

Topic: Meaning of Holding Company and Subsidiary Company and Legal Requirements

B.Com. (HONS.)

Semester – II

Paper code- BCH2.1: Corporate Accounting

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HOLDING COMPANY As per Section 2(46) of the Companies Act, 2013 “holding company”, in relation to one or more other companies, means a company of which such companies are subsidiary companies;

SUBSIDIARY COMPANY As per Section 2(87) of the Companies Act, 2013 “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) of the Companies Act, 2013 Company include a ‘Body Corporate’.
- As per Sec 2(11) of the Companies Act, 2013 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 Companies Act.

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

LEGAL REQUIREMENTS FOR A HOLDING COMPANY

Section 129 of the Companies Act, 2013 stipulates that the balance sheet of a holding company has to be accompanied by the below-mentioned documents of relating to each of its subsidiaries:

1. A copy of the Balance Sheet of the subsidiary
2. A copy of the P&LA/c of the subsidiary company
3. A copy of the report of its Board Of Directors 222 EP-C&MA
4. A copy of the report of its auditors
5. A statement containing the following particulars: (i) The nature and extent of holding companies interest in the subsidiary at the end of the last financial year (ii) The net aggregate

amount of profits or losses in the subsidiary so far as it concerns the members of the holding company and is not dealt within the holding company's accounts.

6. If the financial year of the holding company and its subsidiary company coincide with each other subsidiary company's balance sheet and other documents specified above with respect to the same financial year should be attached to the balance sheet of the holding company.

If the financial year of the subsidiary company does not coincide with the financial year of the holding company, a statement showing the following should be attached:

- (i) Whether, and to what extent, there has been a change in the holding company's interest in the subsidiary company since the close of the financial year of the subsidiary company
- (ii) Details of any materials changes which have occurred between the end of the financial year of the subsidiary company and the end of the financial year of the holding company in respect of:
 - (a) The subsidiary's fixed assets
 - (b) Its investments
 - (c) The moneys lent by it
 - (d) The moneys borrowed by it for any purpose other than that of meeting its current liabilities
 - (e) If for any reason, the board of directors of the holding company is unable to obtain information on profits (capital or revenue) a report in writing to the effect.

Thus if the financial years of both the subsidiary and holding companies do not coincide, the preceding year's balance sheet and other statements of the subsidiary company should be attached. The information attached to the balance sheet of a holding company in respect of its subsidiary companies could not be more than 6 months.

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