

EXEMPTIONS GRANTED UNDER THE COMPANIES ACT 2013 FOR COMPANIES SET UP IN INTERNATIONAL FINANCIAL SERVICES CENTER

On 04 January 2017, the Ministry of Corporate Affairs, Government of India issued two notifications under Section 462 of the Companies Act, 2013 (**Act**) granting certain exemptions and modifications to certain provisions of the Act to apply to a Specified IFSC Private Company and Specified IFSC Public Company, which are licensed to operate from the International Financial Services Centre (**IFSC**) in an approved multi services Special Economic Zone (**SEZ**) set up under the Special Economic Zones Act, 2005 (**SEZ Act**) read with the Special Economic Zones Rules, 2006 (**SEZ Rules**).

A. The key provisions under the notification applicable to **Specified IFSC Private Company** are as follows:

1. **Formation of company:** Specified IFSC private company will be incorporated only as a company limited by shares. The memorandum of a Specified IFSC private company must, (i) have its name with the last word "International Financial Services Company" or "IFSC"; and (ii) state its object to do financial services activities, as permitted under the SEZ Act and SEZ Rules and in accordance with the license granted by RBI, SEBI or IRDA to operate from the IFSC located in an approved multi services SEZ.
2. **Registered office:** At all times, Specified IFSC private company to have its registered office at the IFSC located in an approved multi services SEZ, where it is licensed to operate.
3. **Appointment of directors:** The requirement to have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year will apply to Specified IFSC private company in the second financial year from the date of its incorporation.
4. **Management and administration:** Exempted from complying with secretarial standards with respect to general and board meetings as specified by Institute of Company Secretaries of India. The board of directors of a Specified IFSC private company can exercise powers by passing certain resolutions through circular resolution, which otherwise require passing such resolutions in a physical meeting only.
5. **Audit and auditors:** Relaxation from requirement of internal audit by the Company, subject to provisions contained in the articles of association and exempted from the provisions on the time limit on rotation and appointment of auditors. In case of removal of auditor where central government approval is required exemption is granted with respect to the time for the Central

Government to respond on an application for removal and provision for deemed approval in case of no response within the prescribed time.

6. **Corporate social responsibility (CSR):** Provisions relating to CSR will be applicable after five years from the commencement of business of a Specified IFSC private company.
 7. **Relax timelines:** The timelines for submitting the respective forms and returns have increased from the prescribed timeline under the Act with respect to the following: filing of verification of the registered office; notice of change for change of the situation of the registered office; registration of creation of charge; declaration in respect of beneficial interest in any share; registration of resolutions and agreements; intimation to Registrar of Companies for appointment of auditor; appointment and resignation of auditors; the directors and key managerial personnel and delivery of share certificates by the company in all cases of allotment, transfer and transmission of shares.
 8. **Administrative flexibility:** Flexibility to Specified IFSC private companies granted amongst others, exemption from private placement procedure; removal of requirement to attach an extract of the annual return in as part of the board's report; holding extraordinary general meeting at any place within or outside India; holding the first meeting of the board of directors within 60 days of its incorporation and holding at least one meeting of the board of directors in each half of a calendar year; exempted from restriction of making investment through not more than two layers of investment companies; and in addition to key managerial personnel or an officer of the company, even any other person authorised by the board can authenticate documents, proceedings and contracts on behalf of the company.
- B. The key provisions under the notification applicable to **Specified IFSC Public Company** are as follows:
1. **Formation of company:** Specified IFSC public company will be incorporated only as a company limited by shares. The memorandum of an IFSC public company to have (i) its name with the last word "International Financial Services Company" or "IFSC"; and (ii) state its object to do financial services activities, as permitted under the SEZ Act and SEZ Rules and in accordance with the license granted by RBI, SEBI or IRDA to operate from the IFSC located in an approved multi services SEZ.
 2. **Registered office:** At all times, Specified IFSC public company to have its registered office at the IFSC located in an approved multi services SEZ, where it is licensed to operate.

3. **Appointment of directors:** Exemptions from appointment of a woman director and independent directors. The requirement to have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year to apply to Specified IFSC public company in the second financial year from the date of its incorporation. Exemptions from provisions relating to retirement of directors by rotation and filling of casual vacancies of directors. Relaxation to provisions relating to requirement for proposing candidature of persons to be appointed as director, subject to provisions of articles of association.
4. **Management and administration:** Exemption from compliance of secretarial standards with respect to general and board meetings as specified by Institute of Company Secretaries of India. The board of directors of a Specified IFSC public company can exercise powers by passing certain resolutions through circular resolution, which otherwise requires passing such resolutions at a physical meeting only. Relaxation in provisions related to calling, convening and holding of meetings, subject to provisions of articles of association.
5. **Audit and auditors:** Relaxation from requirement of internal audit by the Company, subject to provisions contained in the articles of association and exempted from the provisions on the time limit on rotation and appointment of auditors. In case of removal of auditor where central government approval is required exemption is granted with respect to the time for the Central Government to respond on an application for removal and provision for deemed approval in case of no response within the prescribed time.
6. **Corporate Social Responsibility (CSR):** Provisions relating to CSR will be applicable after five years from the commencement of business of a Specified IFSC public company.
7. **Committees:** Exemptions from constituting an audit committee and nomination and remuneration committee and stakeholders' relationship committee.
8. **Relax timelines:** The timelines for submitting the respective forms and returns have increased from the prescribed timeline under the Act with respect to the following: verification of the registered office; notice of change of the situation of the registered office; declaration in respect of beneficial interest in any share; registration of resolutions and agreements; registration of creation of charge; intimation to Registrar of Companies for appointment of auditors; delivery of certificates of all securities to subscribers after incorporation, allotment, transfer or transmission; consent of a person to hold the office as director; and appointment and resignation of the directors and the key managerial personnel.

9. **Administrative flexibility:** Flexibility to Specified IFSC public companies granted amongst others, exemption from private placement procedure; removal of requirement to attach an extract of the annual return in as part of the board's report; holding extraordinary general meeting at any place within or outside India and at any time; holding the first meeting of the board of directors within 60 days of its incorporation and holding at least one meeting of the board of directors in each half of a calendar year; and exemption from restriction of making investment through not more than two layers of investment companies.

10. **Other exemptions:** Other exemptions granted to Specified IFSC public companies are amongst others, with respect to the following: financial year of the subsidiary being same as the holding company; kinds of share capital; voting rights; issue of sweat equity shares; rights issue; passing ordinary resolution in case of scheme of employees' stock option; restrictions on purchase by company or giving of loans by it for purchase of its shares; removal of conditions on acceptance of deposits from its members; and exemption from applicability of proviso which prohibits a member of the company to vote on resolution approving any contract or arrangement which may be entered into by the company, if such member is a related party.