



BSE SME Opportunity

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INTRODUCTION

BSE SME platform has been setup as per the rules and regulations laid down by SEBI. It enables the listing of SMEs from the unorganized sector into a regulated and organized sector. BSE SME will assist these SMEs to raise equity capital for their growth and expansion and thus help them blossom into full-fledged companies.

ELIGIBILITY CRITERIA

- The company has to be incorporated under the Companies Act, 1956.
- The **post-issue paid up capital** of the company shall be at least **Rs. 1 Crore**.
- **Networth** (excluding revaluation reserves) of atleast **Rs. 1 Crore** as per the latest audited financial results.
- **Net Tangible Assets** at least **Rs. 1 Crore** as per the latest audited financial results.
- **Distributable profits** in terms of Section 205 of the Companies Act 1956 for at least **two years** out of immediately preceding three financial years (each financial year has to be a period of at least 12 months). Extraordinary income will not be considered for the purpose of calculating distributable profits.

OR

The **Net Worth** shall be at least **Rs. 3 Crores**.

- Company **website**
- Facilitate trading in demat securities.
- A certificate from the applicant company / promoting companies stating the following
 - a) " The Company has not been referred to the Board for Industrial and Financial Reconstruction (BIFR)."

Note: Cases where company is out of BIFR is allowed.

 - b) There is no winding up petition against the company, which has been admitted by the court or a liquidator has not been appointed.

ADVANTAGES

- Raising **Equity Capital (lower financing costs)** vs **Debt Capital (costly and cumbersome to avail, requirement of collateral)**
- **Equity Capital** has **one time cost** of raising it and **no interest** burden throughout life.
- **Lowers debt** burden leading to **healthier balance sheets** for the entity.
- Listing of a company on the exchange gives **better valuation** to the company.
- Listing provides a continuing **liquidity** to the shareholders of the entity.
- Listing **raises a company's public profile** with customers, suppliers, investors, financial institutions and media.
- Listing opens up room for **future financing**.
- Capital can be raised for new project, expansion, diversification, vertical integration, long-term working capital, acquisition, repayment of liabilities, investment in subsidiaries, etc.
- The **IPO prospectuses** of SMEs will be **vetted by exchanges** rather than SEBI.
- **Lower** initial and annual **listing fees**.
- Opportunity attractive to Investors as **no peer listed**.
- **Easier** to **migrate** to **main board** for further growth of the Company.
- **Clause 49** of the Listing Agreement **does not apply**. However, BSE SME norms as per the SME Listing Agreement are applicable.
- **Clause 41** of the Listing Agreement **does not apply**. The following are the benefits awarded to the SME:
 - SMEs need **not publish their financial results**, as required in respect of companies listed on the Main Board. The SMEs can make it **available** on their **websites**.
 - **Financial results** shall be submitted on **half yearly** basis instead of on quarterly basis.
 - SMEs can send the **abridged version of the annual report** of few pages with the details of the profit & loss account and balance sheet **to the shareholders** instead of sending physical copies of full annual report.
 - SMEs have been **exempted** from the condition of having a **track record of profit making** for 3 years out of last 5 years as applicable for listing an IPO on the Main Board.

DISADVANTAGES

- Offer a **minimum** of **25%** of the post-issue, paid-up **capital** to the **investors**.
- If there is no strength in the balance sheet and profit margins are not attractive, it will be difficult to raise the capital through the SME Exchange.
- No relaxation on corporate governance requirements for listed companies.
- Not less than **50%** directors comprising of **Non-Executive Directors**.
- If the Chairman is an Executive Director or belongs to the promoter group, at least 50% of directors should be independent directors.
- Qualified and independent **Audit Committee**.
- Annual Report shall contain a **separate** section for the **corporate governance report**.
- Annual **CEO/CFO certification** to Board. (FS, Internal Control, Fraud, Significant Changes)
- Corporate Governance **compliance certificate** from Auditor or Company Secretary.

CHECKLIST FOR IPO

- Conversion of private limited company to public limited company
- Full time company secretary (Compliance Officer) to be appointed
- Infusing 50% independent directors into the Board
- Peer Review by Reputed Chartered Accountant firms (since its inception or last 5 years, whichever is shorter)
- Detailed Disclosures about the Past Performance of the company
- Keeping the Annual Reports on accounts ready
- Future Projections of the company (CMA Data) for at least next 3 years
- Due diligence on the applicability of various Regulations
- Due diligence (Legal) by reputed Legal firms
- Due Diligence on the various approvals required from Regulatory Bodies
- Detailed disclosures about the Risk Factors associated with the company
- Detailed disclosures about the External Environment effecting the company
- Detailed disclosures about the litigations, its magnitude and ramifications
- Detailed disclosures about the Business activity
- Documenting the Material Contracts and Agreements
- Detailed disclosures about the Promoters & Management
- Selection of Merchant Banker
- Selection of Registrar and Transfer Agent (RTA)
- Selection of Syndicate Member /Sub- Syndicate Members
- Selection of electronic media and advertising agency
- Selection of Escrow Bankers

SECTIONS NOT APPLICABLE ON A PRIVATE LIMITED COMPANY

Section	Description of the matter
77(2 & 3)	There is no prohibition to provide financial assistance to anyone for purchasing or subscribing for its own shares or of its holding Company.
81	A Private Company including subsidiary of a Public Company can issue its further shares to any person in any manner as it thinks best in its own interest
85 to 90	The Provisions of these Sections do not apply to a Private Company and deals with kinds of share capital and that voting rights should be proportionate to the paid-up capital, prohibiting disproportionately excessive voting rights.
108, 109, 110	The provisions of these Sections are about transfer of shares and debentures that shall not prejudice any power of a Private Company under its Articles to enforce the restrictions in rejecting a particular transfer of shares of the Company.
111(13)	The right of appeal to the Company Law Board against rejection of a transfer of shares is not available as long as the Private Company is only enforcing the provisions of its articles in rejecting a particular transfer. It appears from this section that a right of appeal will be available where the rejection is outside the provisions of the Private Company's Articles. The right of appeal is also available where there is transmission by court sale or sale by other public authority.
165	Private Company is not required to hold statutory meeting or prepare any statutory report.
170 to 186	The Provisions of these Sections relating to General Meetings applies to a Private Company unless in any particular Section it is specifically expressed that the applicability is not intended or unless the Articles of a Private Company that is not a Subsidiary of Public Company make any other provisions in respect of any of the matters covered by these Sections. Relaxation in the length of Notice for calling General Meeting, contents and manner of Service of Notices, Explanatory Statements, Quorum for meeting, Chairman of meeting, Restrictions of voting rights, etc. can be made to the extent to which the Company makes provisions in its Articles.
192A	Passing of resolution by Postal Ballot is not relevant for Private Company.
198	Ceiling on overall managerial remuneration not applicable to a Private Company. A Private Company, which is not subsidiary of a Public Company, may remunerate those in management, by such higher percentage of profits or in any manner as it may deem fit.
204	Restrictions on appointment of any firm or body corporate to office or place of profit is not applicable to a Private Company which is not a subsidiary of Public Company.

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220	Only the Member of Private Company that is not a subsidiary of Public Company is entitled to inspect or obtain copies of Profit and Loss Account of the Company.
252	Minimum Directors for a Private Company is 2 (two) against 3 (three) in case of Public Co.
255 & 256	The Provisions of appointment of Directors and proportion of those who are liable to retire by rotation are not mandatory to a Private Company which is not a subsidiary of a Public Company
257	The provision requiring to give 14 days notice by new candidates seeking election as directors and depositing of certain amount (Rs. 500) are not mandatory for Private Company which is not a subsidiary of Public Company.
259	Central Government approval for increasing number of directors beyond the permissible maximum (presently 12) not required for Private Company that is not a subsidiary of Public Company.
262	The provision relating to manner of filling casual vacancy among directors and the duration of the period of office of those so appointed do not apply to Private Company that is not a subsidiary of Public Company.
263(1)	Appointment of two or more persons as directors by a single resolution can be done by Private Company that is not a subsidiary of Public Company.
264	Filing of consent of candidate for directorship with the Registrar of Companies is not applicable to Private Company that is not a subsidiary of Public Company.
266	Restrictions on appointment of director and subscription to qualification shares are not applicable to Private Company
268, 269	Central Government approval for amendments relating to appointment/re-appointment of a Managing Director/Whole-time Director/not liable to retire by rotation is not required by a Private Company which is not a Subsidiary of a Private Company.
270-273	Requirements of qualification shares holding by directors the time within which the qualification shares to be acquired and filing of a declaration by each director of the qualification shares held, is not applicable to Private Company
274(1)(g)	The disqualification under this Section does not include directorships of Private Company
274(3)	A Private Company that is not a subsidiary of a public Company may in its Articles provide special grounds for disqualification for appointment of person for the office of a Director.
275 to 279	The Directorships of Private Companies are not to be considered while calculating the limit on number of Companies in which a person can be director.
283 (3)	A Private Company may in its Articles provide special grounds for vacation of office of a Director .
292A	Provisions relating to formation of Audit Committee are not applicable.
293	Restrictions on certain powers of Board of Directors regarding selling, leasing, remitting or giving time for payments of debts, investing or borrowing moneys, or contributing to charities other than for political purpose are not applicable to a

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		Private Company which is not a subsidiary of a Public Company
295		Restrictions on loans to directors/relatives, etc. does not apply to Private Company
300		No restrictions on interested directors from participating in the proceedings of the Board and exercising their votes are applicable to a Private Company which is not a subsidiary nor a holding Company of a Public Company
309, 311	310,	A Private Company that is not a subsidiary of a Public Company, is free from restrictions on payment of remuneration to the directors or increase in their remuneration. The procedures like filing Form 25C not required in case of Private Company
317		Restriction on period of appointment of managing director/manager for more than 5 years at a time do not apply to Private Company unless it is a subsidiary of a Public Company.
349, 350		Provision relating to the determination of net profits and ascertainment of depreciation shall not apply to a Private Company.
372A		Restrictions on giving loans or guarantees to other Companies or on making investment in the shares of other Companies do not apply to Private Company unless it is a subsidiary of a Public Company.
386, 388	387,	No. of Companies in which a person may be appointed as manager, the remuneration of a manager and the application of Sections 269, 310 to 312 and 317 in relation to managers do not apply to a Private Company unless it is a subsidiary of a Public Company.
409(3)		Powers given to the Central Government to prevent change in the Board of Directors are not applicable to a Private Company unless it is a subsidiary of a Public Company
416(1)		Restrictions on Contract by agents of the Company in which the Company is the undisclosed principal shall not apply to a Private Company which is a not a subsidiary of a Public Company.

Note: The above is based on the Companies Act, 1956 and are subject to change with the applicability of Companies Act, 2013.

Sections 81, 257, 263(1), 274(1) (g), 275 to 279, 293, 295 & 372A mentioned above in their corresponding sections in the Companies Act, 2013 have withdrawn the exemptions given to Private Limited Company.

Sections 89, 90, 165, 170 to 186, 204, 259, 266, 268, 270 to 273, 277, 300, 311, 350, 409(3) & 416(1) mentioned above have no corresponding sections in the Companies Act, 2013.

283 Sections of the New Companies Act, 2013 has **already** been **notified** as on 26th March 2014 with only 183 sections remaining to be notified.

THANK YOU

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