

# Ease of doing business – exemptions to startup private companies

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In order to ease certain compliances by a private company under the Companies Act, 2013 (the Act), the Ministry of Corporate Affairs (MCA) had notified exemptions for private companies way back in June 2015. Now, with the introduction of concept of ‘startup’ or ‘Startup Company,’ MCA has come out with some more exemptions to private companies and more particularly to startup private companies. However, in order to avail the exemptions granted, private companies shall not be a defaulter in filing the financial statements or annual returns with the Registrar of Companies.

## **What is a startup?**

For the purpose of the Act, the term ‘startup’ means a private company incorporated under the Act or the Companies Act, 1956 (1956 Act) and recognised as startup in accordance with the notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.

### **1. Financial statements**

The financial statements as defined in the Act also include “cash flow statement for the financial year” in addition to balance sheet, profit and loss account and statement of changes in equity and explanatory notes. The Act has exempted one person, small and dormant companies from including the cash flow statement in the financial statements. In the recent exemption, the startup private company is also included in the exemption list and thus not required to include cash flow statement in its financial statements.

### **2. Deposits**

The Act lays down the terms and conditions for acceptance of deposits from its members. In June 2015, private companies which accept from its members monies not exceeding one hundred per cent of aggregate of paid up capital and free reserves were exempted from such conditions provided that the details of monies accepted were to be filed with the Registrar in such manner as may be specified. Now, securities premium account has

also been included with free reserves which in turn shall increase the aggregate amount.

The recent amendment further extended to private companies:

- i. which is a startup, for five years from the date of its incorporation; or
- ii. which fulfils all of the following conditions, namely:-
  - (a) which is not an associate or a subsidiary company of any other company;
  - (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
  - (c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits.

### **3. Annual return**

The prevailing provision of the Act states that the details with respect to remuneration of directors and key managerial personnel (KMP) are to be given. In light of the recent notification, exemption is given to private companies which are small companies to give details of aggregate amount of remuneration drawn by directors and the details of remuneration of KMPs.

Further, startup private companies which do not have company secretary in employment, now can have the annual return signed by the director of a company instead of a practising company secretary and also there is no requirement for two signatories to annual return.

### **4. Auditors' report**

The Act requires that the auditors in their report, inter alia, shall state "whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls." Such inclusion in the auditors' report has been exempted for a private company:

- (i) which is a one person company or a small company; or
- (ii) which has turnover less than rupees fifty crores as per the latest audited financial 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.

There seems to be an error in this exemption; for example, if a private company has turnover in excess of rupees fifty crores but does not have any

borrowings, such private company is also included in the exemption list, whereas the intention is not that.

## 5. Board meetings

In accordance with the Act, every company has to hold at least four Board meetings every year and not more than 120 days shall intervene between two consecutive meetings.

However, relaxation has been given to one person company, small company, and dormant company, and they are required to hold at least one meeting of the Board of directors in each half of a calendar year and the gap between the two meetings shall not be less than ninety days. Such exemption has also been extended to a private startup company.



The screenshot shows the 'Startup Definition' page from startupindia.gov.in. It defines a startup as an entity incorporated or registered in India, subject to three conditions: 1) Not prior to seven years (or ten for biotech), 2) Annual turnover not exceeding INR 25 crore, and 3) Working towards innovation. It also includes a proviso that an entity ceases to be a startup if it exceeds the turnover limit or completes 7 (or 10 for biotech) years.

startupindia.gov.in

### Startup Definition (As defined by DIPP)

**Startup means an entity, incorporated or registered in India :**

- ▶ Not prior to seven years, however for Biotechnology Startups not prior to ten years,
- ▶ With annual turnover not exceeding INR 25 crore in any preceding financial year, and
- ▶ Working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation

Provided that such entity is not formed by splitting up, or reconstruction, of a business already in existence. Provided also that an entity shall cease to be a Startup if its turnover for the previous financial years has exceeded INR 25 crore or it has completed 7 years and for biotechnology startups 10 years from the date of incorporation/ registration. Provided further that a Startup shall be eligible for tax benefits only after it has obtained certification from the Inter-Ministerial Board, setup for such purpose.

## 6. Quorum

The relevant provision of the Act state that where the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board, the number of directors who are not interested and present being not less than two shall form quorum. Such condition has been relaxed to private companies and interested directors may also be counted

towards quorum in Board meetings after disclosure of his/her interest.

## Conclusion

It is the need of the hour for encouraging startup companies to concentrate more on promotion of business, and the extension of exemption to such companies is a welcome move. No doubt, the exemption on deposits would ease the conditions attached and would accelerate the borrowings from private sources for the development of business. The simultaneous condition attached to avail the exemption, that the private companies shall file both the annual return and financial statements with the Registrar is a positive approach to ensure compliance management in such private companies.

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