

**Exemption to Private Companies u/s 462 of The Companies Act 2013 as per Ministry of Corporate Affairs Notifications Dated 5<sup>th</sup> June, 2015 and 13<sup>th</sup> June, 2017**

The Ministry of Corporate Affairs provided exemptions to the private companies from certain provisions of the Companies Act 2013 on 5<sup>th</sup> June, 2013. Further, the Central Government has amended the said notification and has given further exemptions to the private companies as per Section 462 of the Companies Act 2013.

The details of Exemptions provided to the private companies as per Section 462 of the Companies act, 2013 are tabulated below.

<b>Serial Number</b>	<b>Chapter/ Section number/ Sub-section(s) in the Companies Act, 2013</b>	<b>Exceptions/Modifications / Adaptations</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
1.	Chapter I, clause (40) of section 2	The proviso would apply as under:-  Provided that the financial statement, with respect to One Person Company, small company, dormant company <u>and private company (if such a private company)s a start-up</u> , may not include the cash flow statement;  Explanation. - For the purposes of this Act, the term 'start-up' or "start-up company" means a private company incorporated under the Companies Act, 2013 (18 of 20'13) or the Companies Act, 1956 ('I of 1956) and recognised as start-up in accordance with the notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry."
1A	Chapter I, Sub-clause (viii) of clause (76) of section 2	Shall not apply with respect to section 188.
2.	Chapter IV, section 43 and section 47,	Shall not apply where memorandum or articles or association of the private company so provides.
3.	Chapter IV, sub clause (i) of clause (a) of sub-section (1) and sub-section (2) of section 62.	Shall apply with following modifications:-  In clause (a), in sub-clause (i) the following proviso shall be inserted, namely:-  Provided that notwithstanding anything contained in this sub-clause and sub-section

		(2) of this section, in case ninety percent, of the members of a private company have given their consents in writing or in electronic mode, the periods lesser than those specified in the said sub-clause or sub-section shall apply.
4.	Chapter IV, clause (b) of sub-section (1) of section 62.	In clause (b), for the words "special resolution", the words "ordinary resolution" shall be substituted.
5.	Chapter IV, section 67.	Shall not apply to private companies  (a) in whose share capital no other body corporate has invested any money;  (b) if the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice its paid up share capital or fifty crore rupees, whichever is lower; and  (c) such a company in not in default in repayment of such borrowings subsisting at the time of making transactions under this section.
6.	Chapter V, clauses (a) to (c) of sub-section (2) of section 73.	<del>Shall not apply to a private company which accepts from its members monies not exceeding one hundred percent of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.</del>  <sup>1</sup> Shall not apply to a private company-  (A) which accepts from its members monies not exceeding one hundred percent of aggregate of paid up share capital, free reserves and securities premium account; or  (B) which is a start-up, for five years from the date of its incorporation; or  (C) which fulfils all of the following conditions ; namely-  (a) which is not an associate or a subsidiary company of any other company

<sup>1</sup> Substituted by Notification dated 13.06.2017

		<p>(b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and</p> <p>(c) such a company has no default in repayment of such borrowings subsisting at the time of accepting deposits under this section.</p> <p>Provided that the company referred to in Clause (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.</p>
6A	Chapter VII, clause (g) of sub-section (1) of section 92	<p>Shall apply to private companies which are small companies as under:-</p> <p>(g) aggregate amount of remuneration drawn by directors</p>
6B	Chapter VII, proviso to sub-section (1) of section 92	<p>The proviso shall apply as under:-</p> <p>Provided that in relation to One Person Company, small company <u>and a private company</u>(if such private company is a <u>start-up</u>), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.</p>
7.	Chapter VII, sections 101 to 107 and section 109.	Shall apply unless otherwise specified in respective sections or the articles of the company provide otherwise.
8.	Chapter VII, clause (g) of sub-section (3) of section 117.	Shall not apply.
9.	Chapter X, Clause (g) of sub-section (3) of section 141.	Shall apply with the modification that the words "other than one person companies, dormant companies, small companies, and private companies having paid-up share capital less than one hundred crore rupees" shall be inserted after the words "twenty companies".
9A	Chapter X, clause (i) of sub-section (3) of section 143.	<p>Shall not apply <u>to a private company</u></p> <p>(i) which is a one person company; or a small company; or</p> <p>(ii) which has turnover less than rupees fifty crores as per latest audited financial</p>

		statement or which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than rupees twenty five crore;
10.	Chapter XI, section 160.	Shall not apply.
11.	Chapter XI, section 162.	Shall not apply.
11A	Chapter XII, sub-section (5) of section 173	For subsection (5), the following subsection shall be substituted:-  (5) A One Person Company, small company, dormant company <u>and a private company (if such private company is a start-up)</u> shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days.  Provided that nothing contained in this sub-section and in section 174 shall apply to One Person Company in which there is only one Director on its Board of directors.
11B	Chapter XII, sub-section (3) of section 174	Shall apply with the exception that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184.
12.	Chapter XII, section 180.	Shall not apply.
13.	Chapter XII, sub-section (2) of section 184.	Shall apply with the exception that the interested director may participate in such meeting after disclosure of his interest.
14.	Chapter XII, section 185.	Shall not apply to a private company –  (a) in whose share capital no other body corporate has invested any money;  (b) if the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower, and  (c) such a company has no default in repayment of such borrowing subsisting at the time of making transactions under this section.
15.	Chapter XII, second proviso to sub-section (1) of section 188.	Shall not apply.

16.	Chapter XIII, sub-sections (4) and (5) of section 196.	Shall not apply.

2. The private companies, while complying with such exceptions modifications and adaptations, as specified in column (3) of the aforesaid Table, shall ensure that the interests of their shareholders are protected.
- 2A. The exceptions, modifications and adaptations, provided in column (3) of the aforesaid Table, shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 of the said Act or Annual Return under section 92 of the said Act with the Registrar.
3. 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