

COMPANY LAW

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Absurdities in definitions of 'holding company' and 'subsidiary company'

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Holding-subsidiary relationship is the very basic relationship in defining companies as a part of a particular group of companies. In the Companies Act, 2013, there has been a sea change in the definitions of 'holding company' and 'subsidiary company'. Section 4, being the corresponding provision of the Companies Act, 1956, has significantly been changed and incorporated as two separate sections in the Companies Act, 2013. The author analyses the definitions of 'holding company' and 'subsidiary company', anomalies in the definition and the solution for rectifying such anomalies.

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Definition of 'subsidiary company'

1. Clause (87) of section 2 of the Companies Act, 2013 ('the Act') defines 'subsidiary company' or 'subsidiary', in relation to any other company (that is to say the holding company) to mean 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

Anomaly 1

1.1 There seems to be a drafting error in sub-clause (ii) of clause (87) of section 2 as it states that "exercise or control more than one-half of total share capital.....". For any company, it is practically difficult to exercise one half of total share capital. A company or person can exercise voting rights and not capital as a whole. To rectify this anomaly, it is suggested to amend sub-clause (ii) by deleting the phrase "exercise one half of total share capital"; as the member of the company exercises voting and not share capital and to substitute words 'total share capital' by 'total equity capital' or revert back to the provisions of section 4 of the Companies Act, 1956 ('1956 Act')

