

Companies Act, 1956

Section 4 - Meaning of "holding Company" and "subsidiary"

(1) For the purposes of this Act, a company shall, subject to the provisions of sub-section (3), be deemed to be a subsidiary of another if, but only if,-

(a) that other controls the composition of its Board of directors; or

1[(b) that other -

(i) where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company;

(ii) where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital; or]

(c) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

Illustration

Company B is a subsidiary of Company A, and Company C is a subsidiary of Company B. Company C is a subsidiary of Company A, by virtue of clause (c) above. If Company D is a subsidiary of Company C, Company D will be a subsidiary of Company B and consequently also of Company A, by virtue of clause (c) above; and so on.

(2) For the purposes of sub-section (1), the composition of a company's Board of directors shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it at its discretion without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say:-

(a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid;

(b) that a person's appointment thereto follows necessarily from his appointment as director 2***] or manager of, or to any other office or employment in, that other company; or

3[(c) that the directorship is held by an individual nominated by that other company or a subsidiary thereof.]

(3) In determining whether one company is a subsidiary of another,-

(a) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to the provisions of clauses (c) and (d), any shares held or power exercisable-

(i) by any person as a nominee for that other company (except where that other is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other company;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;

(d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary [not being held or exercisable as mentioned in clause (c)] shall be treated as not held, or exercisable by that other, if the ordinary business of that other or its subsidiary as the case may be, includes the lending of money and the shares are held or the power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) For the purposes of this Act, a company shall be deemed to be the holding company of another if, but only if, that other is its subsidiary.

(5) In this section, the expression "company" includes any body corporate, and the expression "equity share capital" has the same meaning as in sub-section (2) of section 85.

(6) In the case of a body corporate which is incorporated in a country outside India, a subsidiary or holding company of the body corporate under the law of such country shall be deemed to be a subsidiary or holding company of the body corporate within the meaning and for the purposes of this Act also, whether the requirements of this section are fulfilled or not.

4(7) A private company, being a subsidiary of a body corporate incorporated outside India, which, if incorporated in India, would be a public company within the meaning of this Act, shall be deemed for the purposes of this Act to be a subsidiary of a public company if the entire share capital in that private company is not held by that body corporate whether alone or together with one or more other bodies corporate incorporated outside India.]

1. Substituted by Act 65 of 1960, Section 3, for clause (b) (w.e.f. 28-12-1960).

2. The words ",managing agent, secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000, Section 4.

3. Substituted by Act 65 of 1960, Section 3, for clause (c) (w.e.f. 28-12-1960).

4. Inserted by Act 65 of 1960, Section 3 (w.e.f. 28-12-1960).