

### Holding Company & Subsidiary Company

Sec 2(46) of the Companies Act, 2013 defines as follows: “Holding company”, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

#### 1. Meaning of ‘Holding Company’:

Holding company means a company having one or more subsidiaries. Hence, the definition of ‘subsidiary company’ under clause (87) of section 2 is required to be referred to. Subsidiary company is a company, where the holding company controls the composition of board of directors or controls more than one half of total share either on its own or together with one or more of its subsidiaries.

#### 2. Control on the composition of the Board of Directors:

As provided in the Explanation (b) to clause (87) of section 2, the Board of Directors of company will be deemed to be controlled by another company only if that other company, at its own discretion, has power to appoint or remove the whole or a majority of the directors of the first mentioned company. ‘At its discretion’ means that it does not require the ‘consent or concurrence’ of any other person.

#### 3. Exercise or control more than one half of the total share capital:

Under the Companies Act, 1956, the criteria of control of voting capital was applied, whereas the Companies Act, 2013 refers to control over more than one-half of total share capital. As specified in rule 2 (1) (r), this share capital includes paid-up equity capital and convertible preference capital. Such criterion does not differentiate between voting and non-voting shares. This position is proposed to be changed through the Companies (Amendment) Bill, 2016 which proposes to substitute the words “total voting power” (as defined in clause (89) of section 2) for “total share capital”.

The definition of ‘control’ is given in the clause (27) of section 2 of the Act. It is an inclusive definition which includes right to appoint majority of the directors or to control the management or policy decisions, individually or in concert, directly or indirectly.

#### **4. Subsidiary of another subsidiary:**

The control of share capital and Board of the holding company could be either through the company itself or one or more subsidiaries of the holding company. Such control would be treated as an indirect control over the subsidiary. If company B is a subsidiary of company A, and company C is a subsidiary of company B then company C is a subsidiary of company A. Further, if company D is a subsidiary of company C, then company D will be a subsidiary to company B and consequently to company A.

#### **5. Impact of Companies (Amendment) Bill, 2016:**

In clause (46) of section 2, an explanation is proposed to be added stating that 'Company includes body corporate'. This Amendment brings foreign body corporates under the purview of the definition of 'holding company'. Consequently, all Indian subsidiaries of such bodies corporates would be treated as 'subsidiaries' under clause (87). This may result into a change in the status of such Indian subsidiaries as the protection available sub-section (7) of section 4 under the Companies Act, 1956 is not available. This change in status would change the applicability of the provisions of the Act to such company.

#### **6. Meaning of 'Subsidiary Company' or 'Subsidiary'**

The definition of 'Subsidiary company' or 'subsidiary' as contained in clause (87) of section 2 of the Act has changed significantly as compared to the clause (47) of section 2 of the Companies Act, 1956 read with section 4. It is a wider definition which also contains restriction on the layers of subsidiaries that can be formed under one holding company. A subsidiary company is defined with reference to a holding company. It is a company, where the holding controls the composition of Board of Director or controls more than one half of total share capital either on its own or together with one or more of its subsidiaries.

#### **7. Exercise or control more than one half of the total share capital**

Under the Companies Act, 1956, the criteria of control of voting capital was applied, whereas the Companies Act, 2013 refers to control over more than one-half of total share capital. As specified in rule 2 (1) (r), this share capital includes paid-up equity capital and convertible preference capital. Such criterion does not differentiate between voting and non-voting shares. This position is proposed to be changed through the Companies (Amendment) Bill, 2016 which proposes to substitute the words "total voting power" (as defined in clause (89) of section 2) for "total share capital".

#### **8. Control in the composition of the Board of Directors**

As provided in the Explanation (b) to clause (87) of section 2, the Board of Directors of company will be deemed to be controlled by another company only if that other

company, at its own discretion, has power to appoint or remove the whole or a majority of the directors of the first mentioned company. 'At its discretion' means that it does not require the 'consent or concurrence' of any other person.

## **9. Subsidiary of another subsidiary**

The control of share capital and Board of the holding company could be either through the company itself or one or more subsidiaries of the holding company. Such control would be treated as an indirect control over the subsidiary.

As explained in clause (c) of the explanation to clause (87), the term 'company' also includes the body corporate. Hence, the foreign companies may become subsidiaries of Indian companies.

## **10. Exemption for shares held in fiduciary capacity**

The shares held by a company or power exercisable by it in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the holding-subsidiary relationship as clarified by General Circular No. 20/2013, dated 27.12.2013.

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