

# Analysis of 34 Exemptions provided to Government Companies

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Exemptions for Government Companies under **Companies Act, 2013**– Analysis of Exemptions provided to a Government Company

## Under the Companies Act, 2013

As on – February 17, 2018

S.No	Section	Provision	Effect on Government Companies
The below mentioned exemptions can only be availed by a Government Company which has not defaulted in filing its Financial Statements or Annual Return with the Registrar			
1	Chapter II, section 4	Mandatorily using 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	Not required to use “Limited” or “Private Limited” with its name
2	Chapter IV, section 56	Transfer and transmission of shares	Not required to submit Form SH-4 in case of transfer of shares, if the person is acting as a nominee of the Government
3	Chapter VII, section 89	Declaration in respect of Beneficial interest in any share	Nominees are not required to file any form
4	Chapter VII, section 90	Investigation of Beneficial ownership in certain cases	Not applicable to a Government Company
5	Chapter VII, sub-section (2) of section 96	Venue of the Annual General Meeting of the Company shall be the registered office of the Company or some other place within the city, town or village in which the registered office of the Company is situated	The AGM shall be held at the Registered office or such other place as may be approved by Central Government
6	Chapter VIII, second proviso to sub-section (1) of section 123	Rules for declaration of dividend in case of inadequacy or absence of profits	Shall not apply to Wholly-owned (entire share capital is held by Government) Government company
7	Chapter VIII, sub-section (4) of section 123	Depositing dividend in a Scheduled Bank in a separate account within 5 days of declaration	Shall not apply to Wholly-owned (entire share capital is held by Government) Government company

8	Chapter IX, section 129	Financial Statements	Shall not apply to the extent of application of Accounting Standard 17 (Segment Reporting) to the companies engaged in defence production.
9	Chapter IX, section 129	Financial Statements-Accounting Standard 22 or Indian Accounting Standard 12 relating to deferred tax asset or deferred tax liability	Non-applicability of provisions of Accounting Standard 22 or Indian Accounting Standard 12 relating to deferred tax asset or deferred tax liability for 7 years w.e.f 01/04/2017 to specified Government Companies.
10	Chapter IX, clause (e) of sub-section (3) of section 134	Disclosure in Board's report about Company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director, etc;	Not required to disclose
11	Chapter IX, clause (p) of sub-section (3) of section 134	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	Directors are evaluated by the Ministry or Department of the Central Government which is administratively in charge of the company, or, the State Government, as per its own evaluation methodology
12	Chapter XI, section 149(1) (b) and first proviso to sub-section (1) of section 149	Maximum 15 Directors Appointment of more than 15 Directors after passing Special Resoluion	Can appoint more than 15 Directors
13	Chapter XI, clause (a) of sub-section (6) of section 149	An independent director in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience	The word "Board" is replaced with "Ministry".
14	Chapter XI, clause (c) of sub-section (6) of section 149	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	No such restriction
15	Chapter XI, sub-section (5) of section 152	Filing of consent to act as Director with Registrar	Availment of this exemption is not feasible as filing of form facilitates the DIN to be associated with MCA which is required for Annual Filings
16	Chapter XI, sub-sections (6) and (7) of section 152	Retirement of Directors by rotation at Annual General Meeting	Directors are not required to retire by rotation if 51% or more share capital is held by the Government. This exemption is also available to subsidiary of the above mentioned company

17	Chapter XI, section 160	Right of persons other than retiring directors to stand for Directorship	Shall not apply to Wholly-owned (entire share capital is held by Government) Government company and also its wholly owned subsidiary
18	Chapter XI, section 162	Appointment of Directors to be voted individually	Shall not apply to Wholly-owned (entire share capital is held by Government) Government company and also its wholly owned subsidiary
19	Chapter XI, section 163	Option to adopt principle of Proportional Representation for Appointment of Directors	Shall not apply to Wholly-owned (entire share capital is held by Government) Government company and also its wholly owned subsidiary
20	Chapter XI, sub-section (2) of section 164.	Disqualification for not filing Financial Statements or Annual Returns or repayment of deposits, payment of interest, redemption of debentures and interest thereon, or payment of Dividend	No disqualification will be attracted to a Director of a Government Company
21	Chapter XI, section 170	Register of Director and Key Managerial Personnel and their shareholding	Not required to be maintained by a Wholly-owned Government Company
22	Chapter XI, section 171	Members' Right to inspect	No such right is available to members in case of Wholly-owned Government Company
23	Chapter XII, clause (i) of subsection (4) of section 177	Every Audit Committee is required to recommend for appointment, remuneration and terms of appointment of auditors of the company	Every Audit Committee is required to recommend for remuneration only
24	Chapter XII, sub-sections (2), (3) and (4) of section 178	Duties of Nomination and Remuneration committee with respect to identification of directors and senior management, formulation of policy for appointment and remuneration of Directors and employees	Not required to be done by the Nomination and Remuneration committee only to the extent of Directors, but this will apply for Senior Management and Employees
25	Chapter XII, section 182	Prohibitions and restrictions regarding political contributions	A Government Company cannot make political contributions
26	Chapter XII, section 185	Loan to Directors, etc;	Govt Co. has to obtain approval of the Ministry or Department of the Central Government which is the administrative incharge of the Company
27	Chapter XII, section 186	Loans and Investment by a Company- Special Resolution of shareholders has to be passed where giving of any loan or guarantee or providing any security or acquisition exceeds 60% of its paid-up capital ,free reserves and securities premium OR 100%of free reserves and securities premium account which ever is more.	Govt Co. has to obtain approval of the Ministry or Department of the Central Government which is the administrative incharge of the Company

<b>28</b>	Chapter XII, first and second proviso to sub-section (1) of section 188	Related Party transactions-approval of shareholders in case the contract/arrangement/transaction to be entered with the related parties, exceed the limits specified.	A Govt Co. can by passing a Board Resolution enter into contracts or arrangements with other Govt. companies For contracts or arrangements with other companies, approval of the Ministry or Department of the Central Government which is the administrative incharge of the Company has to be obtained.
<b>29</b>	Chapter XIII, sub-sections (2), (4) and (5) of section 196	Term for appointment of Managing Director, Whole-time director or manager Remuneration of the above Appointment of the above in a general meeting	Not applicable to a Government Company
<b>30</b>	Chapter XIII, section 197	Overall Maximum Managerial Remuneration and Managerial Remuneration in case of absence or inadequacy of profits	Not applicable to a Government Company
<b>31</b>	Chapter XIII, sub-sections (1), (2), (3) and (4) of section 203	Appointment of Key Managerial Personnel- MD and Chairman not to be same person. KMP to be appointed by a resolution of the Board KMP not to hold office in more than one company Vacancy to be filled within six months	Not applicable to a Government Company
<b>32</b>	Chapter XV, section 230 to 232	Power to Compromise or make arrangements with creditors and members Power of Tribunal to enforce Compromise or arrangements Merger and Amalgamation of Companies	The word Tribunal, wherever it is appearing the the sections, will be replaced with Central Government
<b>33</b>	Chapter XXIX, sub-section (2) of section 439	Non-cognizable offence- complaint in writing can be taken from Registrar, a shareholder of the company, or a person authorised by the Central Government in that behalf.	Complaint in writing can be taken a person authorised by the Central Government in that behalf.
<b>34</b>	Rule 18 of The Companies (Share Capital and Debenture) Rules, 2014	Creation of charge on the properties and assets of the Company when secured debentures are issued	Not required to create any charge if the issue of debentures by a Government company is fully secured by the guarantee given by the Central Government or one or more State Government or by both