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Wholly Owned Subsidiary- An overview

Subsidiary company means:

A company in which the another company, known as Holding Company,

1. controls more than one half of the Total Paid Up Share Capital

or

2. controls the composition of board of directors.

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

The share capital includes paid-up equity capital and convertible preference capital.

Every Subsidiary Company is not necessarily be the Wholly Owned Subsidiary but every Wholly Owned Subsidiary is a Subsidiary Company.

· Wholly Owned Subsidiary is a Company in which 100 percent Capital controlled by the Holding Company.

· Subsidiary is a Company in which more than 50 percent of the Capital controlled by the Holding Company.

The question arises that How the WOS will be incorporated with Only One Shareholder/Subscriber holding 100 percent Shares ?

The Companies Act, 2013 Specified under the relevant provisions that for the Incorporation of Private Company, there is requirement of at least two subscribers and for Public Limited Company, atleast seven subscribers are required. It is rightly stated that there is no specific

definition of WOS prescribed under the Companies Act, 2013 but there are Certain Provisions from where one can derive that the Incorporation of WOS is allowed and accepted under the Companies because Answer of above said question of minimum subscribers requirement while incorporating the WOS has been prescribed under the below mentioned Section 187 of the Companies Act, 2013:

187. Investments of company to be held in its own name

(1) All investments made or held by a company in any property, security or other asset shall be made and held by it in its own name:

Provided that the company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

From above First Proviso to section 187(1), it is clear that:

1. The Statutory Limit of Minimum Subscribers/members/Shareholders not to be overruled by any other section. Minimum Subscribers/members/Shareholders requirements need to be fulfilled.
2. This Proviso Specified that Holding Company may hold the shares in the name of its nominee also to fulfill the requirement of minimum Subscribers.

Nominee Shareholders hold the share on behalf of the holding company just to fulfill the minimum subscriber requirement of the act. He does not hold any right as a shareholder for himself as he just holds the position of nominee Shareholder of the Holding Company.

Further, it would be more beneficial for us to read Section 89(1) also which says as under:

89. Declaration in Respect of Beneficial Interest in any Share

(1) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.

Our View: Nominee Shareholder is registered shareholder on behalf of the Holding Company and does not hold the beneficial interest in those shares which were allotted to him and accordingly, the nominee shareholder will give a declaration to the Subsidiary Company regarding the name of the holding company who holds the beneficial interest in the shares allotted to him.

So the minimum requirement of Subscribers can be fulfilled by the Holding company by appointing the Nominee/s on behalf of Holding Company who will be the registered shareholder but will not

hold any beneficial interest in the shares allotted to him on behalf of the holding company and Nominee is further bound to give the declaration to the subsidiary company regarding the name of Holding Company who holds the beneficial interest in shares.

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