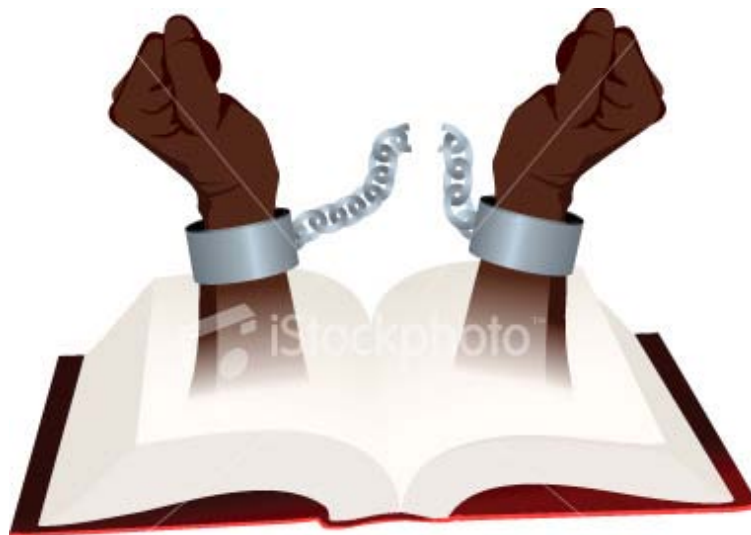


EXEMPTIONS AND RELAXATIONS TO GOVERNMENT COMPANIES

(COMPANIES ACT, 2013)



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EXEMPTIONS AND RELAXATIONS TO

GOVERNMENT COMPANIES

FROM FEW PROVISIONS OF COMPANIES ACT, 2013

(To be notified in official gazette)

Since the introduction of the Companies Act, 2013 in September 2013, certain class of companies like Private Companies, Government Companies etc. was feeling the pressure of the rigorous provisions of the Act and the compliances required therein. Especially for Government Companies, which enjoyed many exemptions and reliefs under the Companies Act, 1956, the introduction of Companies Act, 2013 proved a challenge. Many of the provisions of the Companies Act, 2013 were posing difficulty in their practical application, like those relating to appointment of independent directors, seeking deposit from directors seeking appointment at general meetings etc. The coming into effect of the Companies Act, 2013 meant that all the reliefs and relaxations granted under the Companies Act, 1956 to these Government Companies were automatically revoked till a further notification granting certain specific reliefs was brought out.

The Ministry of corporate Affairs has by way of notifications dated 5th June, 2015, released the most anticipated exemptions for Government Companies, Private Companies, Nidhi Companies and Companies registered under Section 8 of the Companies Act, 2013 (Act).

This write-up presents an insight on the exemptions provided by means of these notifications to Government Companies. Exemptions to Private Companies and Companies registered u/s 8 of the Act has already been circulated by means of separate write ups and for Nidhi Companies the write up will be circulated shortly.

EXEMPTIONS TO GOVERNMENT COMPANIES

NAME OF ALL GOVERNMENT COMPANIES TO END WITH THE WORD "LIMITED" ONLY

Nature of Exemption	Impact of the Exemption
In Section 4, in sub-section (1), in clause (2), the words 'in the case of a Public limited Company, or the last words "Private Limited" in the case of a private limited company' shall be omitted. Relevant provisions from Section 4 after amendment will read as below: <i>4(1) The memorandum of a company shall state –</i> <i>(a) the name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a Private Limited Company.</i>	The name of all Government Companies shall end with the word "Limited", be it Public or Private Company.

PROCEDURAL FORMALITIES FOR TRANSFER OF GOVERNMENT BONDS AND SECURITIES HELD BY NOMINEES

Nature of Exemption	Impact of the Exemption
Section 56, in sub-section (1), after the proviso, the following provisos will be inserted, namely:- <i>Provided further that the provisions of this sub-section, in so far it requires a proper instrument of transfer, to be duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee, shall not apply with respect to bonds issued by a Government Company, provided that an intimation by the transferee specifying his name, address and occupation, if any, has been delivered to the company along with the certificate relating to the bond; and if no such certificate is in existence, along with the letter of allotment of the bond:</i> <i>Provided also that the provisions of this sub-section shall not apply to a Government Company in respect of Securities held by nominees of the Government.</i>	In case of transfer of Bonds issued by a Government Company, Instrument of transfer is not required to be executed and delivered to the company provided an intimation regarding the transfer supported by the details of the transferee and the relevant bond certificate is delivered to the Company. The requirement of execution of a instrument of transfer and delivering the same to the company has also been done away with in case of transfer of securities held between nominees of the Government.

DECLARATION IN RESPECT OF BENEFICIAL INTEREST

Nature of Exemption	Impact of the Exemption
Section 89 and 90 shall not apply	Section 89 of the Companies Act, 2013 contains provisions regarding declaration to be given by the registered and beneficial owner to the company and in turn by company to ROC. Section 90 contains provisions relating to investigation of beneficial ownership of shares in certain cases. These requirements are relaxed in case of government companies.

PLACE FOR HOLDING AGM

Nature of Exemption	Impact of the Exemption
Section 96, sub-section 2, for the words "some other place within the city, town or village in which the registered office of the company is situate", the words "such other place as the Central Government may approve in this behalf" shall be substituted Relevant provisions from 96(2) after amendment will read as below: <i>96(2) Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at such other place as the Central Government may approve in this behalf</i>	The AGM of a Government Company can either be held at the registered office or at any other place as approved by the Central Government.

DECLARATION OF DIVIDEND OUT OF RESERVES

Nature of Exemption	Impact of the Exemption
Section 123, sub-section (1), second proviso and sub-section (4) shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by the State Government or Governments or by the Central Government and one or more State Governments.	The rules regulating declaration of dividend out of reserves in case of inadequacy or absence of profits and the provision relating to depositing the amount of dividend (including interim dividend) in a separate bank account within 5 days of declaration will not be applicable in case of those Government Companies which the entire paid up share capital is held by the Government.

SEGMENT REPORTING NOT TO APPLY FOR COMPANIES ENGAGED IN DEFENCE PRODUCTION

Nature of Exemption	Impact of the Exemption
Section 129 shall not apply to the extent of application of Accounting Standard 17 (Segment Reporting) for the Companies engaged in defence production	In preparation of financial statements, the requirement of Segment Reporting as per AS 17 has been relaxed in case of Government Companies engaged in defence production.

DISCLOSURES IN BOARD'S REPORT

Nature of Exemption	Impact of the Exemption
Section 134, sub-section (3), clause (e) and clause (p) shall not apply. Text of clauses (e) and (p) <i>(e) in case of a company covered under sub-section (1) of section 178, 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</i> <i>p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating 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;</i>	The requirement of disclosing the Company's nomination and remuneration policy and 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 in the Board's report has been relaxed for government companies.

MAXIMUM NUMBER OF DIRECTORS

Nature of Exemption	Impact of the Exemption
Section 149(1)(b) and first proviso to Section 149(1) shall not apply.	A government company can have more than 15 directors.

QUALIFICATION FOR APPOINTMENT OF INDEPENDENT DIRECTOR

Nature of Exemption	Impact of the Exemption
In Section 149(6), clause (a), for the word "Board", the words "Ministry of Department or the Central Government which is administratively in charge of the Company, or, as the case may be, the State Government, shall be substituted. Section 149(6), clause(c) shall not apply.	Section 149(6)(a) after amendment will read as follows: <i>149(6)(a) - who, in the opinion 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, is a person of integrity and possesses relevant expertise and experience.</i> The following requirement for selecting a person as independent director will not apply to a Government Company: <i>149(6)(c) - who has or had no 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</i>

CONSENT TO ACT AS DIRECTOR AND FILING OF SAME WITH ROC

Nature of Exemption	Impact of the Exemption
Section 152(5) shall not apply where appointment of such director is done by the Central Government or State Government, as the case may be	The requirement of seeking consent from a Director and filing the same within 30 days of appointment to ROC is relaxed where appointment of such director is done by the Central Government or State Government.

RE-APPOINTMENT OF RETIRING DIRECTORS IN AGM

Nature of Exemption	Impact of the Exemption
Section 152, sub-section (6) and (7) shall not apply to – (a) a Government Company in which the entire paid up share capital is held by the Central Government, or by the State Government or Governments or by the Central Government and one or more State Governments; (b) a subsidiary of a Government Company, referred in on (a) above, in which entire paid up share capital is held by that Government Company	The provisions relating to retirement of directors by rotation in AGM will not apply in case of those Government Companies specified in the left hand column.

RIGHTS OF PERSON OTHER THAN RETIRING DIRECTOR TO STAND FOR DIRECTORSHIP

Nature of Exemption	Impact of the Exemption
Section 160 shall not apply to (a) a Government Company in which the entire paid up share capital is held by the Central Government, or by the State Government or Governments or by the Central Government and one or more State Governments; (b) a subsidiary of a Government Company, referred in on (a) above, in which entire paid up share capital is held by that Government Company	Various provisions of Section 160 like seeking deposit of Rs. 1 Lakh, notice of candidature etc. will not apply in case of appointment of a director in a general meeting to those Government Companies specified in the left hand column.

APPOINTMENT OF DIRECTOR TO BE VOTED INDIVIDUALLY

Nature of Exemption	Impact of the Exemption
Section 162 shall not apply to (a) a Government Company in which the entire paid up share capital is held by the Central Government, or by the State Government or Governments or by the Central Government and one or more State Governments; (b) a subsidiary of a Government Company, referred in on (a) above, in which entire paid up share capital is held by that Government Company	A Government Company, as specified in the left hand column, can pass a single resolution for appointment of 2 or more persons as directors.

PRINCIPLE OF PROPORTIONAL REPRESENTATION FOR APPOINTMENT OF DIRECTORS

Nature of Exemption	Impact of the Exemption
Section 163 shall not apply to (a) a Government Company in which the entire paid up share capital is held by the Central Government, or by the State Government or Governments or by the Central Government and one or more State Governments; (b) a subsidiary of a Government Company, referred in on (a) above, in which entire paid up share capital is held by that Government Company	The provisions relating to appointment of directors on proportional representation basis, by means of relevant regulation in the AOA, will not apply in case of those Government Companies specified in the left hand column.

DISQUALIFICATION FOR APPOINTMENT OF A DIRECTOR

Nature of Exemption	Impact of the Exemption
Section 164(2) shall not apply	The restriction that, a person being a director in any other Company which has not filed financial statements or annual returns for any continuous period of three financial years; or 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 shall not be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so, will not apply in case of appointment of a person as director in a Government Company.

Register of Directors, KMP and their shareholding

Nature of Exemption	Impact of the Exemption
Section 170 and 171 shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by the State Government or Governments or by the Central Government and one or more State Governments.	The requirement relating to maintenance of register of Directors, KMP and their shareholding and the right of members to inspect it has been relaxed for a government company as specified in the left hand column.

ROLE OF AUDIT COMMITTEE IN RECOMMENDING APPOINTMENT OF AUDITORS

Nature of Exemption	Impact of the Exemption
In Section 177, sub-section (4), clause (i), for the words "recommendation for appointment, remuneration and terms of appointment" the words "recommendation for remuneration" shall be substituted.	In case of Government Companies, the appointment of Auditor is done by the CAG and accordingly, the requirement of the Audit Committee to recommend the appointment and terms of appointment of Auditor in case of Government Company has been done away with.

ROLE OF NOMINATION AND REMUNERATION COMMITTEE IN RECOMMENDING APPOINTMENT AND REMUNERATION OF DIRECTORS

Nature of Exemption	Impact of the Exemption
Sub-Sections (2), (3) and (4) of Section 178 shall not apply to Government Company except with regard to appointment of Senior Management and Other Employees	The provisions relating to role of Nomination and Remuneration Committee in identifying Directors and KMP, recommending their appointment to the Board and framing policy for their appointment and remuneration has been relaxed for Government Companies except with regard to Senior Management and Other Employees.

LOANS TO DIRECTORS AND OTHER INTERESTED ENTITIES

Nature of Exemption	Impact of the Exemption
Section 185 shall not apply to Government Company in case such Company obtains 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 before making any loan or giving any guarantee or providing any security under the Section.	The restrictions contained in Section 185 regarding giving of loans/guarantees/securities etc. by a company to its directors and other entities in which a director is interested has been relaxed for government companies provided they seek prior approval of their administrative Ministry or Department for the proposed transactions.

LOANS AND INVESTMENTS BY A COMPANY

Nature of Exemption	Impact of the Exemption
Section 186 shall not apply to – (a) A Government Company engaged in defence production Government Company other than a listed company in case such Company obtains 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 before making any loan or giving any guarantee or providing any security or making any investment under the Section.	The requirement of seeking member's approval by means of a special resolution for making loans/ investment or giving or guarantee / security in excess of the threshold limits specified in Section 186 has been relaxed for government companies engaged in defence production and other unlisted government companies which seek prior approval of their administrative Ministry or Department for the proposed transactions.

RELATED PARTY TRANSACTIONS

Nature of Exemption	Impact of the Exemption
First and Second proviso to sub-section (1) of Section 188 shall not apply to – (a) A Government Company in respect of contracts or arrangements entered into by it with any other government company; (b) a Government Company other than a listed company in respect of contracts or arrangements other than those referred to in clause (a), in case such Company obtains 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 before entering into such contract or arrangement.	The requirement of seeking member's approval by means of a special resolution for related party transactions as contained in Section 188(1) and the restriction on a member, being a related party, to vote thereon has been relaxed for transactions entered between two government companies and for transactions entered into by an unlisted government company with a company other than a government company, provided the unlisted government company seeks prior approval of its administrative Ministry or Department for the proposed transactions.

APPOINTMENT OF MANAGERIAL PERSONNEL

Nature of Exemption	Impact of the Exemption
Sub-sections (2), (4) and (5) of Section 196 shall not apply	The following provisions of Section 196 shall not apply to government companies: • Requirement of Appointment / Re-appointment of MD /WTD /Manager for a term not exceeding 5 years at a time. • Requirement of seeking approval of Board and Members at a meeting for appointment of managerial personnel and also of Central Government where such appointment/remuneration of managerial personnel is not in accordance with provisions of Schedule V. • Requirement that notice convening the Board or General Meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including, interest, of a director or directors, in such appointment, if any • Requirement of filing return of appointment of managerial personnel within 60 days with the ROC • Provision that where an appointment of a managing director, whole time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.

REMUNERATION OF MANAGERIAL PERSONNEL

Nature of Exemption	Impact of the Exemption
Section 197 shall not apply	All the provisions of Section 197 and related provisions of Schedule V relating to limits on Managerial Remuneration have been relaxed for government companies. Government Companies can remunerate their Managerial Personnel without having to comply with restrictive provisions of Section 197 and Schedule V.

APPOINTMENT OF KEY MANAGERIAL PERSONNEL

Nature of Exemption	Impact of the Exemption
In Section 203, after sub-section (4), the following sub-section shall be inserted, namely :- <i>(4A) The provisions of sub-sections (1), (2), (3) and (4) of this section shall not apply to a managing director or chief Executive Officer or Manager and in their absence, a whole-time director of the Government Company.</i>	All the provisions of Section 203, barring the penal provision contained in sub-section (5), like KMP not to hold office in more than one company at the same time, appointment of KMP to be made by a Board Resolution etc. 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. These provisions will continue to apply to CFO and CS of Government Companies, being KMP.

COGNIZANCE OF OFFENCES BY COURT

Nature of Exemption	Impact of the Exemption
In Sub-section (2) of Section 439, the words "<i>the Registrar, a shareholder of the Company, or of</i>" shall be omitted.	The Court will not take cognizance of any offence committed by a Government Company under the Act unless compliant in writing is made by a person authorised by the Central Government in this behalf.

PROFESSIONAL LIFE –

ENDLESS POSSIBILITIES

WITH

BORDERLESS SUCCESSES

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