



Regulatory Alert Tracking change

Privileges to a Government company under the Companies Act

Issue no: RA/11/2015

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Background

Companies Act, 2013 (2013 Act) was brought into force in phases by 1 April 2014, barring certain provisions relating to compromises, arrangements and amalgamations, prevention of oppression and mismanagement, setting up of/exercise of powers by National Company Law Tribunal / National Company Law Appellate Tribunal, Investor Education and Protection Fund, National Financial Reporting Authority, Special Court etc.

After the commencement of the 2013 Act, the Government received representations from various stakeholders expressing practical difficulties by Government companies in complying with some of the requirements laid down in the commenced provisions. Some of the issues raised and suggestions made required amendments to the 2013 Act.

The Government has, on 26 May 2015, notified the Companies (Amendment) Act, 2015 (Amendment Act) thereby amending certain provisions of the 2013 Act.

2013 Act as amended by the Amendment Act empowers MCA – subject to the Parliamentary oversight - to issue one or more notification directing that the provisions of 2013 Act shall not apply or shall apply with specified exceptions, modifications and adaptations to class or classes of companies.

MCA has on 5 June 2015, issued draft notifications relaxing certain provisions of 2013 Act to private companies, Section 8 companies and Government companies. These draft notifications are laid in both the Houses of Parliament as required under 2013 Act.

Key highlights of the draft notification as far as it relates to relaxation to "Government companies" are summarized in this Alert.

Government company means any company in which not less than 52% of the paid-up share capital is held by:

- a. the Central Government (CG), or
- b. by any State Government (SG) or Governments, or
- c. partly by the CG and partly by one or more SGs,

and includes a company which is a subsidiary company of such a Government company

Highlights of proposed exemptions / privileges for Government companies under the 2013 Act

Sr. No.	Section reference of 2013 Act	Subject	Exemption / privileges for Government companies
1.	Section 4(1)(a)	Memorandum	Name of the Company shall end with "Limited" only, even if it is a private company.
2.	Section 56(1)	Transfer and Transmission of securities	Transfer of bonds issued by Government companies can be done without the instrument of transfer subject to conditions. Requirement of instrument of transfer shall not apply to securities held by nominees of the government.
3.	Section 89	Declaration in respect of beneficial interest in any share	Requirement of making declaration of holding beneficial interest and filing the same with Registrar of Companies (ROC) shall not apply.
4.	Section 96(2)	Annual General Meeting (AGM)	The AGM shall be held at the registered office of the company or such other place as may be approved by CG.
5.	2 nd proviso to section 123(1)	Declaration of dividend	In case of inadequacy or absence of profit, the conditions for declaration of dividend out of reserves prescribed in the rules shall not apply if the entire paid up

			share capital is held by CG, or SG or Governments or by the CG and one or more SG.
6.	Section 123(4)	Declaration of dividend	Requirement of depositing the amount of dividend, including interim dividend, in separate bank account with scheduled bank within 5 days from the date of declaration shall not be required if the entire paid up share capital is held by CG, or SG or Governments or by the CG and one or more SG.
7.	Section 129	Financial statement	Accounting Standard 17 – on Segment Reporting shall not apply in case of Government companies engaged in defence production.
8.	Section 134(3)(e)	Financial statement, Board's report	Requirement of including the company's policy on Directors' appointment and remuneration, stating criteria for determining qualifications, positive attributes, independence of a director, policy for remuneration of directors / key managerial personnel (KMP) / other employees in Director's report shall not apply.
9.	Section 134(3)(p)	Financial statement, Board's report	Statement in Director's report regarding annual evaluation of Directors which are evaluated by Ministry or Department of CG who is administratively in charge of the company, or, as the case may be, SG, as per its own evaluation methodology, shall not apply.

10.	Section 149(1)(b) and 1 st proviso to section 149(1)	Company to have Board of Directors	A Government company may appoint more than 15 Directors by way of board resolution without passing special resolution of shareholders.
11.	Section 149(6)(a)		The opinion of Ministry or Department of the CG which is administratively-in-charge of the Company, or, the SG shall be considered (and not that of the Board of Directors) to determine integrity and relevant expertise and experience for appointing Independent Director.
12.	Section 149(6)(c)		Disqualification from being appointed as Independent Director, if the individual has or had pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during 2 immediately preceding financial years or during the current financial year shall not apply.
13.	Section 152(6) and (7)	Appointment of Directors	The provisions relating to retirement of directors by rotation shall not apply if: (a) entire paid up share capital is held by CG, or by SG or Governments or by the CG and one or more SGs; (b) wholly owned subsidiary of the Company referred above
14.	Section 160	Right of persons other than retiring directors to stand for directorship	The provisions relating to submission of candidature of directorship along with deposit of ₹ 1,00,000 shall not apply if: (a) entire paid up share capital is held by the CGG, or by SG or Governments or by the CG and one or more SGs;

			(b) wholly owned subsidiary of the Company referred above
15.	Section 162	Appointment of directors to be voted individually	<p>The provisions relating to appointment of 2 or more directors by way of single resolution shall not be apply if:</p> <p>(a) entire paid up share capital is held by the CG, or by SG or Governments or by CG and one or more SGs;</p> <p>(b) wholly owned subsidiary of the Company referred above.</p>
16.	Section 163	Option to adopt principle of proportional representation for appointment of directors	<p>The provisions relating to appointment of minimum two third of total number of Directors on principle of proportional representation based on Articles of the Company shall not apply if:</p> <p>(a) entire paid up share capital is held by CG, or by SG or Governments or by CG and one or more SGs;</p> <p>(b) wholly owned subsidiary of the Company referred above.</p>
17.	Section 164(2)	Disqualifications for appointment of Director	<p>The provisions relating to disqualification for appointment of Director on account of failure of Company to file financial statement or Annual Return for 3 continuous financial years or to repay deposit or interest thereon or redeem debentures on due date or pay interest thereon or pay dividend for 1 year or more, shall not apply.</p>
18.	Section 170 and 171	Register of directors and KMP and their	<p>The provision of maintaining the register of directors and KMP and their shareholding shall not apply if the entire</p>

		shareholding and Members' right to inspect said Register	share capital is held by CG, or by SG or Governments or by CG or by one or more SGs. Consequently, members' right to inspect the registers shall also not apply.
19.	Section 177(4)(i)	Audit Committee	Audit Committee shall only recommend the remuneration of auditors and will not be required to recommend the appointment of auditor and terms thereof.
20.	Section 178(2), (3) and (4)	Nomination and Remuneration Committee and Stakeholders Relationship Committee	The Nomination and Remuneration Committee shall only be required to identify and recommend appointment and removal of senior management and other employees and frame policy for their remuneration.
21.	Section 185	Loan to directors, etc.	Prohibition on providing loan to directors and other person in whom director is interested shall not apply if the Company obtains approval of Ministry or Department of CG which is administratively-in-charge of the company or SG before making any loan or giving any guarantee or providing any security.
22.	Section 186	Loan and investment by company	The provisions relating to any giving loan, guarantee or providing any security in connection with the loan or acquire securities of any body corporate by company shall not apply to: a) Government company engaged in defense production; b) Unlisted Government company, if it

			obtains approval of Ministry or Department of CG which is administratively-in-charge of the company or SG before making any loan or giving any guarantee or providing any security or making any investment.
23.	1 st and 2 nd proviso to Section 188(1)	Related party transactions	<p>Related party transactions which requires approval by way of a resolution and non-voting by the concerned related shall not apply to:</p> <p>a) Entering into contracts or arrangements with other Government company</p> <p>b) Unlisted Government company is entering into contracts or arrangements other than those referred in (a) above, obtains approval of the Ministry or Department of CG which is administratively-in-charge of the company or SG before entering into such contract or arrangement.</p>
24.	Section 196(2), (4) and (5)	Appointment of managing director (MD), whole-time director (WTD) or manger	<p>Government Company permitted to appoint or re-appoint any person as MD, WTD or manager for a term exceeding 5 years.</p> <p>Shareholders', CG's approval and filing of return with ROC not required for appointment of MD, WTD or manager of a government company.</p>
25.	Section 197	Overall maximum Managerial remuneration and	Ceiling on payment of managerial remuneration, remuneration to non-executive directors, approval of CG etc.

		managerial remuneration in case of absence or inadequacy of profits	shall not apply.
26.	Section 203(1), (2), (3) and (4)	Appointment of KMP	Appointment of KMP by prescribed class of companies shall not apply for appointment of MD or Chief Executive Officer or manager and in their absence, a WTD.
27.	Section 439(2)	Offences to be non-cognizable	<p>ROC and shareholders no longer have any authority to file complaint against the Company or its officer in any court for cognizance of any offence under 2013 Act.</p> <p>Court can take such cognizance only on receiving complaint from person authorised by CG.</p>

Conclusion

The draft notification once implemented is likely to minimize compliances for Government companies.

The draft notification will be effective on publication of the notification in the Official Gazette after the statutory Parliamentary approval process.

Source: Draft Notification issued by MCA on 5 June 2015

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