Veeru's Academy
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Government company definition:

As per 2(45) of the companies act, Government company means any company in which not less than 51% of Paid up share capital held by:

A. Central Government or
B. State Government or Governments or
C. Partly by Central Government and partly by one or more State Governments

And includes a company which is a subsidiary of such government company.

Key inputs from definition:

1. Subsidiary of Government company is also a government company (Need not be a wholly owned subsidiary)
2. Paid up capital referred in definition includes both equity and preference share capital
3. If Government company issues shares with differential voting rights, paid up share capital limit of 51% shall be applied on total voting power not on paid-up share capital. **(Recent Amendment)**

Illustrations:

1. Sarkari Ltd. capital structure contains the following:
Central government-25%
Punjab Government-26%
Total shareholding is 51% by central and state government. Will this be a government company?

Clue: Total shareholding (25+26) 51%. Limit specified in sec 2(45) is not less than 51%. Hence 51% shareholding also considered as Government company. Hence, Sarkari Company is a government company.

2. Examine with reference to the provisions of the companies act, 2013 whether Sun Ltd. And Moon Ltd. Can be considered as Government Company.

(i) C.G. and Government of Himachal Pradesh together holds 40% of the paid-up share capital of Sun Ltd. and One Government Company also holds 40% of the paid-up share capital of Sun Ltd.

(ii) Moon Ltd. Is Subsidiary but not wholly owned subsidiary of Government Company.

Clue:

(i) By literal interpretation of definition under Sec2(45), 51% shareholding by central or state governments (or) governments only covered. As CG and Himachal Pradesh government holds 40%. Sun ltd is not a government company. Government company holding of 40% in Sun Ltd is irrelevant.

(ii) Moon Ltd which is a subsidiary of government company is considered as Government company.

3. B Ltd issues shares with differential voting rights is as follows:

Capital structure

A. Equity Share capital of INR 10 each -INR 10 lakhs (One vote for one share)

B. Equity Share capital with **differential voting rights**- INR 10 each -INR 10 lakhs (One vote for 10 share)

C. Preference share capital INR 20 Lakhs

Out of above,

- Central government holds:
  Equity share capital **without differential voting rights** of INR 2lakhs and
  Equity share capital **having differential voting rights** of INR1 lakh (10000 Shares)

- Haryana State Government
  Equity share capital **without differential voting rights** of INR 1lakhs
  Equity share capital **having differential voting rights** of INR1 lakh (10000 shares) and
  Preference share capital of INR 10 lakhs

Face value of all categories of shares is INR 10.

Will this be a government company?

Ans/Clue: As per sec 2(45), if company issues shares with differential voting rights, then for calculating 51% limit we need to consider voting rights instead of paid up share capital. Accordingly, calculation will be as follows:

Equity share capital without differential rights:(one share one vote)

Central Government holding-	INR 2 Lakhs/10 Lakhs	20%
Haryana State Government-	INR 1 Lakh/10 Lakhs	10%
		30%

Equity share capital with differential rights:(Ten shares carry one vote)

Shares contain voting rights=100000 X 1/10= 10000 Shares

Central Government holding-	1000 shares (10% of 10000 shares)/10000 shares	10%
Haryana State Government-	1000 shares (10% of 10000 shares)/10000 Shares	10%

20%

Preference share capital:

Preference share capital does not carry any voting rights. As company issued shares with differential voting rights, preference share capital is not considered to calculate voting power of 51%. Hence, even though Haryana Government is holding 50% of preference share capital in B Ltd., this holding shall not be considered anywhere.

Conclusion: As total holding is only 50%(30+20), B Ltd is not a Government company.

4. X Ltd. having capital structure as follows:

Pondicherry-Union Territory-20%

Ladakh Union Territory-10%

Andaman- Union Territory-20%
Delhi- Union Territory -25%
Is X Ltd. is a government company?

Ans/Clue: As per Government company definition provided under sec 2(45) shareholding of 51% by central government and state governments only covered. By literal interpretation of definition, union territories are out of Sec 2(45).

This is a unique situation. Clarity not provided either in study material or RTP anywhere by ICAI. Based on analysis, I can provide my logical analysis on this. Till Institute or MCA come up with some clarification, this can used as a reasonable conclusion on this issue.

Questions is whether Sec 2(45) covers even union territories or not:

To know this, we need to refer to our constitution which is mother of all laws. Constitution not provided any specific definition for word government or central government. However, it provides definition of state in Article 12.

Article 12 *specifies state includes government, parliament of India and the Government and the Legislature of each of the State and all local or* ***other authorities within the territory of India or under the control of the Government of India.***

Government is a general administrative term whereas state is a constitutional term which can used interchangeably. Further, Article 12 clearly says it covers *"other authorities within the territory of India or under the control of the Government of India.*

Hence, By reasonable interpretation, Union Territories also falls under ambit if article 12. Hence, shareholding by union territories also covered indirectly under Sec 2(45).
Hence, X Ltd can be considered as government company

Note: As I said earlier, this is my personnel view. There should a clear guidance from MCA or from Institute in this regard.

Annual Reports on Government companies:

Activity	Holding shares by CG or CG and SG both(Sec 394)	Holding shares by SG(or) group of SG (Sec 395)
Annual Report	Annual report should be placed both the houses of parliament together with audit report and comments made by CAG. SG also should place annual report in both houses of state legislature along with Audit report and comments of CAG.	Annual report should be placed both the houses of each member state legislature along with Audit report and comments made by CAG
Time limit for annual report	Within 3 months of AGM	----------------do-------------------