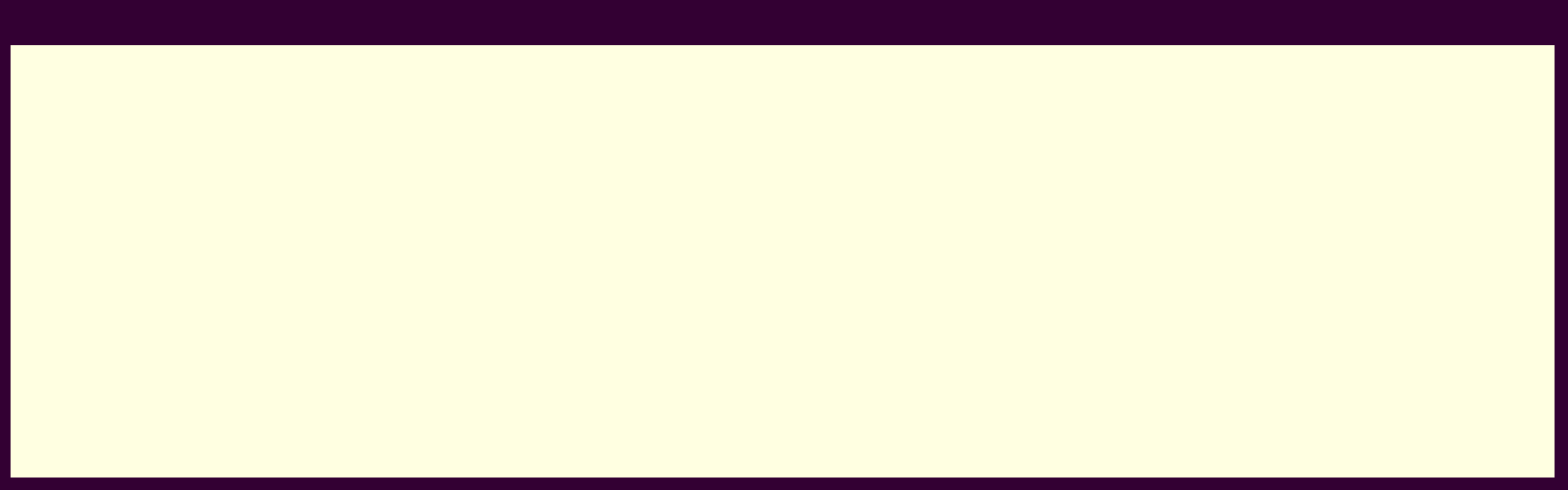


# **Applicability of Provisions of Companies Act 2013 on Private Companies**



# Definition of Private Company

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- ≡ a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,—
  - (i) restricts the right to transfer its shares;
  - (ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where 2 or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

## Contd.....

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**Provided further that—**

**(A) persons who are in the employment of the company; and  
(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and**

**(iii) prohibits any invitation to the public to subscribe for any securities of the company;**

**⌘ Section 2 (71): The definition of Public Company provides that a private subsidiary of a public company shall be deemed to be a public company even though the subsidiary continues to be a private company in the Articles.**

# Limit on Maximum No. of members

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- ≡ **Limit on maximum number of members of private company increased to 200 from 50 (Section 2(68)(ii))**

# Filing with ROC

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- ⌘ **For commencement of business by private Company, following needs to be filed with the registrar of companies**
- ❖ **declaration by director in prescribed form providing that the subscribers have paid the value of shares agreed to be taken by them, and**
- ❖ **Confirmation that the company has filed a verification of its registered office, with the Registrar.**

# Issue of Securities

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- ≡ **A private company may issue securities (Section 23)**
  - ❖ **by way of rights issue or bonus issue**
  - ❖ **through private placement**
  
- ≡ **A Private company may issue securities only through private placement by complying with the provisions of Part II of Chapter III.**

## **Quorum for meetings (Section 103)**

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- ≡ In the case of a private company, two members personally present, shall be the quorum for a meeting of the company.**

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# Requirement regarding Directors

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- ⇒ **Company to have Board of Directors - Every company shall have a Board of Directors consisting of individuals as directors and shall have a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company (Section 149(1)(a)).**
- ⇒ **1 Independent Director on Corporate Social Responsibility (CSR) Committee if CSR requirement is triggered and if not required to appoint independent director u/s 149 (4), then constitute CSR Committee without independent director .**
- ⇒ **Resident Director- 1 director required to be resident in India for at least 182 days in a calendar year Section 149(3).**

# Number of Directorship (Section 165)

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- ⌘ **No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time:**

**Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.**

**Explanation.— For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.**

# **Restriction on Loan to Directors etc (Section 185)**

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**Applicable to both Public and Private company**

- ⌘ **Save as otherwise provided in this Act, NO COMPANY SHALL. This clarifies that the given restrictions is applicable to both Public and Private companies unlike the existing Companies Act, 1956 where it is applicable only to Public Companies (Section 295 (2) exempting Private Company which is not a subsidiary of a public company)**

# **Loan and investments by a Company (Section 165)**

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- ≡ Exemptions that were available to private limited companies transactions between holding Wholly Owned Subsidiary, Loans given by investments companies etc. are to be removed now.**

# Exemptions

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- ≡ **Exemption from appointment of Women Director and Small Shareholder Director**
- ≡ **Provisions of Section 190 regarding Contract of employment with managing or whole-time directors, shall not be applicable to private companies**

# **Prohibition of Insider Trading (Section 195)**

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- ⌘ **Dealing in shares by a person having non - public price sensitive information; or**
- ⌘ **Communicating such information to any person**
- ⌘ **In relation to listed companies, SEBI should have the power to enforce the above provisions**
- ⌘ **These provisions are applicable to unlisted public companies as well as private companies.**

# Disclosure of Interest

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- ⌘ **The provisions are applicable to private limited companies also.**
- ⌘ **It is provided that the director interested in a contract should not participate in the meeting. A private limited company with two directors may not be able to comply with the quorum requirement**
- ⌘ **In case the contract is entered into without disclosing interest of a director, the contract will be voidable at the instance of the company.**



**Thank You.....**