

Private Limited Companies & Key Compliances: Insights from Mehta & Mehta Webinar

Private limited companies form the foundation of India's corporate framework. While listed companies often receive the spotlight, private companies carry their own complexities and opportunities. In a recent webinar hosted by **Mehta & Mehta**, experts and practitioners explored the evolving compliance landscape, statutory exemptions, and practical challenges faced by private companies under the **Companies Act, 2013**.

1. Why Private Limited Companies Matter

- Almost every listed company begins its journey as a private limited company before transitioning to public listing.
- Structuring, fundraising, and governance complexities emerge most intensely at the private company stage.
- Company Secretaries (CS) play a critical role here—acting not just as compliance officers but as strategic advisors in shareholding structuring, ESOP design, and investor negotiations.

2. Shifts Post Companies Act, 2013

- **Pre-2013:** Private companies enjoyed extensive exemptions, and many company secretaries avoided their compliances.
- **Post-2013:** A paradigm shift occurred. Provisions such as CSR (Sec 135), SBO disclosures (Sec 90), Related Party Transactions (Sec 188), and Private Placement (Sec 42) now extend to private companies.
- This has made compliance **more demanding** than even in some listed entities, requiring careful interpretation of each section.

3. Key Exemptions Available to Private Companies

Despite enhanced oversight, private companies benefit from targeted relaxations via MCA's Section 462 notifications:

- **Cash Flow Statement** – Exempt for OPCs, small companies, dormant companies, and startups.
- **Related Party Transactions** – Transactions with holding, subsidiary, or associate companies are excluded from Section 188.
- **Rights Issue** – Notice period reduced from 7–30 days to as little as 1 day with 90% shareholder consent (by value).

- **ESOPs** – Approval via ordinary resolution (not special resolution). Startups may issue ESOPs even to >10% promoters/directors.
- **Deposits** – Convertible notes (₹25 lakh minimum per investor per tranche) and loans from directors/relatives (with declaration) are excluded from “deposits.”
- **General Meetings** – AOAs may shorten notice below 21 days; EGMs can be held outside India.

4. The Strategic Role of Company Secretaries

- Unlike listed companies with external advisors, private companies rely heavily on their internal CS for governance.
- CSs ensure compliance with exemptions, design Articles of Association (AOA) to capture flexibilities, and pre-empt regulatory pitfalls.
- The session emphasized that a CS in a private company is “one among equals” with peers in listed firms, given the nuanced compliance environment.

5. Best Practices Suggested

- Draft **Articles of Association** carefully to embed exemptions (e.g., shorter notice, ESOP relaxations).
- Treat filing timelines as non-negotiable—defaults erode all exemptions.
- Keep **Board and shareholder approvals** well documented to avoid disputes in rights issues, borrowings, and related party dealings.
- Align with **sectoral regulators** (RBI, IRDAI, SEBI, etc.) where applicable—sectoral laws override company law exemptions.
- Use webinars, ICSI guidance, and peer forums to stay updated on MCA circulars and evolving interpretations.

6. Case Studies and Lessons Shared

- ROC notices were issued converting private companies into “deemed public” due to breaches in shareholding or deposits.
- A JV private company with 51% public company shareholding had to comply with all public company provisions, despite retaining “Private” in its name.
- Defaults in deposit treatment (e.g., unsecured loans treated as deposits) triggered penalties and compliance costs.

Conclusion

Private companies may appear less regulated than listed companies, but in practice, their compliance landscape is more intricate. The **Companies Act, 2013** has brought private entities firmly under the compliance lens, balancing **flexibility with accountability**.

The takeaway: For promoters, investors, and professionals, **diligent compliance is not optional** it is the foundation of growth, governance, and credibility.

To access the full recording, visit:

□ *“Decoding Corporate Laws with Mehta & Mehta”* on YouTube.