

**Government of India
Ministry of Corporate Affairs
Policy Section**

No. 3/3/2017-CL-I
New Delhi, the 28th June, 2017

Public Notice

The proviso to clause (87) of section 2 of the Companies Act, 2013 provides for restricting class or classes of holding companies from having layers of subsidiaries beyond prescribed number. Based on suggestions received, the Ministry of Corporate Affairs (MCA) is considering commencing the said provision.

Accordingly, a notification proposing amendments to the Companies (Specification of Definitions Details) Rules, 2014 containing the above prescription has been drafted and is available, along with a background/explanatory note, on the online portal of the Ministry, www.mca.gov.in.

It has been decided to invite suggestions/comments on the draft notification/rules from stakeholders. Comments/suggestions on the draft rules along with justifications in brief may be sent latest by **20th July, 2017** through email at csddar@mca.gov.in. It is requested that the name, contact number, email address and postal address of the sender be indicated clearly at the time of sending suggestions/comments in the following format:-

Format for sending suggestions/comments

1. Name of stakeholder
2. Contact number of stakeholder
3. Email address of stakeholder
4. Postal address of stakeholder

5. Suggestions/comments as under

Serial Number	Rule/sub-rule Number	Suggestion/comments	Justification
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Joint Director (Policy)

Background/Explanatory Note

Sub.: Commencement of proviso to clause 87 of section 2 of the Companies Act, 2013 [restrictions on number of layers of subsidiaries]

1. The proviso to clause (87) of section 2 of the Companies Act, 2013 [CA-13], which is proposed to be notified, reads as under:-

(87) “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) *****; or

(ii) *****;

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) *****;

(b) *****;

(c) *****;

(d) “layer” in relation to a holding company means its subsidiary or subsidiaries;

2. The said provision, along with layering restriction on investment subsidiaries under section 186(1) of CA-13 (notified w.e.f. 1/4/2014), were incorporated in CA-13 with a view to check misuse of multiple layers of subsidiaries for diversion of funds/siphoning off funds as a measure of minority investor protection and is in consonance with recommendations of the Hon’ble Standing Committee on Finance given in para 58-59, 1.122 and 12.90 of the 21st Report of the Hon’ble Standing Committee on Finance on the Companies Bill, 2009.

3. The proviso to section 2(87) of the CA-13 and sub-section (1) of section 186 were, however, sought to be omitted in the Companies (Amendment) Bill, 2016 following recommendations by the Companies Law Committee (CLC) in its report given during February, 2016.

4. Subsequently, in view of reports of misuse of multiple layers of companies, where companies create shell companies for diversion of funds or money laundering, it has been decided to retain the provisions. It has now been decided to commence the proviso to section 2(87).

Proposed Rule:

5. **Restrictions:** The proposed rule 5(1) seeks to allow a holding company to have up to two layers of subsidiaries (not counting one layer of wholly owned subsidiary). The restriction under sub-section (1) of section 186 on investment through not more than two layers of investment companies will continue to apply and such investment companies will also be included in the count for the purposes of layer requirements under the proposed Rule (refer proposed Rule 5(3)).

6. **Exempted classes:** The proposed restriction would not affect a holding company from acquiring a subsidiary incorporated in a country outside India if such subsidiary has subsidiaries as per the laws of such country (refer proposed proviso to rule 5(1)). Exemptions are allowed from the above restriction (refer proposed rule 5(2)) to the following classes of companies:

- (a) a banking company;
- (b) a systemically important non-banking financial company (NBFC) registered with the Reserve Bank of India;
- (c) an insurance company;
- (d) a Government company.

7. **Prospective application:** With a view to remove any hardships to existing companies, it is proposed to apply the restrictions prospectively. Existing holding companies required to restrict the number of layers need not reduce the existing layers of subsidiaries in excess of two on the date of commencement of proviso to section 2(87) but cannot add any additional layer of subsidiaries provided they file a return to the registrar giving details of layers of subsidiaries in the prescribed form (proposed rule 5(3)).

DRAFT NOTIFICATION

Ministry of Corporate Affairs
Notification

New Delhi, the 2017

GSR ____ In exercise of the powers conferred under proviso to clause (87) of section 2 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Specification of Definitions Details) Rules, 2014, namely:—

1. Short title and Commencement.—

(1) These rules may be called the Companies (Specification of Definitions Details) Amendment Rules, 2017.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Specification of Definitions Details) Rules, 2014, after rule 4, following rule 5 and Annexure shall be inserted, namely:-

“5. Restriction on number of layers for certain classes of holding companies: (1) After the date of commencement of this rule, every holding company, other than a holding company belonging to a class specified in sub-rule (2), shall have not more than two layers of subsidiaries:

Provided that the provisions of this sub-rule shall not affect a holding company from acquiring a subsidiary incorporated in a country outside India if such subsidiary has subsidiaries as per the laws of such country.

Explanation-. It is clarified that in computing the layers under this rule, one layer which is represented by a wholly owned subsidiary shall not be taken into account.

(2) The provisions of this rule shall not apply to following classes of companies, namely:-

(a) a banking company;

(b) a non-banking financial company as defined in the Reserve Bank of India Act, 1934 (2 of 1934) which is registered with the Reserve Bank of India and considered as systemically important non-banking financial company by the Reserve Bank of India;

(c) an insurance company being a company which carries on the business of insurance in accordance with provisions of Insurance Act, 1938 and Insurance Regulatory Development Authority Act, 1999;

(d) a Government company referred to in clause (45) of section 2 of the Act.

(3) The requirement for making investment through not more than two layers of investment companies provided under sub-section (1) of section 186 shall apply irrespective of the prescription under this Rule, and in case of an investment company being a subsidiary of a company covered under sub-rule (1), such subsidiary shall be counted for the purpose of layer requirements under this Rule.

(4) Every holding company, other than a holding company referred to in sub-rule (2), existing on or before the commencement of this Rule, which has number of layers of subsidiaries in excess of number specified in sub-rule (1) -

(i) shall file, with the Registrar a return in Form SDD-1 given in the Annexure disclosing the details specified therein, within a period of three months from the date of its deployment as an electronic form on the Ministry's MCA-21 portal; and

(ii) shall not, after the date of commencement of this rule, have any additional layer of subsidiaries over and above the layers existing on such date.

Form SDD-1

Return regarding layers of subsidiaries existing on the date of commencement of rule 5

(Refer Rule 5(4)(i))

1. (a) Name of the company: _____

(b) CIN of the company: _____

2. Number of layers of subsidiaries as on the date of _____
commencement of rule 5

3. Layer wise details of subsidiary companies

SN	Name of subsidiary	CIN of subsidiary company	Name of holding company	CIN of holding company	% of shares held by holding company	Layer number
1	SL1-1					1
2	SL1-2					1
3	SL1-3					1
..	.....					1
..	SL2-1					2
..	SL2-2					2
..	SL2-3					2
..	.....					2
..	SL3-1					3
..	SL3-2					3
..	SL3-3					3

..	.....					3
..	SL4-1					4
..	SL4-2					4
..	SL4-3					4
..	.....					4
..	.....	.....	....	...	....	... upto the last level

I (Name of director of the company signing the Form) am authorised by the Board of Directors of the company vide resolution number _____ dated _____ (DD/MM/YYYY) to sign this form and declare that -

(1) the information of the subsidiaries and the layers as contained in the form is true, correct and complete and no information has been suppressed or concealed.

(2) I have read the provisions of section 448 and 449 of Companies Act, 2013 which provide for punishment for false statement and punishment for false evidence respectively.

To be digitally signed by

Director DSC

Director Identification Number of the Director

Date:

Place:

[File No. _____]

Note : The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification number G.S.R 238(E), dated the 31st March, 2014.