

ICSI-CCGRT

Comparative Statement regarding Exemptions to Govt Companies by MCA

vide notification dated 05/06/2015 under Companies Act 2013 and provisions in SEBI LODR 2015

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MOIL Limited, Nagpur

Sr. No.	Chapter Number /Section number/ Sub-section(s) in the Companies Act, 2013 and <u>relevant provisions</u>	Companies Act, 2013 (Exemptions given by MCA)	SEBI LODR 2015	Suggestions/Remarks
1.	<p>Chapter II, section 4. <u>Name Of All Government Companies To End With The Word “Limited” Only:</u></p> <p>4. (I) The memorandum of a company shall state - (a) name of the company with the last word “Limited” in the case of a public limited company, or the last words “Private Limited” in case of a private limited company:</p>	<p>In section 4, in sub-section (1), in clause (a), 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.</p>	<p>No such provisions / requirement.</p> <p>Hence, no impact.</p>	NIL
2.	<p>Chapter IV, section 56. <u>Procedural Formalities For Transfer Of Government Bonds And Securities Held By Nominees:</u></p> <p>56. (I) A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities:</p>	<p>In sub-section (1), after the proviso, the following provisos shall be inserted, namely:</p> <p>Provided further that the provisions of this sub-section, in so far as 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</p>	<p>No such provisions / requirement.</p> <p>Hence, no impact.</p>	NIL

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	<p>Provided that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.</p>	<p>allotment of the bond: 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.</p>		
3.	<p><u>Chapter VII, section 89.</u> <u>Declaration In Respect Of Beneficial Interest:</u></p> <p>89. (1) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.</p> <p>(2) Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.</p> <p>(3) Where any change occurs in the beneficial interest in such shares, the person referred to in sub-section (1) and the beneficial owner specified in sub-section (2) shall, within a period of thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.</p> <p>(4) The Central Government may make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section.</p> <p>(5) If any person fails, to make a declaration as required</p>	Shall not apply.	<p>No such provisions / requirement.</p> <p>Hence, no impact.</p>	NIL

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	<p>under sub-section (1) or sub-section (2) or sub-section (3), without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.</p> <p>(6) Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fees or additional fees as may be prescribed, within the time specified under section 403.</p> <p>(7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified under the first proviso to sub-section (1) of section 403, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.</p> <p>(8) No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him.</p> <p>(9) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend to its members under this Act and the said obligation shall, on such payment, stand discharged.</p>			
4.	Chapter VII, section 90. <u>Declaration In Respect Of Beneficial Interest:</u>	Shall not apply.	No such provisions / requirement.	NIL

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	<p>90. Where it appears to the Central Government that there are reasons so to do, it may appoint one or more competent persons to investigate and report as to beneficial ownership with regard to any share or class of shares and the provisions of section 216 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section.</p>		Hence, no impact.	
5.	<p>Chapter VII, sub-section (2) of section 96. <u>Place For Holding AGM:</u></p> <p>96. (1) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:</p> <p>Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year:</p> <p>Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:</p> <p>Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.</p> <p>(2) Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any</p>	<p>In 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.</p>	<p>No such provisions / requirement.</p> <p>Hence, no impact.</p>	NIL

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	<p>day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate:</p> <p>Provided that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.</p>			
6.	<p>Chapter VIII, second proviso to sub-section (1) of section 123. <u>Declaration Of Dividend:</u></p> <p>123. (1) No dividend shall be declared or paid by a company for any financial year except -</p> <p>(a) <u>out of the profits</u> of the company <u>for that year</u> arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or <u>out of the profits</u> of the company <u>for any previous financial year</u> or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both; or</p> <p>(b) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government:</p> <p>Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company:</p> <p>Provided further that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend <u>out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of</u></p>	<p>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.</p>	<p>No such provisions / requirement.</p> <p>It is also not for listed companies on which SEBI LODR is applicable.</p> <p>Hence, no impact.</p>	NIL

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	<p><u>dividend shall not be made except in accordance with such rules as may be prescribed in this behalf:</u></p> <p>Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves.</p>			
7.	<p><u>Chapter VIII, sub-section (4) of section 123. Declaration Of Dividend Out Of Reserves:</u></p> <p>123 (4) The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.</p>	<p>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 or by one or more Government Company.</p>	<p>No such provisions / requirement.</p> <p>It is also not for listed companies on which SEBI LODR is applicable.</p> <p>Hence, no impact.</p>	NIL
8.	<p><u>Chapter IX, section 129. Segment Reporting Not To Apply For Companies Engaged In Defence Production:</u></p> <p>129. (1) the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III: Provided that the items contained in such financial statements shall be in accordance with the accounting standards:</p> <p>Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company.</p>	<p>Shall not apply to the extent of application of Accounting Standard 17 (Segment Reporting) to the companies engaged in defence production.</p>	<p>No such provisions / requirement.</p> <p>Hence, no impact.</p>	NIL
9.	<p><u>Chapter IX, clause (e) of sub-section (3) of section 134. Disclosures In Board's Report:</u></p>	<p>Shall not apply.</p>	<p>No such provisions / requirement about <u>reporting</u> in Board's</p>	NIL

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	<p>134. (3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include -</p> <p>(e) in case of a company covered under sub- section (1) of section 178, company's <u>policy on directors' appointment</u> and <u>remuneration</u> including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;</p>		<p>Report.</p> <p>Hence, no impact.</p>	
10.	<p>Chapter IX, clause (p) of sub-section (3) of section 134. <u>Disclosures In Board's Report:</u></p> <p>134. (3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include -</p> <p>(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 <u>manner in which formal annual evaluation</u> has been made by the Board of its <u>own performance</u> and that of its <u>committees</u> and <u>individual directors</u>;</p>	<p>Shall not apply in case the directors are evaluated by 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, as per its own evaluation methodology.</p>	<p>No such provisions / requirement about <u>reporting</u> in Board's Report.</p> <p>Hence, no impact.</p>	NIL
11.	<p>Chapter XI, section 149(1)(b) and first Proviso to sub- section (1) of section 149. <u>Maximum Number Of Directors</u></p> <p>149. (1) Every company shall have a Board of Directors consisting of individuals as directors and shall have—</p> <p>(a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person</p>	<p>Shall not apply.</p>	<p>No such provisions / requirement.</p> <p>Hence, no impact.</p>	NIL

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	<p>Company; and (b) a maximum of fifteen directors:</p> <p>Provided that a company may appoint more than fifteen directors after passing a special resolution:</p>			
12.	<p>Chapter XI, clause (a) of sub-section (6) of section 149.</p> <p><u>Qualification For Appointment Of Independent Director:</u></p> <p>149 (6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,— (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;</p>	<p>In section 149, in sub-section (6), in clause (a), for the word “Board”, the words “Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government” shall be substituted.</p>	<p>Regulation 16 (1)(b)(i) :</p> <p>Continues the same provision like Section 149(6)(a): <i>"independent director" means (i) who, in the opinion of the board of directors, is a person of integrity and possesses relevant expertise and experience.</i></p>	<p>SEBI should also notify that in Regulation 16 (1)(b)(i), for the word “Board”, the words “Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government” shall be substituted, for Government Company.</p>
13.	<p>Chapter XI, clause (c) of sub-section (6) of section 149.</p> <p><u>Qualification For Appointment Of Independent Director</u></p> <p>149 (6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,— (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;</p>	<p>Shall not apply.</p>	<p>Regulation 16 (1)(b)(iv):</p> <p>Continues the same provision like Section 149(6)(c) <i>"independent director" means (iv) who, apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, during the two</i></p>	<p>SEBI should also notify that Regulation 16 (1)(b)(iv) shall not apply to Government Companies.</p>

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			<i>immediately preceding financial years or during the current financial year.</i>	
14.	<p>Chapter XI, sub-section (5) of section 152. <u>Consent To Act As Director And Filing Of Same With RoC</u></p> <p>152. (5) A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment in such manner as may be prescribed:</p> <p>Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.</p>	Shall not apply where appointment of such director is done by the Central Government or State Government, as the case may be.	No such provisions / requirement. Hence, no impact.	Consent of individual should be required even if where appointment of such director is done by the Government. However, the consent may be obtained at the time of application/proposal itself and copy of the same can be provided to the concerned companies.
15.	<p>Chapter XI, sub-sections (6) and (7) of section 152. <u>Re-Appointment Of Retiring Directors In AGM:</u></p> <p>152. (6) (a) Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall—</p> <p>(i) be persons whose period of office is liable to determination by retirement of directors by rotation; and</p> <p>(ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.</p> <p>(b) The remaining directors in the case of any such company shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.</p>	Shall not apply to -- (a) 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.	No such provisions / requirement. It is also not for listed companies on which SEBI LODR is applicable. Hence, no impact.	This exemption should be given to all CPSEs as the appointment of directors in all CPSEs (Listed / Unlisted) is made by the Government.

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	<p>(c) At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with clauses (a) and (b) and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.</p> <p>(d) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.</p> <p>(e) At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.</p> <p><i>Explanation.</i>—For the purposes of this sub-section, “total number of directors” shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.</p> <p>(7) (a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.</p> <p>(b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless—</p> <p>(i) at that meeting or at the previous meeting a resolution</p>			

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	<p>for the re-appointment of such director has been put to the meeting and lost;</p> <p>(ii) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;</p> <p>(iii) he is not qualified or is disqualified for appointment;</p> <p>(iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or</p> <p>(v) section 162 is applicable to the case.</p>			
16.	<p>Chapter XI, section 160. <u>Rights Of Person Other Than Retiring Director To Stand For Directorship:</u></p> <p>160. (1) A person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of <u>one lakh rupees</u> or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty-five per cent of total valid votes cast either on show of hands or on poll on such resolution.</p> <p>(2) The company shall inform its members of the candidature of a person for the office of director under sub-section (1) in such manner as may be prescribed.</p>	<p>Shall not apply to—</p> <p>(a) 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;</p> <p>(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.</p>	<p>No such provisions / requirement.</p> <p>It is also not for listed companies on which SEBI LODR is applicable.</p> <p>Hence, no impact.</p>	<p>This exemption (particular deposit of one lakh) should be given to all CPSEs as the appointment of directors in all CPSEs (Listed / Unlisted) is made by the Government.</p>

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17.	<p>Chapter XI, section 162. <u>Appointment Of Director To Be Voted Individually:</u></p> <p>162. (1) At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.</p> <p>(2) A resolution moved in contravention of sub-section (1) shall be void, whether or not any objection was taken when it was moved.</p> <p>(3) A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.</p>	<p>Shall not apply to —</p> <p>(a) 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;</p> <p>(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.</p>	<p>No such provisions / requirement.</p> <p>It is also not for listed companies on which SEBI LODR is applicable.</p> <p>Hence, no impact.</p>	<p>This exemption should be given to all CPSEs as the appointment of directors in all CPSEs (Listed / Unlisted) is made by the Government.</p>
18.	<p>Chapter XI, section 163. <u>Principle of Proportional Representation For Appointment Of Directors:</u></p> <p>163. Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.</p>	<p>Shall not apply to—</p> <p>(a) 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;</p> <p>(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.</p>	<p>No such provisions / requirement.</p> <p>It is also not for listed companies on which SEBI LODR is applicable.</p> <p>Hence, no impact.</p>	<p>This exemption should be given to all CPSEs as the appointment of directors in all CPSEs (Listed / Unlisted) is made by the Government.</p>
19.	<p>Chapter XI, sub-section (2) of section 164. <u>Disqualification For Appointment Of A Director:</u></p> <p>164 (2) No person who is or has been a director of a</p>	<p>Shall not apply.</p>	<p>No such provisions / requirement.</p> <p>Hence, no impact.</p>	NIL

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	<p>company which -</p> <p>(a) has not filed financial statements or annual returns for any continuous period of three financial years; or</p> <p>(b) 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,</p> <p>shall 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.</p>			
20.	<p><u>Chapter XI, section 170.</u> <u>Register Of Directors, KMP And Their Shareholding:</u></p> <p>170. (1) Every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as may be prescribed, which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.</p> <p>(2) A return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel shall be filed with the Registrar within thirty days from the appointment of every director and key managerial personnel, as the case may be, and within thirty days of any change taking place.</p>	<p>Shall not apply to a Government Company in which the entire share capital is held by the Central Government, or by any State Government or Governments or by the Central Government or by one or more State Governments.</p>	<p>No such provisions / requirement.</p> <p>It is also not for listed companies on which SEBI LODR is applicable.</p> <p>Hence, no impact.</p>	NIL
21.	<p><u>Chapter XI, section 171.</u> <u>Register of Directors, KMP and their shareholding:</u></p> <p>171. (1) The register kept under sub-section (1) of section 170,—</p> <p>(a) shall be open for inspection during business hours and</p>	<p>Shall not apply to a Government Company in which the entire share capital is held by the Central Government, or by any State Government or Governments or by the Central Government or by</p>	<p>No such provisions / requirement.</p> <p>It is also not for listed companies on which SEBI LODR is applicable.</p>	NIL

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	<p>the members shall have a right to take extracts therefrom and copies thereof, on a request by the members, be provided to them free of cost within thirty days; and</p> <p>(b) shall also be kept open for inspection at every annual general meeting of the company and shall be made accessible to any person attending the meeting.</p> <p>(2) If any inspection as provided in clause (a) of sub-section (1) is refused, or if any copy required under that clause is not sent within thirty days from the date of receipt of such request, the Registrar shall on an application made to him order immediate inspection and supply of copies required thereunder.</p>	one or more State Governments.	Hence, no impact.	
22.	<p>Chapter XII, clause (i) of sub-section (4) of section 177.</p> <p><u>Role of Audit Committee In Recommending Appointment of Auditors:</u></p> <p>171. (1) The register kept under sub-section (1) of section 170,—</p> <p>(a) shall be open for inspection during business hours and the members shall have a right to take extracts therefrom and copies thereof, on a request by the members, be provided to them free of cost within thirty days; and</p> <p>(b) shall also be kept open for inspection at every annual general meeting of the company and shall be made accessible to any person attending the meeting.</p> <p>(2) If any inspection as provided in clause (a) of sub-section (1) is refused, or if any copy required under that clause is not sent within thirty days from the date of receipt of such request, the Registrar shall on an application made to him order immediate inspection and supply of copies required thereunder.</p>	In clause (i) of sub-section (4) of the section 177, for the words “recommendation for appointment, remuneration and terms of appointment” the words “recommendation for remuneration” shall be substituted.	A.(2) of Part C of Schedule II of LODR continues with the clause <i>“recommendation for appointment, remuneration and terms of appointment”</i>	SEBI should also notify that In case of Government Companies, Clause A(2) of Part C of Schedule II of LODR, <i>for the words “recommendation for appointment, remuneration and terms of appointment” the words “recommendation for remuneration” shall be substituted</i>
23.	<p>Chapter XII, sub-sections (2), (3) and (4) of section 178..</p> <p><u>Role of Nomination and Remuneration Committee in Recommending Appointment and Remuneration of</u></p>	Shall not apply to Government company except with regard to appointment of ‘senior management’ and other employees.	In Part D of the Schedule II of LODR, Role of Nomination and Remuneration	SEBI should also notify that In case of Government

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	<p><u>Directors:</u></p> <p>178. (1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors:</p> <p>Provided that the chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.</p> <p>(2) The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.</p> <p>(3) The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.</p> <p>(4) The Nomination and Remuneration Committee shall, while formulating the policy under sub-section (3) ensure that -</p> <p>(a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;</p> <p>(b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and</p> <p>(c) remuneration to directors, key managerial personnel and senior management involves a balance between fixed</p>	<p>Note: (1) As per above, now Govt. Companies are not required to make any criteria/policy regarding appointment and performance evaluation of the directors.</p> <p>(2) It is important to mention that exemption has been given under section 178 (2), (3) and (4), but similar provisions regarding performance evaluation of the directors by Independent Directors are also there in Clause VII (3) of Schedule IV of the Companies Act, 2013 and these have not been exempted.</p>	<p>Committee continue includes "Directors" for provisions such as <i>"Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the board of directors a policy relating to, the remuneration of the directors."</i></p> <p><i>"Formulation of criteria for evaluation of performance of independent directors and the board of directors."</i></p> <p>Hence, it applies for Directors of the CPSEs also.</p>	<p>Companies, provisions mentioned in Part D of Schedule II of LODR shall not apply in respect of matters related to "Directors"</p>

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	and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals: Provided that such policy shall be disclosed in the Board's report.			
24.	<p><u>Chapter XII, section 185.</u> <u>Loans To Directors And Other Interested Entities:</u></p> <p>185. (1) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person: Provided that nothing contained in this sub-section shall apply to— (a) the giving of any loan to a managing or whole-time director— (i) as a part of the conditions of service extended by the company to all its employees; or (ii) pursuant to any scheme approved by the members by a special resolution; or (b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India. <i>Explanation.</i>—For the purposes of this section, the expression “to any other person in whom director is interested” means - (a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director; (b) any firm in which any such director or relative is a partner;</p>	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.	No such provisions / requirement. Hence, no impact.	NIL

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	<p>(c) any private company of which any such director is a director or member;</p> <p>(d) any body corporate at a general meeting of which not less than twenty five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or</p> <p>(e) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.</p> <p>(2) If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.</p>			
25.	<p>Chapter XII, section 186. <u>Loans And Investments by a Company:</u></p> <p>186. (1) Without prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, make investment through not more than two layers of investment companies: Provided that the provisions of this sub-section shall not affect,—</p> <p>(i) a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;</p>	<p>Shall not apply to -</p> <p>(a) a Government company engaged in defence production;</p> <p>(b) a 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</p>	<p>No such provisions / requirement.</p> <p>Hence, no impact.</p>	NIL

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	<p>(ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.</p> <p>(2) No company shall directly or indirectly —</p> <p>(a) give any loan to any person or other body corporate;</p> <p>(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and</p> <p>(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.</p> <p>(3) Where the giving of any loan or guarantee or providing any security or the acquisition under sub-section (2) exceeds the limits specified in that sub-section, prior approval by means of a special resolution passed at a general meeting shall be necessary.</p> <p>(4) The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.</p> <p>(5) No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained:</p> <p>Provided that prior approval of a public financial institution shall not be required where the aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other</p>	<p>any investment under the section.</p>		

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	<p>bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given does not exceed the limit as specified in sub-section (2), and there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.</p> <p>(6) No company, which is registered under section 12 of the Securities and Exchange Board of India Act, 1992 and covered under such class or classes of companies as may be prescribed, shall take inter-corporate loan or deposits exceeding the prescribed limit and such company shall furnish in its financial statement the details of the loan or deposits.</p> <p>(7) No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.</p> <p>(8) No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.</p> <p>(9) Every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a register which shall contain such particulars and shall be maintained in such manner as may be prescribed.</p> <p>(10) The register referred to in sub-section (9) shall be kept at the registered office of the company and</p> <p>(a) shall be open to inspection at such office; and</p> <p>(b) extracts may be taken therefrom by any member, and copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed.</p> <p>(11) Nothing contained in this section, except sub-section (1), shall apply -</p>			

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	<p>(a) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;</p> <p>(b) to any acquisition -</p> <p>(i) made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities:</p> <p>Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities;</p> <p>(ii) made by a company whose principal business is the acquisition of securities;</p> <p>(iii) of shares allotted in pursuance of clause (a) of sub-section (1) of section 62.</p> <p>(12) The Central Government may make rules for the purposes of this section.</p> <p>(13) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.’</p> <p><i>Explanation.</i>—For the purposes of this section,—</p> <p>(a) the expression “investment company” means a company whose principal business is the acquisition of</p>			

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	<p>shares, debentures or other securities; (b) the expression “infrastructure facilities” means the facilities specified in Schedule VI.</p>			
26.	<p>Chapter XII, <u>first</u> and <u>second</u> proviso to sub-section (1) of section 188. <u>RELATED PARTY TRANSACTIONS</u></p> <p>188. (1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—</p> <p>(a) sale, purchase or supply of any goods or materials; (b) selling or otherwise disposing of, or buying, property of any kind; (c) leasing of property of any kind; (d) availing or rendering of any services; (e) appointment of any agent for purchase or sale of goods, materials, services or property; (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and (g) underwriting the subscription of any securities or derivatives thereof, of the company:</p> <p>Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a special resolution: Provided further that no member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party:</p>	<p>Shall not apply to --</p> <p>(a) a Government company in respect of contracts or arrangements entered into by it with any other Government company;</p> <p>(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.</p>	<p>No such provisions / requirement.</p> <p>Hence, no impact.</p>	NIL

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27.	<p>Chapter XIII, sub-sections (2), (4) and (5) of section 196. <u>APPOINTMENT OF MANAGERIAL PERSONNEL</u></p> <p>196. (2) No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time:</p> <p>Provided that no re-appointment shall be made earlier than one year before the expiry of his term.</p> <p>(4) Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule:</p> <p>Provided that a notice convening 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 appointments, if any:</p> <p>Provided further that a return in the prescribed form shall be filed within sixty days of such appointment with the Registrar.</p> <p>(5) Subject to the provisions of this Act, 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.</p>	Shall not apply.	<p>No such provisions / requirement.</p> <p>Hence, no impact.</p>	NIL

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28.	<p><u>Chapter XIII, section 197</u> <u>REMUNERATION OF MANAGERIAL PERSONNEL</u></p> <p>197. (1) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits:</p> <p>Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:</p>	Shall not apply.	No such provisions / requirement. Hence, no impact.	NIL
29.	<p><u>Chapter XIII, sub-sections (1), (2), (3) and (4) of section 203</u> <u>APPOINTMENT OF KEY MANAGERIAL PERSONNEL</u></p> <p>203. (1) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,- (i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director; (ii) company secretary; and (iii) Chief Financial Officer :</p> <p>Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the</p>	After sub-section (4), the following sub-section shall be inserted, namely:- “(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.”	No such provisions / requirement. Hence, no impact.	NIL

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	<p>managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,</p> <p>(a) the articles of such a company provide otherwise; or (b) the company does not carry multiple businesses:</p> <p>Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.</p> <p>(2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.</p> <p>(3) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time:</p> <p>Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board:</p> <p>Provided further that whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel:</p> <p>Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is</p>			

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	<p>made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.</p> <p>(4) If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.</p>			
30.	<p>Chapter XXIX, sub-section (2) of section 439.</p> <p><u>COGNIZANCE OF OFFENCES BY COURT</u></p> <p>439. (2) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf:</p> <p>Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India:</p> <p>Provided further that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.</p>	<p>In sub-section (2), the words “the Registrar, a shareholder of the company, or of” shall be omitted.</p>	<p>No such provisions / requirement.</p> <p>Hence, no impact.</p>	NIL
