

Chapter 13: Government Company

Sec 2(45): Definition of Government Company

Compulsory points (To be written in every answer)

Government Companies means:

- a. Company in which 51% or more paid up share capital is held by:
 - i. Central Government; or/& ii. State Government; or/&
 - iii. State Governments
- b. Company which is subsidiary of Government Company.

13.1

Sec 394: Annual reports on Government companies

Why provision is made?

To streamline the reporting made by government company to CG in case the CG is member

Applicable to

Only to government company

Compulsory points (To be written in every answer)

If the CG is a member of Government Company, then such company shall comply with the following:

1. Prepare an annual report within 3 months from the date of AGM in which the CAG gave comment on the audit report u/s 143(6).
2. Place before both houses of parliament the following document as soon as it is prepared:
 - Annual Report
 - Audit Report
 - Comments of CAG

If SG is also member of Government Company in addition to CG the above mentioned documents shall be laid before the state legislature.

Cross Ref.

Sec 143(6)

Sec 395: Annual reports where one or more State Governments are members of companies

Why provision is made?

To state the process to report to the SG in case if the SG is member of government company and CG is not.

Applicable to:

Only to government company

Compulsory points (To be written in every answer)

1. If the CG is not the member of Government company and only SG or SG(S) are the members of government company then such company shall comply with the following :
 - i. Prepare an annual report within 3 months from the date of AGM in which the CAG gave comment on the audit report u/s 143(6)
 - ii. Place before both houses state legislature the following document as soon as it is prepared.
 - Annual Report
 - Audit Report
 - Comments of CAG
2. Provisions of Sec 395 & Sec 394 are applicable even in case of Liquidation.

Government Company exemptions

Exemption & Particulars	Applicable to	Effect of Exemption
Chapter VIII, Sec 123(1)-2nd proviso: Declaration of dividend	WOS	In case of inadequate profit in the Current Year the Government Co. can declare the dividend out of accumulated profit without compliance of the rules.
Chapter VIII, Sec 123(4): Transfer of dividend to separate account	WOS	The requirement of depositing dividend amount (incl. interim dividend) to be deposited in a separate scheduled Bank in a separate account within five days from the date of declaration does not apply to Govt. Co.
Chapter IX, Sec 129:	Defence Production	No compliance with AS 17 is required.

Financial Statements		
Chapter IX, Sec 134(3)(e): Contents of Board's Report	All Gov companies	Requirement that the Board's report shall disclose the company's policy on director's appointment, remuneration, and criteria for determining qualifications, positive attributes, independence of director and other matters provided under sec 178(3) shall not apply.
Chapter IX, Sec 134(3)(p): Contents of Board's Report	Where evaluation is made by Dept. of CG	Requirement of indicating the manner in which formal evaluation has been made by the board of its own performance and that of its committees and individual directors; shall not apply in case the directors are evaluated by the MCA or Dept. of CG which is administratively in charge of the co. the SG, as per its own revaluation methodology.
Chapter XI, Sec 149(1)(b) & Sec 149(1) 1st proviso: Min/max directors, 1 woman director	All Govt. Companies	Government Companies can appoint maximum no. of directors above 15 without passing GM-SR. They can be appointed by GM-OR.
Chapter XI, Sec 149(6)(a): Independent Director	Where Evaluation is made by Dept of CG	Integrity and relevant expertise & experience needed to be possessed by an ID will be tested by Ministry or Department of the Central Government.
Chapter XI, Sec 149(6)(c): Independent Director	All Gov. Companies	ID shall not have/ had pecuniary relationship with the Co., its holding, subsidiary or associate co., or their promoters, or directors, during the 2 immediately preceding FYs or during the current FY. This shall not apply to a Government Company.
Chapter XI, Sec 152(5): Consent to act as director	All Gov. Companies	Newly appointed director of Government Company need not file his consent to act as director under DIR-2 after appointment.
Chapter XI, Sec 152(6) & (7): Rotation of directors and filling up of vacancy of retiring director	WOS and its subsidiaries	The BOD need not be rotational or non-rotational & may have fix tenure. Process of re-appointment or automatic re-appointment is also not applicable.
Chapter XI, Sec 160: Appointment of the new director.	WOS and its subsidiaries	The process of the appointment of New director & notice of 14 days & deposit of Rs. 1 Lac is not applicable.
Chapter XI, Sec 162: Restriction on 2 or more directors in one resolution.	WOS and its subsidiaries.	Government companies can appoint 2 or more directors in the one resolution without passing GM-UR i.e. only by GM-OR.
Chapter XI, Sec 163: Proportional Representation.	WOS and its subsidiaries.	Adoption of appointment by proportional representation method is not applicable.
Chapter XI, Sec 164(2): Company default disqualification	All Gov Companies	Attraction of disqualification u/s 164(2) does not disqualify all the directors of government company.
Chapter XI, Sec 170: Register of Key Managerial Persons	WOS	Need not maintain Register of directors & KMP. Also, does not require the filling of DIR 12 with ROC in case of change.
Chapter Xi, Sec 171: Inspection of register	WOS	No register u/s 170, no question of inspection by members arises.
Chapter XII, Sec 177(4) Audit Committee	All Govt. Companies	As appointment of auditor of Govt. Co. is made by CAG u/s 139, Audit committee can only recommend the

		remuneration.
Chapter XII, Sec 178(2),(3),(4): Remuneration committee	All Govt. companies	Provisions relating induction of directors, criteria/qualifications does not apply to Govt. Co. Nomination and Remuneration Committee of Govt. co. will lay down for senior management only and other employees.
Chapter XII, Sec 185: Loan to Director	If the approval of the MCA or Dept. of CG or SG, as the case may be, is obtained before making any loan or giving any guarantee or providing any other security then it shall not apply to Gov Co.	
Chapter XII, Sec 186: Loans and investment by company	It shall not apply to – a. Govt. Co. engaged in defense production; b. Govt. Co., other than a Listed Co., in case approval of the MCA or Dept. of CG or SG, as the case may be, is obtained before making any loan or giving any security and giving or making any investment	
Chapter XIII, 1 st and 2 nd proviso to Sec 188(1): Related parties transaction	It shall not apply to – a. A Govt. Co. in respect of contracts or arrangements entered into by it with any other Govt. Co. A Govt. Co., other than a Listed Company, in respect of contracts and arrangements other than those referred to in clause (a), in case such company obtains approval of the MCA or Dept. of CG which is administratively in charge of the company, or as the case may be, SG before entering into such arrangement or contracts.	
Chapter XIII. Sec 196(2),(4) & (5): Appointment of executive director	All Govt. Cos.	These provisions are not applicable to Govt. Co.: a. Sec 196(2)-Term of MD not to exceed five years. b. Sec 196(4)-Approval of members/ CG as the case may be for appointment of MD. c. Sec 196(5)-Approval of members/ CG for appointment of MD. d. Sec 196(5)-Validity of acts of MD if his appointment is not approved at the GM
Chapter XIII, Sec 197: Managerial remuneration	All Gov Companies	Provision related to maximum remuneration in case of loss or inadequacy of profits as given in sec 197 does not apply to Govt. Co. Thus, they can pay any amount of remuneration to the director even in case of loss.
Chapter XIII, Sec 203 (2),(3), (4): Appointment of WTKMP	All Gov companies	Sec 203(4):"Provisions of Sec 203(1),(2),(3)&(4) shall not apply to MD or CEO or Manager or WTD of the Govt. Co."