

**98. Holding of shares in Government Companies in the names of the President of India and the Governor of a State.**

The undersigned is directed to refer to this Department's Office Memorandum No.15/32/65-IGC dated the 13th October, 1965 on the above subject and to state that certain Ministries of the Government of India and State Governments have, on receipt of the above communication, raised a query as to whether the President or the Governor of a State will be deemed to be a corporation sole for purposes of holding shares in Government companies. This matter has, therefore, been examined in detail and the clarification as under is given for information and guidance of all concerned.

2. This Department had advised in the above Office Memorandum that shares in a Government company can not be registered in the name of a public office which is not a corporation sole as understood in law. Thus the shares in a Company can not be held in the name of the Collector of Central Excise or a Secretary to the Government of India, etc. This position may be followed in the case of holders of all public offices save as mentioned below.

3. The President or the Governor of a State functioning under the Constitution is not a corporated sole, just as the Administrator-General constituted under the Administrators General Act 1963, is. As provided by Article 77(1) and 166(1) of the Constitution, all executive action of the Government of India or the Government of a State shall be expressed to be taken in the name of the President or the Governor, as the case may be. "Executive action" or "executive power" has been broadly stated to be "the residue of Governmental functions that remain after legislative and judicial functions are taken away." Further it appears that the said articles are confined to cases where the executive action is required to be expressed in the shape of a formal order or notification or any other instrument. When an executive decision affects an outsider or is required to be officially notified or communicated, it should be normally expressed in the form mentioned in these Articles, that is, in the name of the President or the Governor, as the case may be.

4. The acquisition or holding of shares in a company by the Government of India or a State Government is "executive action" as contemplated by Articles 77(1) and 166(1) of the Constitution and can, therefore, be made in the name of the President of India or the Governor of the State, as the case may be.

5. In view of the above, shares in a Government company can be held in the name of the President of India or the Governor of a State.

6. The clarification as above is brought to the notice of all Ministries of the Government of India and State Governments for their information and guidance.

**(D/o Company Affairs No.15/32/65-IGC dated 30/09/1966)**

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