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## MCA's Exemption Notification for Government Companies

[The following guest post is contributed by **Vinita Nair** of Vinod Kothari & Co. The author may be contacted at [vinita@vinodkothari.com](mailto:vinita@vinodkothari.com).]

By way of a notification dated June 5, 2015 **exempted Government companies**, private companies, section 8 companies and nidhi companies from complying with certain provisions of the Companies Act, 2013 ("Act, 2013" or "Act" or CA 2013) as mentioned below subject to the condition that the company ensures protection of shareholders' interests. The exemption notification has been published in Official Gazette.

Section 620 of the Companies Act, 1956 also empowered modification of the Act in relation to Government companies. Several notifications were issued under that for exempting or modifying the applicability of the provisions of that legislation.

### I. Exemption to all Government Companies:

1. By way of alterations to section 4(1)(a), the memorandum of a Government company shall state name of the Company with the last expression "Limited";

2. In case of Government companies the requirement under Section 56 (1) for proper instrument of transfer duly executed and stamped shall not be required with respect to bonds issued by Government company provided that an intimation is given by the transferee specifying his name, address and occupation and delivered to the Company along with the bond certificate, if any or with the letter of allotment of the bond.

Further the requirement proper instrument of transfer duly executed and stamped shall also not apply in case of transfer of securities held by nominees of the Government.

3. A Government company need not comply with the provisions of Section 89 relating to declaration in respect of beneficial interest in any share. Consequentially, the provisions of Section 90 relating to investigations of beneficial ownership of shares in certain cases by Central Government shall also not apply to Government Company.

4. A Government company shall hold an annual general meeting (AGM) of the company at the registered office or such other place as the Central Government may approve in this behalf, pursuant to provisions of section 96 (2).

5. A Government company need not comply with the provision of section 134(3)(e) relating to specifying the company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178.

6. The restriction of having a maximum of 15 directors, unless approved by members by passing special resolution under Section 149 (1) (b) read with first proviso, shall not apply in case of Government companies.

7. The independent directors being appointed should be persons of integrity and possess relevant expertise and experience in the opinion of Ministry or Department of the Central Government which is administratively in charge of the Company, or as the case may, the State Government.

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8. The restriction with respect to independent director not having pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year as specified under section 149(6) (c) shall not apply to a Government company.

9. A Government company need not obtain consent letter from directors and file the same with the Registrar of Companies (RoC) within 30 days of appointment as required under section 152(5) where the appointment of such a director is carried out by the Central Government or State Government, as the case may be.

10. The disqualification specified under section 164 (2) pertaining to ineligibility of a director of following company from being appointed/ re-appointed as a director of the Company shall not apply to a Government company:

- which has not filed financial statements or annual returns for any continuous period of three financial years; or

- which has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more.

11. The Audit Committee of a Government company shall recommend remuneration of auditors. The recommendation for appointment and terms of appointment as required under Section 177 (4) (i) shall not be required to be included in the Terms of Reference of Audit Committee.

12. Provision of Section 163 relating to proportional representation for appointment of directors on the Board shall not apply.

13. The requirement specified under section 178(2), (3) and (4) with respect to identification of directors, senior managerial personnel by the Nomination and Remuneration Committee , framing of criteria for determining qualifications, positive attributes and independence of a director and framing policy thereof, will be applicable only for appointment of 'senior management' and other employees.

14. A Government company is not required to comply with provisions of section 196 (2), (4) and (5) dealing with the following:

- Restriction on appointing or re-appointing any person as its managing director, whole-time director or manager for a term exceeding five years at a time;

- Approval of terms and conditions of such appointment approved by the Board of Directors at a meeting, by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in Schedule V;

15. A Government company is not required to comply with provisions of section 197 which specifies limits for overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.

16. The provisions of sub-section (1), (2), (3) and (4) of Section 203 with respect to appointment of key managerial personnel, holding of office, period within which appointment to be made in case of vacation of office of key managerial personnel (KMP), will not apply to a managing director or Chief Executive Officer or manager and in their absence, a whole-time director of the Government company.

17. In case of Government company, no court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of a person authorised by the Central Government in that behalf. The Court shall not take cognizance of any offence on a complaint made by the Registrar or shareholder of the company as specified under Section 439 (2) of CA, 2013.

**II. Exemption to such Government Companies whose entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments:**

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1. In case of inadequacy of profits, such Government company can declare dividend without complying with the requirements of Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014.

2. Such Government company need not deposit amount of dividend, including interim dividend in a separate bank account within 5 days from the date of declaration of such dividend as specified under section 123 (4).

3. The requirement of retirement of directors by rotation under section 152 (6) shall not apply. Consequently, the provision pertaining to vacancy of retiring director not being filled at the meeting as provided under section 152 (7) shall also not apply.

4. The requirement of providing notice of candidature in case of appointing a director other than a retiring director under section 160 shall not apply.

5. A motion can be moved for the appointment of two or more persons as directors of the company by a single resolution. The provisions of section 162 shall not apply to such government company.

6. Provision of section 163 relating to proportional representation for appointment of directors on the Board shall not apply.

7. Provisions of section 170 shall not apply. Such Government company shall not be required to maintain Register of directors and key managerial personnel and their shareholding under section 170. Consequently, the provision pertaining to inspection of the register maintained under section 170 as provided under section 171 shall also not apply. Further, section 170 also mandates filing of return for appointment of director and KMP in DIR-12. This requirement also has been exempted.

### **III. Exemption to such Government Companies that have obtained approval of the Ministry or Department of the Central Government which is administratively in charge of the Company, or as the case may be, the State Government:**

1. A Government company whose directors are evaluated by the Ministry or Department of the Central Government which is administratively in charge of the company, or as the case may be, the State Government, as per its own evaluation methodology need not include statement disclosing the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors as stipulated under section 134 (3)(p).

2. Section 185 prohibiting granting of loans to directors and to any other person in whom director is interested shall not apply to Government companies in case such company obtains approval before making any loan or giving any guarantee or providing any security or making any investment under the section.

3. Provisions of section 186 with respect to loans and investment by company shall not apply to a Government company, other than a listed company in case such company obtains approval before making any loan or giving any guarantee or providing any security or making any investment under the section.

4. A Government company, other than a listed company, is not required to comply with provisions of first and second proviso of section 188 which restricts companies from entering into related party transactions exceeding specified values without obtaining prior approval of shareholder and also restricts related party who is a party to the contract, to abstain from voting in case such company obtains approval before entering into such contract or arrangement.

### **IV. Exemption to Government Companies engaged in defense production:**

1. Section 129 pertaining to financial statement shall not apply to a Government company to the extent of application of Accounting standard 17 (Segment Reporting) to the companies engaged in defense production.

2. Provisions of Section 186 with respect to loans and investment by company shall not apply

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## V. Exemption to subsidiary whose entire paid up share capital are held by such Government Companies whose entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments:

1. The requirement of retirement of directors by rotation shall not apply. Consequently, the provision pertaining to vacancy of retiring director not being filled at the meeting as provided under section 152 (7) shall also not apply.
2. The requirement of providing notice of candidature in case of appointing a director other than a retiring director under section 160 shall not apply.
3. A motion can be moved for the appointment of two or more persons as directors of the company by a single resolution. The provisions of section 162 shall not apply to such government company.

## VI. Exemption to a Government company on entering into contract or arrangement with another Government company:

1. Such government companies are not required to comply with provisions of first and second proviso of section 188 which restricts companies from entering into related party transactions exceeding specified values without obtaining prior approval of shareholder and also restricts related party who is a party to the contract, to abstain from voting.

## Conclusion

The exemptions will making it easier for Government companies to comply with certain provisions of Act, 2013.

It is pertinent to note that in case of Government Companies these provisions were also formerly exempted by ways of notifications issued under Section 620 of Act, 1956. Most of the exemptions are the same as those provided under the erstwhile notifications. The new provisions exempted for a Government company include exemptions under Sections 134 (3) (e) & (p), 149, 177, 178 and 203 of Act, 2013.

- Vinita Nair



Posted by [Umakanth Varottil](#) at 4:01 PM



Labels: [Companies Act](#), [Company Law](#), [Government Companies](#)

## 2 comments:

**Anonymous said...**

Point number 12 in "I. Exemption to all Government Companies" is incorrect as it only applies in the case of "II. Exemption to such Government Companies whose entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments:" and "Exemption to subsidiary of a Government company referred to in (II), in which the entire paid up share capital is held by that Government Company".

[July 6, 2015 at 4:05 PM](#)

**Anonymous said...**

point no.7 - exemptions under section 170 is not only limited to appointment but also changes. in other words, the wholly owned government companies need not file dir-12 not only for appointments but for cessations also.

[July 29, 2015 at 12:43 PM](#)

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