

# Decoding Key Definitions under Companies Act, 2013

10 August 2023

CS Anoop Deshpande

Anoop.Deshpande@sunpharma.com

Deshpande.Anoop@gmail.com

9158888660

LinkedIn - deshpandeanoop

# Associate Company (6)

**“associate company”**, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation.—For the purposes of this clause,—

- (a) the expression **“significant influence”** means control of at least twenty per cent. of total **voting power**, or **control** of or participation in business decisions under an agreement;
- (b) the expression **“joint venture”** means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

# Holding (46) and Subsidiary Company (87)

**“holding company”**, in relation to one or more other companies, means a company of which such companies are subsidiary companies;

Explanation.—For the purposes of this clause, the expression “company ” includes any body corporate.

**“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) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total **voting power** either at its own or together with one or more of its subsidiary companies:

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,—

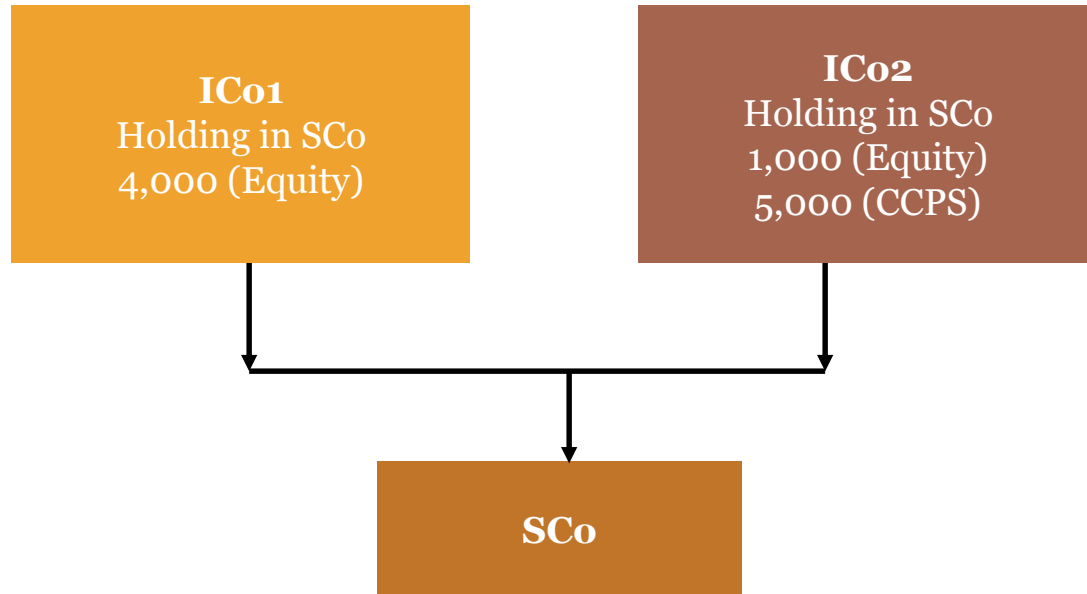
(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the Directors;

(c) the expression “company” includes any body corporate;

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

# Holding, Subsidiary and Associate Company



Type of Capital	No. of Shares
Equity	5,000
CCPS	5,000
<b>Total</b>	<b>10,000</b>

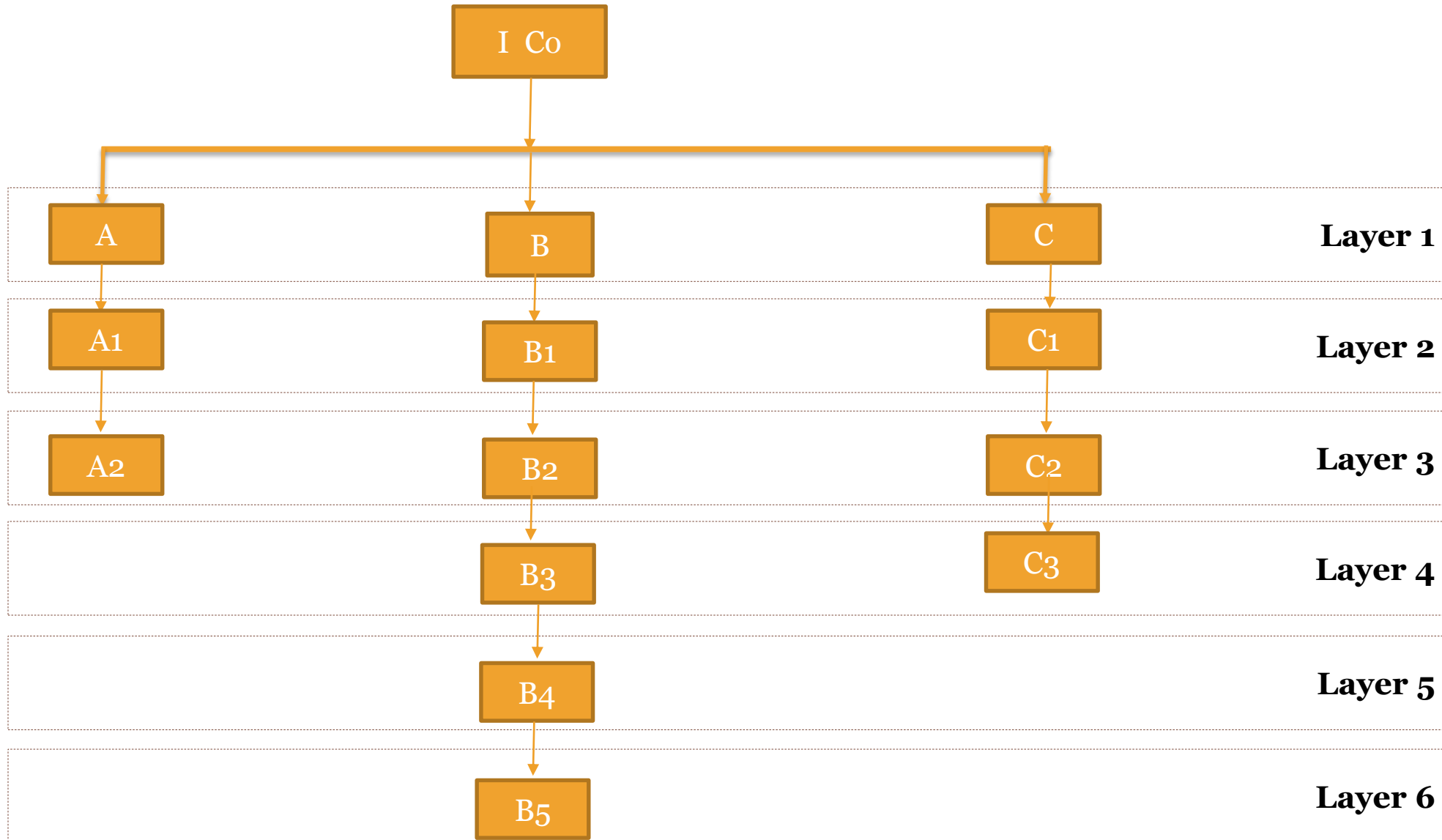
## CA 2013

- SCo becomes a subsidiary company of ICo2 as ICo2 is holding more than 50% of the equity and convertible preference capital
- SCo becomes an associate company of ICo1 as ICo1 is holding more than 20% of the equity and convertible preference capital

## Post CAA 2017

- SCo becomes a subsidiary company of ICo1 as ICo1 is holding more than 50% of the total voting power
- SCo becomes an associate company of ICo2 as ICo2 is holding more than 20% of the total voting power.
- However, where dividend is not paid to ICo2 on the CCPS for consecutive two years, then ICo2 will get voting powers as equity shares, thereby making ICo2 the Holding Company of SCo

# Layers of Subsidiaries



# Deposit (31)

“**deposit**” includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include any amount received;

- i. from central/ state government
- ii. from foreign source
- iii. from any banking company as a loan
- iv. from any public financial institutions notified by the central government as a loan/ financial assistance
- v. as against issue of commercial paper or any other instruments
- vi. by a company from any other company
- vii. and held pursuant to an offer made in accordance with the provisions of the act towards subscription to any securities
- viii. from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company
- ix. by the issue of bonds or debentures secured by a first charge
- x. issue of non-convertible debenture not constituting a charge on the assets of the company
- xi. from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit
- xii. any non-interest bearing amount received and held in trust
- xiii. in the course of, or for the purposes of, the business, as advance, security deposit, long term service advance.
- xiv. by the promoters of the company by way of unsecured loan
- xv. by a Nidhi company in accordance with the rules made under section 406 of the Act
- xvi. by way of subscription in respect of a chit under the Chit Fund Act, 1982 (40 of 1982)
- xvii. by the company under any collective investment scheme in compliance with regulations framed by the Securities and Exchange Board of India;
- xviii. by a start-up company, by way of a convertible note

# Financial Year (41)

**“financial year”** in relation to any company or body corporate, means the period ending on the 31<sup>st</sup> day of March every year, and where it has been incorporated on or after the 1<sup>st</sup> day of January of a year, the period ending on the 31<sup>st</sup> day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

**Provided that** on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:

**Provided further that** a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause.

# Independent Director (47) – [1/2]

**“independent director”** means an independent director referred to in sub-section (6) of section 149;

(6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—

- a) person of integrity and possesses relevant expertise and experience;
- b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company  
(ii) who is not related to promoters or Directors in the company, its holding, subsidiary or associate company;
- c) who has or had no pecuniary relationship during the two immediately preceding financial years or during the current financial year;
- d) none of whose relatives—
  - (i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year not exceeding fifty lakh rupees or two per cent of the paid-up capital
  - (ii) is indebted during the two immediately preceding financial years or during the current financial year;
  - (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person during the two immediately preceding financial years or during the current financial year; or
  - (iv) has any other pecuniary transaction or relationship amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);



# Independent Director (47) – [2/2]

e) who, neither himself nor any of his relatives—

i. holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.

ii. is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

A. a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

B. any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

iii. holds together with his relatives two per cent. or more of the total voting power of the company; or

iv. is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, Directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or

f) who possesses such other qualifications as may be prescribed.

# Key Managerial Personnel (51)



The Chief Executive Officer or the Managing Director or the Manager [Section 203 – In their absence, a Whole-time Director]



The Company Secretary



The Whole-time Director



The Chief Financial Officer



such other officer, not more than one level below the Directors who is in whole-time employment, designated as key managerial personnel by the Board



Such other officer as may be prescribed

**NCLAT, In Hamlin Trust and others vs. LSFIO Rose Investments and Others** held “after hearing the arguments of the counsel for appellants, held that even if RFPL is a private company the provisions of Section 203 shall apply to a company that voluntarily appoints a CFO, like RFPL since the CFO is a key managerial personnel (KMP) in terms of Section 2(51) of Companies Act, 2013, directed that eligibility for appointment of CFO as enshrined in Section 203 of the Companies Act, 2013 would apply de hors agreement between the parties to the contrary”

# Manager (53) and Managing Director (54) Whole-time Director (94)

**“manager”** means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;

**“managing director”** means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

**Explanation—**For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management;

**“whole-time director”** includes a director in the whole-time employment of the company;

# Officer (59) and Officer in Default (60)

“**officer**” includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the Directors is or are accustomed to act;

“**officer who is in default**” for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

- i. whole-time director;
- ii. key managerial personnel;
- iii. where there is no key managerial personnel, such director or Directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the Directors, if no director is so specified;
- iv. any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
- v. any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
- vi. every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
- vii. in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

# Private Company (68) and Public Company (71)

**“Private company”** means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—

- i. restricts the right to transfer its shares;
- ii. except in case of One Person Company, limits the number of its members to two hundred:

**Provided that** where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

**Provided further that**—

- A. persons who are in the employment of the company; and
  - B. persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- iii.* prohibits any invitation to the public to subscribe for any securities of the company

**“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:

**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;

# Small Company (85)

“**Small company**” means a company, other than a public company,—

- i. paid-up share capital not exceeding Rs. 4 crore [can be maximum Rs.10 crore]; and
- ii. turnover not exceeding Rs. 40 crore [can be maximum Rs.100 crore]:

**Provided that** nothing in this clause shall apply to—

- A. a holding company or a subsidiary company;
- B. a company registered under section 8; or
- C. a company or body corporate governed by any special Act

## **Impact:**

- Two Board Meetings
- Cash flow statement not required
- No external certification for Annual Return
- No Audit Rotation
- Eligible for fast track merger
- Lesser fees and penalties
-

# Related Party (76)



A director or his relative



A firm in which a director, manager or his relative is a partner



A public company in which a director or manager is a director and holds along with his relatives, more than 2% of its paid up share capital



Any person on whose advice, directions or instructions a director or manager is accustomed to act



Prescribed – A director (other than ID) or key managerial personnel of the holding company or his relative with reference to a company



A key managerial personnel or his relative



A private company in which a director or manager or his relative is a member or director



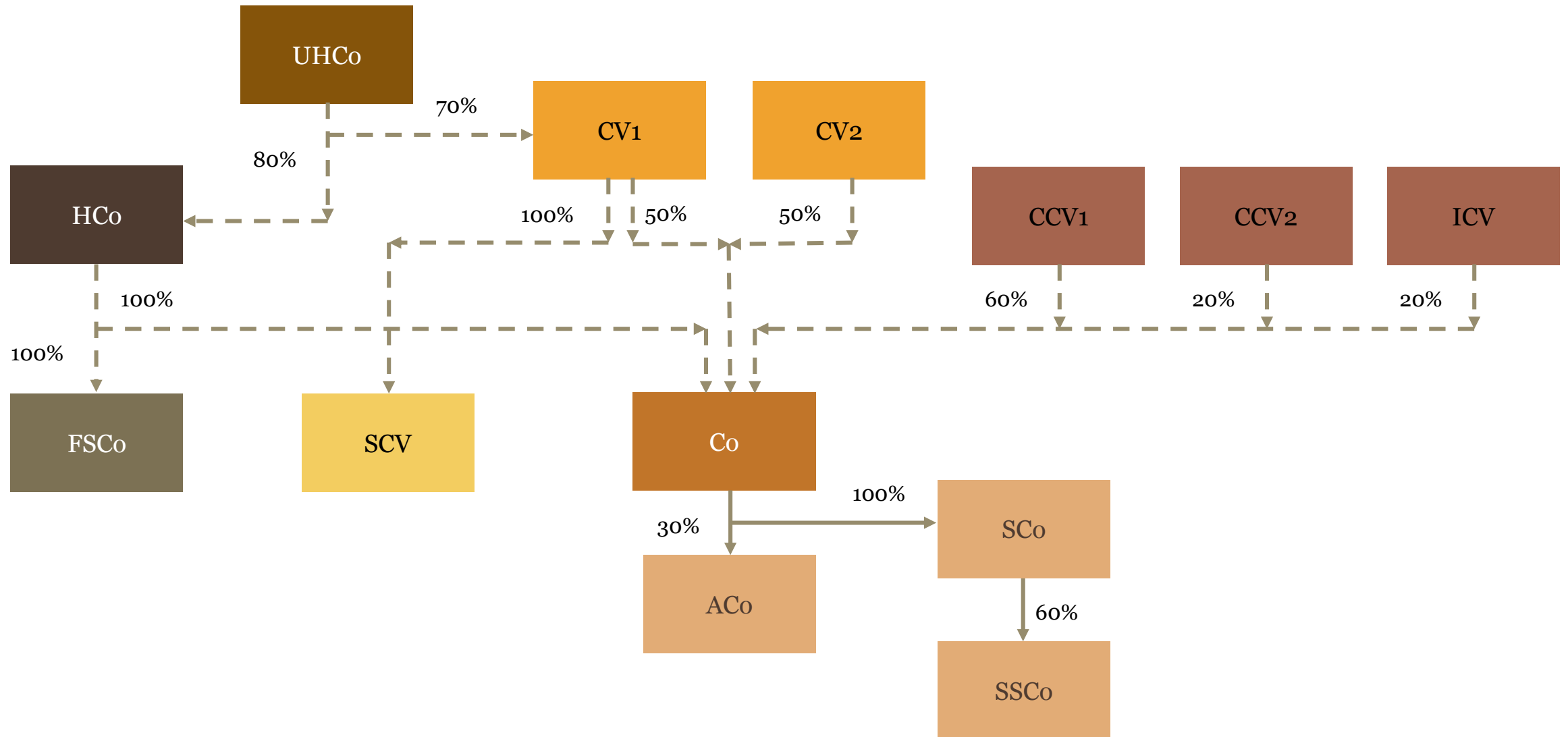
Any body corporate whose Board of directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager



- A) Holding, subsidiary or associate company
- B) Subsidiary of holding company to which it is also a subsidiary
- C) Investing company or the venturer

- Nothing in clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity
- Clause (viii) is exempt for private companies for the purpose of Section 188 by virtue of notifications dated 5 June 2015 and 13 June 2017

# Examples on Clause (viii)





Thank you