

Definitions of companies updated in Amended act

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The Companies (Amendment) Act, 2017, which received presidential assent and was notified on 3 January 2018, has amended various definitions under the Companies Act, 2013. Some of the important amendments to definitions include the following:

Associate company. An associate company to another company under the 2013 act means a company in which such other company has a significant influence. While the act defined “significant influence” as control of at least 20% of the total share capital or of business decisions under an agreement, the amendment has modified this to make it control of at least 20% of the “total voting power, or control of or participation in business decisions under an agreement”. In other words, the amendment links the concept of significant influence in determining an associate company with control over voting power, rather than control over share capital. The contours of significant influence have also been expanded to include even instances where there is participation in business decisions of the company under an agreement.

Joint ventures, which are also included in the definition of associate companies, have been defined to mean a joint arrangement whereby the parties that have joint control of the arrangement have the rights to the net assets of the arrangement.

Related party. The definition of related party now includes an “investing company or venturer of the company”, which has been defined to mean a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

Holding company. A holding company in relation to another company has been defined under section 2 (46) of the 2013 act as a company of which such other company is a subsidiary company. An explanation has been added to the definition of holding company under the amendment, where for the purposes of the definition of holding company, “company” includes any body corporate.

Subsidiary company. The 2013 act had defined a subsidiary company as one in which the holding company controls the composition of the board, or exercises control over more than 50% of the total share capital of the company (directly or indirectly). The amendment has changed the latter half of this definition to exercising control over more than 50% of the “total voting power” of the company. Essentially, this means that the total share capital will no longer

be considered for the purposes of determining whether a company is a subsidiary company; voting power will henceforth be the determinant.

The business law digest is compiled by Nishith Desai Associates (NDA). NDA is a research-based international law firm with offices in Mumbai, New Delhi, Bengaluru, Singapore, Silicon Valley, Munich and New York. It specializes in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner.