

Exemptions to Government Companies

SL No.	Sections/ Rules	Particulars (erstwhile provision)	Amendment
1.	Chapter VII, sub-section (2) of section 96	<u>Place of AGM</u> Such other place as the Central Government may approve in this behalf'	<u>Place of AGM</u> Such other place within the city, town or village in which the registered office of the company is situated or such other place as the Central Government may approve in this behalf.
2.	Chapter XI, sub – sections (6) and (7) of section 152	<u>Retirement and Vacancy of Director</u> Shall not apply to – a Government Company in which the 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; (b) a subsidiary of a Government company, referred to in (a)above, in which the entire paid up share capital is held by that Government company)	<u>Retirement and Vacancy of Director</u> Shall not apply to – (a) a Government company, which is not a listed company, in which not less than fifty-one per cent. of 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; (b) a subsidiary of a Government company, referred to in (a) above

Directors

Sl No.	Sections/ Rules	Particulars (erstwhile provision)	Amendment
1.	Rule 4 of the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017	<u>Exemption from appointment of IDs</u> Rule 4 shall be numbered as sub-rule (1) and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted namely	<u>Exemption from appointment of IDs</u> (2) The following classes of unlisted public company shall not be covered under sub-rule (1), namely:- (a) a joint venture; (b) a wholly owned subsidiary; and (c) a dormant company as defined under section 455 of the Act.
2.	Rule 4 of the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017	<u>Exemption from appointment of IDs</u> N. A.	<u>Exemption from appointment of IDs</u> A “joint venture” would mean a joint arrangement, entered into in writing, whereby the parties that have a joint control of the arrangement, have rights to the net assets of the arrangement. The usage of the term is similar to that under the Accounting Standards.
3.	Rule - 6		The Board of directors of every listed company and a company covered under rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall constitute an 'Audit Committee' and a 'Nomination and Remuneration Committee of the Board'

4.	Rule- 3, sub-rule 3, clause (e)	<p style="text-align: center;"><u>Participation through electronic mode</u></p> <p>"(e) The director, who desire, to participate may intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for one calendar year."</p>	<p style="text-align: center;"><u>Participation through electronic mode</u></p> <p>The following shall be substituted - “(e) Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year :</p> <p>Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.”.</p>
5.	Schedule IV, para III, sub-para (12)	<p style="text-align: center;"><u>Functions of Independent Director</u></p> <p>“acting within his authority” assist in protecting the legitimate interests of the company, shareholders and its employees;</p>	<p style="text-align: center;"><u>Functions of Independent Director</u></p> <p>“acting within their authority” assist in protecting the legitimate interests of the company, shareholders and its employees;</p>
6.	Schedule IV, para VI, sub-para (2)	<p style="text-align: center;"><u>Vacancy of Independent Director</u></p> <p>An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within “a period of not more than one hundred and eighty days” from the date of such resignation or removal, as the case may be.</p>	<p style="text-align: center;"><u>Vacancy of Independent Director</u></p> <p>An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within “three months” from the date of such resignation or removal, as the case may be.</p>
7.	Schedule IV, para VII, sub-para (1)	<p style="text-align: center;"><u>Meeting of Independent Director</u></p> <p>The independent directors of the company shall hold at least one meeting “in a year” without the attendance of non-independent directors and members of management;</p>	<p style="text-align: center;"><u>Meeting of Independent Director</u></p> <p>The independent directors of the company shall hold at least one meeting “in a financial year” without the attendance of non-independent directors and members of management;</p>
8.	Rule- 3, sub-rule (11), in clause (a)	<p style="text-align: center;"><u>Preparation of Draft Minutes</u></p>	<p style="text-align: center;"><u>Preparation of Draft Minutes</u></p> <p>after the words "decision taken by majority" , the words "and the draft minutes so recorded shall be preserved by the company till the confirmation of the draft minutes in accordance with sub-rule (12)" shall be inserted</p>

Exemptions to Private Companies

The relaxations provided by the MCA to the private companies are summarized as below:

1. For the private companies (Start Ups) –

Section	Modification / relaxation
2 (40)	Private company, which is start up, are relaxed to include Cash Flow Statement in the Financial Statement. <i>(At present, OPC, small company and dormant company are availing this relaxation)</i>
73 (2) Clauses (a) to (e)	Relaxation from the compliances of these clauses for a period of 5 years from the date of incorporation. <i>(Simultaneously MCA has also relaxed these norms for other private companies too)</i>
92 (1)	<u>Signing of Annual Return</u> In case of private company, which is a start up, Annual Return may be signed by the company secretary or where there is no company secretary, by the Director of the company <i>(At present, OPC and small company are availing this relaxation)</i>
173 (5)	Private company, which is a start up, shall be deemed to have complied with the provisions of this section if at least one meeting of Board of Directors has been conducted in each half of the financial year and the gap between the two meetings is not less than ninety days. Further in case of OPC, if there is only one Director then this would not be applicable [proviso to Section 173(5)] <i>(At present, OPC, small company and dormant company are availing this relaxation)</i>

Start up for this purpose refers to the private companies incorporated under the Companies Act, 2013 or the Companies Act, 1956 and recognized as start-up in accordance with the notification issued by the DIPP, Ministry of Commerce and Industry

2. For other private companies –

Section	Modification/ Relaxation
73(2) Clauses (a)-(e)	Compliances form these clauses are relaxed for the private companies - a) Which accepts deposits from its Members not exceeding 100% of aggregate of the paid-up share capital, free reserve and securities premium account; OR b) On compliance of <u>all 3 conditions</u> : i. Private company is not an associate or subsidiary of any other company; ii. Borrowing of such company from Banks or FIs or any body Corporate is less than twice of its paid-up share capital or ₹ 50 Crore whichever is lower; and iii. The company has not defaulted in the repayment of borrowings existing at the time of accepting deposit. <i>(Earlier MCA provided exemption in respect of point (a) only, now the relaxation has been extended to start-ups and point(b) also)</i>
92(1)(g)	Instead of disclosing the remuneration of Directors and KMP in the Annual Return, the Small Companies shall disclose the aggregate amount of remuneration drawn by the Directors. <i>(Limited to Small Companies only)</i>

143(3)(i)	Following companies have been granted exemption to have in their Auditor's Report, reporting on adequacy of internal financial controls system and operating effectiveness of such controls: <ol style="list-style-type: none"> 1. OPC 2. Small Companies 3. the Private Company which has a turnover of less than 50 Crore as per the latest Audited Financial Statements AND which has an aggregate borrowing from Banks or FIs or any Body Corporate at any point of time during the financial year less than ₹ 25 Crore.
174(3)	Interested Director would now be counted for the purpose of Quorum in such meeting after disclosure of interest u/s 184. <i>MCA vide its notification dated 5th June, 2015 has provided relaxation in terms of Section 184 of the Act leaving the ambiguity for the purpose of counting such Directors in the Quorum. However, now they have clarified in terms of Quorum too.</i>

Financial Statement

Sl No.	Sections/ Rules	Particulars (erstwhile provision)	Amendment
1	Schedule III, Div – 1, part I after clause 'W'	N. A.	Post demonetization, the Government has come up with a notification that every company shall disclose the details of Specified Bank Notes (SBN) held and transacted during the period from 8th November, 2016 to 30th December, 2016 as provided in the Table therein.
2.	Rule 11 of the Companies(Audit and Auditors) Rules, 2014	N. A.	After clause (c) the following clause shall be inserted- (d) whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016 and if so, whether these are in accordance with the books of accounts maintained by the company"

Audit and Auditors

3.	The Companies(Audit and Auditors) Second Amendment Rules, 2014, Rule 5 (b)	<u>Terms for Appointment of auditor</u> all private limited companies having paid up share capital of rupees "twenty" crore or more;	<u>Terms for Appointment of auditor</u> all private limited companies having paid up share capital of rupees "fifty" crore or more;
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Merger

Sl No.	Sections/ Rules	Particulars (erstwhile provision)	Amendment
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1		<u>Notification of Section 234</u>	<u>Notification of Section 234</u> The government hereby appoints the 13 th day of April, 2017 as the date on which the provisions of section 234 of the said Act shall come into force.
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NCLT Rules, 2016

Sl No.	Sections/ Rules	Particulars (erstwhile provision)	Amendment
1.	NCLT Rule 63	63. Presentation and scrutiny of petitions or applications.- In case of the scrutiny of the petitions or applications as provided in Part III and elsewhere in these rules, if any person is aggrieved of the decision of the Registrar or such other officer officiating as the Registrar of the Benches, an appeal against the order of the Registrar shall be made within fifteen days of the making of such order to the President of the Principal Bench and at other places to any Member of the Bench designated by the President, and whose decision thereon shall be final.	Following shall be substituted namely – “Appearance of authorised representative – (1) Subject to provisions of section 432 of the Act, a part to any proceedings or appeal before the Appellate Tribunal may either appear in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Appellate Tribunal.” (2) The Central Government, the Regional Director or the Registrar of Companies or Official Liquidator may authorize an officer or an Advocate to represent in the proceedings before the Appellate Tribunal. (3) The officer authorised by the Central Government or or the Regional Director or the Registrar of Companies or Official Liquidator shall be an officer not below the rank of Junior Time Scale or company prosecutor.”

Key highlights in changes in registered office –

Amended Rule 28 of the Rules states that to shift the registered office of a company within the same state from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, an application is to be filed with the Regional Director in Form INC 23.

Form INC 23 is to be submitted along with the requisite fee and the following documents:

- Board Resolution for shifting of registered office
- Special Resolution of the members of the company approving the shifting of registered office
- A declaration given by the Key Managerial Personnel or any two directors authorized by the Board, that the company has not defaulted in payment of dues to its workmen and has either the consent of its creditors for the proposed shifting or has made necessary provision for the payment thereof
- A declaration not to seek change in the jurisdiction of the Court where cases for prosecution are pending.

Shifting of Registered Office from one state or Union Territory to another state

As per Rule 30 of the Amendment Rules, to shift the registered office of a company from one state or Union Territory to another state, the company has to submit an application seeking approval for alteration of memorandum with respect to such change to the Central Government. Such application is to be filed in Form INC 23 along with the requisite fee and the following documents:

- a copy of Memorandum of Association along with proposed alterations

- a copy of the minutes of the General Meeting at which the resolution authorizing such alteration was passed, giving details of the number of votes cast in favour or against the resolution
- a copy of Board Resolution or Power of Attorney or the executed vakalatnama, as the case may be

The Company shall also be required to advertise in Form INC-26 in Vernacular Newspaper, English Newspaper with the widest circulation in the state in which the Registered Office of the Company is situated, within 30 days of filing of Form INC 23. As per the Principal Rules, such advertisement had to be made within 14 days of filing of application.

SEBI - LODR

Reg 37 - Nothing contained in this regulation shall apply to draft schemes which solely provide for merger of a wholly owned subsidiary with its holding company:

Provided that such draft schemes shall be filed with the stock exchanges for the purpose of disclosures

Schedule XI - 1. The listed entity shall, along with the draft scheme of arrangement, remit fee at the rate of 0.1% of the paid-up share capital of the listed/transferee/resulting company, whichever is higher, post sanction of the scheme, subject to a cap of Rs. 5,00,000/-.

2. The fee specified in clause 1 shall be paid by way of direct credit to the bank account of the Board through NEFT/RTGS/IMPS or any other mode allowed by RBI or by means of a demand draft in favour of “Securities and Exchange Board of India” payable at Mumbai

Reg 26 - Obligations with respect to employees including senior management, key managerial persons, directors and promoters

(6) No employee including key managerial personnel or director or promoter of a listed entity shall enter into any agreement for himself or on behalf of any other person, with any shareholder or any other third party with regard to compensation or profit sharing in connection with dealings in the securities of such listed entity, unless prior approval for the same has been obtained from the Board of Directors as well as public shareholders by way of an ordinary resolution:

Provided that such agreement, if any, whether subsisting or expired, entered during the preceding three years from the date of coming into force of this sub-regulation, shall be disclosed to the stock exchanges for public dissemination:

Provided further that subsisting agreement, if any, as on the date of coming into force of this sub-regulation shall be placed for approval before the Board of Directors in the forthcoming Board meeting:

Provided further that if the Board of Directors approve such agreement, the same shall be placed before the public shareholders for approval by way of an ordinary resolution in the forthcoming general meeting:

Provided further that all interested persons involved in the transaction covered under the agreement shall abstain from voting in the general meeting.

Explanation - For the purposes of this sub-regulation, ‘interested person’ shall mean any person holding voting rights in the listed entity and who is in any manner, whether directly or indirectly, interested in an agreement or proposed agreement, entered into or to be entered into by such a person or by any employee or key managerial personnel or director or promoter of such listed entity with any shareholder or any other third party with respect to compensation or profit sharing in connection with the securities of such listed entity.

SEBI (SAST)

Exemption from making open offer

- Acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016

- Acquisition of shares by the lenders pursuant to conversion of their debt as part of a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India:

Provided that the conditions specified under sub-regulation (5) of regulation 70 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 are complied with.

SEBI - ICDR

Definition of QIB - QIB means **systemically important non - banking financial companies** - means a non -banking financial company registered with the Reserve Bank of India and having a net - worth of more than five hundred crore rupees as per the last audited financial statements.

Chapter VII not to apply in certain cases – PREFERENTIAL ISSUE - EXEMPTION

70. (1) The provisions of this Chapter shall not apply where the preferential issue of equity shares is made in terms of the rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985, **the resolution plan approved by the Tribunal** under the Insolvency and Bankruptcy Code, 2016, whichever applicable

(5) The provisions of this Chapter shall not apply where the **preferential issue of specified securities is made to the lenders pursuant to conversion of their debt**, as part of a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India,

(6) The provisions of this Chapter shall not apply where the **preferential issue, if any, of specified securities is made to person(s) at the time of lenders selling their holding of specified securities or enforcing change in ownership in favour of such person(s) pursuant to a debt restructuring scheme implemented in accordance with the guidelines specified by the Reserve Bank of India**

Reg – 111 A - Liability for contravention of the Act, rules or the regulations.

- The listed entity or any other person thereof who contravenes any of the provisions of these regulations, **shall, in addition to the liability for action in terms of the securities laws, be liable for the following actions by the respective stock exchange(s)**, in the manner specified in the circulars or guidelines issued by the Board:
 - (a) imposition of fines; (b) suspension of trading; (c) freezing of promoter/promoter group holding of designated securities, as may be applicable, in coordination with depositories;
 - (d) any other action as may be specified by the Board from time to time.
- The manner of revocation of actions specified in clauses (b) and (c) of sub-regulation (1), shall be as specified in the circulars or guidelines issued by the Board. Failure to pay fine. 111B. If the listed entity fails to pay any fine imposed upon it by the recognised stock exchange(s), within the period as specified from time to time, the stock exchange may initiate such other action in accordance with law, after giving a notice in writing.

IBC

Procedure for Voluntary liquidation by a Corporate Person-

- Majority of designated partners or the persons exercising power in the corporate person give **a statement of declaration in form of affidavit** accompanied by **audited financial statements** and other such documents to the effect that-
 - The corporate person in question is under no debt or he will be able to pay all its debts in full from the proceeds of its assets and the initiation of liquidation process is not to defraud others. If the liquidator is of the opinion that the voluntary liquidation is being done to defraud others or the corporate person will not be able to pay its debt in full from the proceeds of the assets, then he shall make an application to the Adjudicating Authority to suspend the process.
- Within **4 weeks of declaration** of such statement, the corporate person may pass
 - A resolution by special majority is to be passed validating the corporate person to be liquidated voluntarily and appointment of **insolvency professional** to act as liquidator; or
 - A special majority resolution may also be passed mandating the liquidation of corporate person on the happening of any event or on expiry of certain duration and appointment of **insolvency professional** to act as liquidator.
- Further, creditors representing 2/3rd of the debts of the corporate person must approve such resolution within **7 days** of its passing.
- The process shall be deemed to commence from the date of passing of resolution. Upon the commencement of the voluntary liquidation process the corporate person shall cease to conduct any business but it will still bear all corporate powers until its dissolution is complete.
- The liquidator shall make a **public announcement** according to Performa specified in **Form A Schedule I** to call upon the claims from the stakeholders within **5 days** of his appointment. The last date for making such claim shall be within **30 days** from the commencement date.
- Such public announcement shall be published in the Official Gazette, in English and in a regional newspaper having wide circulation, on the website of the corporate person, if any and on any such other website provided by IBBI for this purpose.

Fast Track Insolvency Resolution Process

The Insolvency and Bankruptcy Board of India (IBBI) has notified the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017. The fast track process shall apply to the following categories of corporate debtors:

a small company, as defined under clause (85) of section 2 of the Companies Act, 2013;

OR a Startup (other than the partnership firm), as defined in the notification dated 23rd May, 2017 of the Ministry of Commerce and Industry; OR an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding Rs.1 crore.

- The process in these cases shall be completed within a period of 90 days, as against 180 days in other cases. However, the Adjudicating Authority may, if satisfied, extend the period of 90 days by a further period up to 45 days for completion of the process. A creditor or a corporate debtor may file an application, along with the proof of existence of default, to the Adjudicating Authority for initiating fast track resolution process.
- After the application is admitted and the interim resolution professional (IRP) is appointed, if the IRP is of the opinion, based on the records of corporate debtor, that the fast track process is not applicable to the corporate debtor, that the fast track process is not applicable to the corporate debtor, he shall file an application before expiry of 21 days from the date of his appointment to Adjudicating Authority to pass an order to convert the fast track process into a normal corporate insolvency resolution process.