

AMENDED DEFINITIONS

COMPANIES (AMENDMENT) ACT, 2017

SECTION 2(6) – ASSOCIATE COMPANY

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 purpose of this clause -

- (a) the expression "significant influence" means control of at least twenty percent 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;'

The explanation for joint venture has been newly inserted. Earlier the significant influence was determined on basis of control of at least twenty percent of total share capital, or of business decisions under an agreement instead least twenty percent of total voting power, or control of or participation in business decisions under an agreement. Thus, the control through total voting power only and not just by holding capital. Therefore, there is no exemption for companies having preference share capital. Further, agreement is essential element to establish control through participation.

Total voting power defined in 2(89) of the Act which states that in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes.

SECTION 2(28) – COST ACCOUNTANT

Cost Accountant means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act.

The holding of valid certificate of practice by Cost Accountant has been newly inserted.

SECTION 2(30) – DEBENTURE

Debenture includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not.

Provided that—

- a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and
- b) such other instrument, as may be prescribed* by the Central Government in consultation with the Reserve Bank of India, issued by a company, shall not be treated as debenture;"

The proviso to the definition has been newly inserted.

SECTION 2(41) – FINANCIAL YEAR

Financial Year, in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st 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 or associate 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;

In order to obtain the permission for adopting a different financial year, an application can be made by a company or body corporate which is an associate company to company incorporated outside India. Earlier, associate companies were not covered under the definition. Therefore, a company or a body corporate being either, holding company or a subsidiary or associate company of a company incorporated outside India can adopt a different financial year for the ease of consolidation of its accounts.

SECTION 2(46) – HOLDING COMPANY

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.

The explanation is newly inserted. The explanation harmonizes the provisions of section 2(87) [subsidiary company] and 2(46) [holding company] of the Act.

SECTION 2(49) – INTERESTED DIRECTOR

Interested Director means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company.

The definition of interested director has been omitted.

SECTION 2(51) – KEY MANAGERIAL PERSONNEL

Key Managerial Personnel, in relation to a company, means—

- (i) the Chief Executive Officer or the managing director or the manager;
- (ii) the company secretary;
- (iii) the whole-time director;
- (iv) the Chief Financial Officer;
- (v) 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; and
- (vi) such other officer as may be prescribed*;

Point (v) has been newly inserted. Therefore, the officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board, shall also be covered under the definition of key managerial personnel. This clause has been inserted to fix the accountability of the person who is in charge of various departments.

SECTION 2(57) – NET WORTH

Net Worth means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

In addition to the paid-up share capital, reserves created out of the profits and securities premium account, the debit or credit balance of Profit and Loss account shall be considered for the computation of Net Worth.

SECTION 2 (71) – PUBLIC 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;

In order to be public company, both conditions shall be satisfied. The word “and” has been inserted. Further, the companies such as section 8/ unlimited/ guarantee cannot be a public company.

SECTION 2 (72) – PUBLIC FINANCIAL INSTITUTION

Public Financial Institution means—

(i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);

(ii) the Infrastructure Development Finance Company Limited, referred to in clause (vi) of sub-section (1) of section 4A of the Companies Act, 1956 (1 of 1956) so repealed under section 465 of this Act;

(iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002);

(iv) institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act, 1956 (1 of 1956) so repealed under section 465 of this Act;

(v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless—

(A) it has been established or constituted by or under any Central or State Act other than this Act or the previous company law; or

(B) not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments;

SECTION 2 (76) – RELATED PARTY

Related Party, with reference to a company, means—

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager or his relative is a member or director;

(v) a public company in which a director and manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;

(vi) 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;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any body corporate which is—

(A) a holding, subsidiary or an associate company of such company;

(B) a subsidiary of a holding company to which it is also a subsidiary; or

(C) an investing company or the venturer of the company;

(ix) such other person as may be prescribed;

Explanation — For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

Earlier, entities incorporated in India were covered in the purview of the definition. Thereby, the companies incorporated outside India (such as holding/ subsidiary/ associate / fellow subsidiary of an Indian company) were excluded from the purview of related party of an Indian company. Thus, the definition has been amended by substituting the word ‘company’ with ‘body corporate’.

SECTION 2 (85) – SMALL COMPANY

Small Company means a company, other than a public company –

- i. paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed* which shall not be more than ten crore rupees; and
- ii. turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed* which shall not be more than one hundred crore rupees.

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;

The maximum prescribed limit w.r.t. the paid-up share capital for small companies has been increased from five crore rupees to ten crores.

Further, maximum prescribed limit w.r.t. the turnover for small companies has been increased from twenty crore rupees to one hundred crores.

Please note that for determining the status of a small company the turnover shall be as per profit and loss account for the immediately preceding financial year. Earlier the turnover was considered as per its last profit and loss account.

SECTION 2 (87) – SUBSIDIARY COMPANY

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;

The company shall be treated as a subsidiary company where the holding company controls the composition of the Board of Directors or exercises or controls more than one-half of the total voting power instead of total share capital at its own or together with one or more of its subsidiary companies.

For determination of total voting power, the equity shareholders of the company have the voting rights and under certain circumstances voting rights will also be available to the preference shareholders of the company. Further, under section 47(2)(c), where the dividend is not paid such class of preference shares for a period of 2 years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the meeting.

SECTION 2 (91) – TURNOVER

Turnover means the gross amount of revenue recognized in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year.

Value realization of sales etc. has been replaced with revenue recognized in profit and loss account.

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