



## **Regulatory Alert** Stay Ahead...

### **Relaxations for government companies under Company Law**

**Issue no: RA/10/2017**

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## Background

A government company under the Companies Act, 2013 (2013 Act), means any company in which not less than 51% 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.

Ministry of Corporate Affairs (MCA) had issued a notification on 5 June 2015 (2015 notification) relaxing certain provisions of the 2013 Act for government companies.

MCA has now issued a notification dated 13 June 2017 (Amendment notification) amending the 2015 notification.

Key highlights of the changes under the Amendment notification are summarized.

## Highlights of the amendments

Sr. No	Subject and section reference of 2013 Act	Earlier exemption for government companies	Revised exemption for government companies
1	Section 96(2)- Venue of holding Annual General Meeting (AGM)	AGM shall be held either at the registered office of the company or at such other place as may be approved by the CG.	AGM shall be held either at the registered office of the company or at such other place within the city, town or village in which registered office is situated or at such other place as may be approved by CG.
2	Section 152(6) and(7) - Retirement of directors by rotation	The provisions relating to compulsory retirement of directors by rotation shall not apply to government companies if: <ul style="list-style-type: none"><li>• entire paid up share capital is held by the CG, or by SG or Governments or by CG and one or more SGs;</li><li>• wholly-owned subsidiary of the company referred above.</li></ul>	The provisions relating to compulsory retirement of directors by rotation shall not apply to a government company if: <ul style="list-style-type: none"><li>• it is an <i>unlisted government company</i>;</li><li>or</li><li>• It is a subsidiary of an unlisted government company.</li></ul>
3	Section 230 to Section 232 - Mergers and amalgamations	There was no special provisions dealing with compromise arrangement and amalgamations for government companies.	In case of government companies, instead of the National Company Law Tribunal (NCLT), the CG is empowered to approve the compromise arrangement and amalgamations. This is in line with the provisions of the Companies Act, 1956.

All the exemptions and privileges granted to government company under the 2015 notification as well as the Amendment notification will be available only if such government company has not committed default in filing its financial statements and annual return with the Registrar of Companies (ROC).

## Conclusion

The Amendment notification increases exemptions and privileges available to a government company. These benefits are available only if the government company has not defaulted in filing its financial statements and annual return with the ROC.

Regulatory landscape of mergers and amalgamations for government companies will now be regulated by approval of CG instead of NCLT.

**Source:** Notification No. G.S.R 463 (E) issued by MCA on 5 June 2015 read with Notification No. G.S.R 582 (E) issued by MCA on 13 June 2017.

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