

## **Holding & Subsidiary Company- Provisions under CA, 2013**

As per Section 2(46) “holding company”, in relation to one or more other companies, means a company of which such companies are subsidiary companies;

### **Subsidiary Company**

A subsidiary company is a company owned and controlled by another company. The owning company is called a parent company or sometimes a holding company.

A subsidiary's parent company may be the sole owner or one of several owners. If a parent company or holding company owns 100% of another company, that company is called a "wholly-owned subsidiary."

**As per Section 2(87)** “subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.—For the purposes of this clause,—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(c) the expression "company" includes anybody corporate;

(d) "layer" in relation to a holding company means its subsidiary or subsidiaries;

#### **COMPANY INCLUDES BODY CORPORATE:**

- As per Sec 2(87) Company include a 'Body Corporate'.
- As per Sec 2(11) body corporate includes a 'Company incorporate out of India'.

Thus, an Indian company in which more than 50% shares are held by a foreign body corporate will be a 'Subsidiary Company'.

Similarly, any Indian body corporate can be 'holding company' even if that body corporate is not registered as 'company' under company Act.

An Indian company can be holding/subsidiary of a foreign body corporate even if it is not registered as a Company.

#### **SHARE-HOLDING OF HOLDING COMPANY BY SUBSIDIARY COMPANY:**

A holding Company can and does hold shares of subsidiary, but a subsidiary can't hold shares in its holding company. Share allotment made to subsidiary is void.

This restriction applies even if shares are held by nominee of subsidiary Company and not by the subsidiary company itself.

However there are certain cases, subsidiary can be member of its holding Company:-

- a) When subsidiary is a legal representative of deceased member of holding Company.
- b) When subsidiary is concerned in shares as trustee.
- c) Investment held before the Company became subsidiary can continue, but in that case, subsidiary has no voting right in holding Company.

### **advantages of Holding Company**

Following are the advantages of Holding Company:

- 1) Subsidiary company maintained their separate identity.
- 2) The public may not be aware the existence of combination among the various company.
- 3) Holding company need not to be invest entire amount in the share capital in subsidiary company still enjoy controlling power in such company.
- 4) It would be possible to carry forward losses for income tax purposes.
- 5) Each subsidiary company prepares its own accounts and therefore financial position and profitability of each undertaking is known.
- 6) Holding company may additional acquired or disposed of and the shares in subsidiary company in market whenever if desired.