15.	Second proviso to section 188(1)	Related party transactions	Member of the private company can vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.
16.	Section 196(4) and (5)	Appointment of managing director, whole-time director or manger	Shareholder’s approval and filing of Form MR 1 shall not be required in case of appointment of managing director, whole-time director or manger.

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