

Union Budget 2021- Proposed Amendments to the Companies Act, 2013.

1. Small Companies

The Finance Minister in the budget announced that, the definition of small companies will be amended by increasing the threshold limits to determine a small company as below: -

- Paid up capital – up to Rs. 2 crores (previously Rs. 50 Lakhs) and
- Turnover – up to Rs. 20 crores. (previously Rs. 2 crores.)

The private companies whose paid up capital is less than Rs. 2 crores and turnover is less than Rs. 20 crores will be now is considered as small company.

However, a private company which is a holding company or subsidiary company or Section 8 company will not be considered as small company.

Benefits of the exemption

The small companies can take the following benefits under the companies Act, 2013

- **Board Meetings:** it is not required for small companies to hold 4 board meetings in year, small companies may hold only 2 board meetings in a calendar year, i.e. one Board Meeting in each half of the calendar year and gap between two meetings is not less than 90 days.
- **Rotation of company auditors:** –It is not necessary for small companies to follow the condition laid in Section 139(2) of the Company Act 2013, which mandates the rotation of auditors every 5 years (individual auditors) and every 10 years (firm of auditors).
- **Exemptions on reporting in Board's Report:** – Matters to be included in Board's Report mention under Rule 8 of Companies (Accounts) Rules shall not apply for small company which includes disclosure on conservation of energy, technology absorption, foreign exchange earnings and outgo.
- **Annual Return:** – Annual Return of a Small Company can be signed by the company secretary alone, or where there is no company secretary, by a single director of the company.
- **Cash Flow Statement:** – A small company need not include Cash Flow Statement as part of its financial statements.
- **Exemptions in Audit Report:** – small companies are not required to give report on internal financial controls with reference to financial statements and the operating effectiveness of such controls in audit report.
- **Exemption from Companies (Auditor's Report) Order:** - The rule is not applicable to a small company.

- **Lesser penalties for Small Companies under Section 446B of the Companies Act, 2013:** – If a small company fails to comply with the provisions of section 92(5), section 117(2) or section 137(3), such company and officer in default of such company shall be liable to a penalty which shall not be more than one half of the penalty specified in such sections.

2. **One Person Companies**

The Annual Budget 2021 proposes to allow NRIs to form One Person Company which is not allowed under the existing provisions. Further it is proposed remove the threshold limits prescribed for OPC to mandatorily convert into either private or public company. Accordingly, MCA has amended the provisions by Companies (Incorporation) Second Amendment Rules, 2021 which will be effective from April 1, 2021.

Benefits for OPCs:

- OPC can be incorporated by a NRI
- Residency status limit for Indian Citizen to set up an OPC is reduced to 120 days
- OPC can increase its paid up capital beyond Rs. 50 lakhs and the turnover can exceed Rs. 2 crores and can continue to be OPC.