

11. Government Companies

Meaning (617)

Means any company which-

- a. In which not less than 51% of the paid up share capital (aggregate of equity and preference both) is held-
 - ✓ by the CG; or
 - ✓ by the SG; or
 - ✓ by the CG and SG jointly
- b. which is a subsidiary of GC.

Legal status

- GC is not an instrumentally or agency or department of the state. Therefore employees of the GC are not the employees of the government; income of the GC is not the income of government.
- A GC may be held to be a department of government
In appropriate circumstances, a GC may be held to be a department of instrumentally of the state, generally, following tests may be employed for deterring this fact;
 - ✓ Whether the GC is wholly owned by the Government;
 - ✓ Whether there is deep and pervasive government control over such GC;
 - ✓ Whether the government has conferred monopoly status or protection to such GC;
 - ✓ Whether functions discharged by the GC are of public importance and are closely related to government functions;
 - ✓ Whether the GC has been incorporated by means of transfer of a Government department to GC.

Exemptions to Government companies (Section 620)

As per this section, the CG has the power to direct by notification in the OG that any of the provision of the Act –

- ✓ Shall not apply to the GCs; or
- ✓ Shall apply to the GCs with certain exceptions, modifications and adaptations.
- However, the provision of section 619 and 619A are special provisions for the GC. The CG has no power to modify the application of these sections.

Audit of GC (Section 619)

- Appointment of auditor
 - ✓ By CAG
- Remuneration of auditor
 - ✓ Fixed by the shareholder in general meeting.
 - ✓ Alternatively, the shareholder may determine manner in which the remuneration shall be fixed.
- Direction by CAG: the CG has power
 - ✓ to direct the manner in which the accounts shall be audited;
 - ✓ to give instructions to the auditor regarding conduct of the audit; and
 - ✓ to appoint a person to conduct a supplementary test audit of the company's accounts.

- Audit report
 - ✓ The auditor shall submit a copy of his audit report to the CAG who shall have the right to comment upon or supplement the audit report in such manner as he may think fit.
- Other miscellaneous provision
 - ✓ The first auditor of GC shall be appointed by CAG within 1 month of the registration
 - ✓ The branch auditor shall also be appointed by CAG.
 - ✓ The board is competent to revise the account already audited, if-
 - such accounts have not been circulated to the members;
 - the revised accounts are re-submitted to the auditor for fresh audit report;
 - such revised audit report is given in substitution of earlier audit report;
 - the auditor ensures that all the copies of the earlier audit report submitted to the company have been returned to him; and
 - the auditor makes adequate disclosure specifying the fact of revision of accounts and that his new audit report is in substitution of his earlier report.

Annual report of GC (619A)

1. where CG is a member of GC
 - a. prepare within 3 months of its AGM, an annual report on the working and affairs of the company.
 - b. lay before both the house of parliament
 - i. a copy of the annual report;
 - ii. a copy of the audit report; and
 - iii. any comments or supplement to the audit report
2. where SG(s) is a member
 - a. same as per the CG is member. And also submit it to state legislature.
3. where both is member
 - a. same as per CG is a member

Applicability of provision relating to audit of GCs to certain companies (Section 619B)

Shall apply to that company in which not less than 51% of the paid-up share capital is held by one or more of the following combination thereof;

- a. the CG and one or more GC
- b. any SG or government and one or more GC.
- c. the CG, one or more SGs and one or more GCs
- d. the CG and one or more corporations owned or controlled by the CG.
- e. The CG, one or more SG and one or more corporations owned and controlled by CG.
- f. One or more corporations owned or controlled by the CG and SG.
- g. More than one GC.

Example of corporations owned and controlled by government

- a. LIC, UTI and IDBI
- b. Nationalized banks
- c. Any other body corporate established under a separate act or parliament.