

Government Companies and Foreign Companies

By:
CA Kamal Garg

Government Company – Meaning [Section 617]

- A company is a Govt. Co. if:
 1. $\geq 51\%$ paid up **share capital**;
 2. Held by CG/ SG/ Jointly
- Subsidiary of a Govt. Co. is also a Govt. Co.

CG Powers vis-à-vis Govt. Co. [Section 620]

- CG may give exemptions to Govt. Co.;
- Such exemptions are given by Notification in OG;
- **Notification may specify:**
 1. Class of Govt. co. covered;
 2. Application of exemption subject to certain exceptions/ modifications/ adaptations
- No exemption can be given for sections 619 or 619A

Audit of Government Companies [Section 619]

- Covered under Auditing

Annual Report of Govt. Co. [Section 619A]

- **Nature of Documents** = Annual Report, Audit Report & CAG Supplements/ Comments;
- **If CG is the member of Govt. Co.** = The Documents to be laid before Both houses of Parliament;
- **If SG is the member of Govt. Co.** = The Documents to be laid before State Legislature;
- **If both CG and SG are members** = The Documents to be laid at both places;
- **Time Limit** = To be laid in 3 months of date of AGM

Applicability of Section 619 [Section 619B]

- Section 619 (relating to audit etc. of Govt. Co.) is applicable where $\geq 51\%$ paid up share capital is held by one or more or jointly by the following:
 1. CG and one or more Govt. Co.;
 2. SG and one or more Govt. Co.;
 3. CG, SG and one or more Govt. Co.;
 4. CG and Corporation owned/ controlled by CG;
 5. CG, SG and Corporation owned/ controlled by CG;
 6. Corporation owned/ controlled by CG;
 7. More than one Govt. Co.
- **Examples of Corporation owned/ controlled by CG:** LIC/ Nationalised Banks/ Corporates established under the Act of Parliament

Foreign Companies – Introduction [Section 591]

- Every Co. incorporated outside India is not a Foreign Co.;
- **A Co. is a Foreign Co. if:**
 1. Incorporated outside India; **AND**
 2. Established a **place of business** in India

Place of Business

- It includes **share transfer/ registration office** [Section 602];
- A Co. is said to have a place of business in India if:
 1. It has specified/ identifiable place at which it carries on business; **AND**
 2. There is some **concrete connection** (no occasional connection) b/w such place & business of the Co. [*Deverall vs. Grant Advertising Inc.*];
- **Examples:** Hotel where co. representatives meet for purchase of machinery or articles, Maintenance of Liaison Office

Foreign Controlled Company

- A co. in which **majority of voting power** is held by:
 1. foreign individuals; and/ or
 2. bodies corporates incorporated outside India

Indians holding $\geq 50\%$ Share Capital in Foreign Company

- **Indians** = Citizens/ Indian Companies
- **If share capital is so held**, then
 1. such foreign company shall comply with;
 2. in respect of its Indian business;
 3. Such provisions of the Act;
 4. As may be prescribed by CG;
 5. As if it were a company incorporated in India

Registrar [Section 597]

- **Filing of returns and documents:**
 1. ROC of New Delhi; **AND**
 2. ROC of State where principal place of business is situated
- **Payment of Filing Fee:**
 1. ROC of New Delhi

Filing of Documents by Foreign Company [Section 592]

- Every FC to file certain documents when **place of business is established** in India;
- Documents **to be filed in 30 days** of place establishment;
- **Nature of Documents** to be filed:
 1. Certified copy of 'Constitution' of company;
Constitution = Statute/ Charter/ MOA/ AOA/ any other Instrument;
If not in English then certified English translation to be filed;
 2. Full Address of Registered Office & Principal Place of business;
 3. Name & Address of Authorised Person to accept notice;
 4. List of Directors & Secretary of Foreign Co. with prescribed Details;

Intimation of Alterations to ROC [Section 593]

- **By 31st January of the Following Year (i.e. after the year of change):** The following alterations to be so filed:
 1. Change in 'Constitution' of the Co.;
 2. Change in Address of Registered/ **Principal Office**;
 3. Change in Directors/ Secretary (**Change in their particulars such as address etc. not covered**);
- **Within 30 Days of Alteration:**
 1. Change in Authorised Person;
 2. Change in **Principal Place of Business**

Accounts of Foreign Company [Section 594]

- **World Accounts:**
 1. 3 Copies to be filed with ROC;
 2. B/s, P&L A/c, Subsidiary Details;
 3. All Indian provisions apply to (2) above relating to Form/ Disclosures/ Annexures;
 4. If not in English then certified translation required
- **Indian Accounts:**
 1. 3 Copies to be filed with ROC;
 2. B/s, P & L A/c to be as per Sch. VI in INR and audited by Indian CA

Accounts of Foreign Company [Section 594]

- World Account & Indian Accounts to be filed in 9 months of F.Y.;
- ROC can extend upto 3 months;
- **Foreign Co. to prepare list of business places in India:**
 1. As on B/s Date;
 2. In triplicate;
 3. To be filed with B/s
- CG may relax section 594 requirements by notification in OG with exceptions/ modifications/ adaptations

Issue of Prospectus [Section 603]

- Applies to all companies incorporated outside India including Foreign Co.;
- **Contents:**
 1. Instrument defining Constitution;
 2. Enactment under which incorporated;
 3. Certified English translation, if not in English;
 4. Indian address for inspecting above documents;
 5. Date & Country of Incorporation;
 6. Address of Principal Office in India, if any;
 7. Schedule II contents;
 8. Dated and to be registered with ROC before issuance

Service of Documents [Section 596]

- Service to **Authorised Person (AP)** u/s 592(1)(d);
- Notice may be by **post or hand**;
- **Service at any other office or place** of business in India, **if:**
 1. No person is authorised;
 2. AP refuses to accept;
 3. AP ceased to reside at the address given to Registrar;
 4. AP died;
 5. Service to AP not possible for any other reason

Contravention of Act Consequences [Section 599]

- **Penalty** as prescribed;
- **Validity** of contracts/ dealings/ transactions **not affected**;
- **Outsiders can sue** the company;
- Until Foreign company complies with the legal requirements:
 1. It cannot claim any set off or counter claim; and
 2. It cannot institute legal proceedings
