



CS Sidharth Sharma
FCS, LL.B.

Deemed Public Company...An Analytical Study..

The requirement of minimum subscribers and Directors..!

Definition of Public Company:

2(71) “public company” means a company which—

(a) is not a private company [and];

(b) has a minimum paid-up share capital as may be prescribed i.e. “of five lakh rupees or such higher paid-up capital,”.

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;

Commentary : The a company which is not a private company is definitely a public company means that a company incorporated outside the preview of 2(68) i.e. the Private Limited Company , is a public company.

Further ,The Requirement of Minimum paid up Capital was omitted by Companies (Amendment) Act,2015 dated 29th May, 2015.

Now the provisio states that the subsidiary of public company shall deemed to be the deemed public company even if the company hold the status of private limited company. The law is completely silent on the definition or concept of deemed public company and question arise did a deemed public company needs to comply with requirement of minimum subscribers and shareholders same as the public company needs to comply.

Here , we must consider the last line of the proviso which states that “subsidiary continues to be a private company in its articles” we can derive two things from the proviso

1. That a private limited company can be subsidiary of Public Company.
2. That a private company which is subsidiary of public company can continue to be private company as per its articles but it will be deemed as public company.
3. That the term “Deemed” public company which has not been defined under the companies Act,2013.

According to the English Dictionary “Deemed” means “to consider or judge something in a particular way”

“Deemed” in law is used to treat something as if it were really something else or it has qualities it does not have.”

From above definitions, we can derive that a private limited company which is the subsidiary of a public company actually does not hold the status of private limited even if its articles adopted it as private company and provisions of Companies Act,2013 will be applicable on it as if it is Public Limited Company but law does not impose any mandatory condition on the private limited subsidiary company to change its constitution and accordingly it can continue to be the private company but being a deemed public company, certain exemptions from the compliances which are available to the private company will not be applicable on a deemed public company and compliances which needs to be done by a public limited companies will be applicable on the deemed public company .

So, we hereby conclude that:

1. Deemed Public Limited company can continue to be “Private Company”
2. Apart from its constitution and status of being “Private” in its articles of association, it has to fulfill all the compliances of being a public company.
3. Deemed Public Company is Private Company which is controlled by a Public company and will be treated as if “it is public company”.
4. Deemed Public Company will not enjoy the exemptions from certain important compliances available to the private companies.

CONTACT

CS Sidharth Sharma

9811134037

Website

www.cssidharthsharma.com

Disclaimer: The content of the Article is only for the knowledge sharing and not for any legal use. Kindly refer to the relevant existing provisions of applicable Laws and regulations before making any opinion based on this article.