



Regulatory Alert Stay Ahead...

Companies (Amendment) Act, 2017 – impact on M&A

Issue no: RA/10/2018

In this issue:

[Background](#)
[Impact on M&A](#)
[Conclusion](#)
[Do you know about Dbriefs?](#)
[Contacts](#)

Background

- Companies (Amendment) Act, 2017 (the Amendment Act) was passed on 3 January 2018 and has made several changes to the Companies Act, 2013 (2013 Act).
- Ministry of Corporate Affairs (MCA) has brought in force the provisions of the Amendment Act from time to time on 26 January 2018 and 9 February 2018. Recently, in its third round on 7 May 2018, MCA brought in force additional provisions of the Amendment Act. Key provisions that are likely to have an impact on Mergers & Acquisitions (M&A) are summarized in this alert.

Impact on M&A

- Meaning of "significant influence" and "joint venture" in the definition of "associate company" has been altered / clarified as under:
 - "Significant influence" would mean control of at least 20% of total voting power (as against earlier requirement of 20% of total share capital), or control of or participation in business decisions under an agreement.
 - "Joint venture" which was not defined under the 2013 Act has been defined to mean a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.
- One of the parameters for determining holding-subsidary relationship would now be on the basis of the holding company exercising or controlling more than one-half of the total voting power in the subsidiary company (as against the earlier requirement of exercising or controlling of more than one-half of total share capital which was aggregate paid-up equity share capital and convertible preference share capital) either at its own or together with one or more of its subsidiary companies.
- Sweat equity shares may be issued at any time after registration of the Company (as against the earlier cooling period of completion of 1 year from the date of commencement of business).
- In case Audit Committee does not approve a Related Party Transaction (RPT) (other than those transactions referred in section 188 of the 2013 Act) it shall make its recommendations to the Board.
- Audit Committee may ratify RPT not exceeding ` 10 million entered into by a director or officer of the Company without its approval. Such ratification should be done within 3 months of entering into a RPT and if such RPT is not ratified by Audit Committee, then such RPT shall be voidable at the option of the Audit Committee. Further, such director shall also indemnify the Company for any loss arising from such RPT.
- Section 185 (loan to directors etc.) of the 2013 Act has been replaced entirely. Key features of the amended section 185 are as under:-
 - Complete ban on giving loan, providing guarantee or security in relation to loans to any director of the Company or its holding company or any partner

or relative of any such director or any firm in which such director or his relative is a partner.

- Advancing loan, providing guarantee or security in relation to loans to "interested persons" now permitted subject to approval of members by special resolution, disclosure in explanatory statement on purpose for which such loan/guarantee/security to be utilized and on lending company being satisfied that such loans are utilized only in relation to principal business activities of the borrowing company.

"Interested person" to include:-

- Private companies in which concerned director is a director / member
 - Bodies corporate at a general meeting of which at least 25% of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
 - Bodies corporate, whose Board, Managing Director or Manager is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.
- Exemption provided to investment companies to continue with interest on loans being now benchmarked with prevailing yield of 1-year, 3-year, 5-year or 10-year government security, closest to the tenor of the loan, as against earlier benchmarking of interest with the Bank rate declared by RBI.
 - In case of contravention of section 185, officers-in-default shall also be liable for the penalty, in addition to the existing penalty on the company, concerned director or other person to whom the loan/ guarantee etc. is advanced.

Conclusion

The changes made by the Amendment Act could require a re-evaluation of corporate structures, particularly in relation to holding-subsidiary and associate relationship, and inter-corporate loans and advances etc.

Source:

- Companies (Amendment) Act 2017 published in the Official Gazette dated 3 January 2018
- Notification No. S.O. 1833(E) dated 7 May 2018 issued by MCA

Do you know about Dbriefs?

Dbriefs are live webcasts that give valuable insights on important developments affecting your business. To register, visit the [Dbriefs](#) page



Download the report



Contacts

Ahmedabad

19th Floor, Shapath - V
SG Highway,
Ahmedabad – 380 015.
Tel: + 91 (079) 6682 7300
Fax: + 91 (079) 6682 7400

Coimbatore

Shanmugha Manram
41, Race Course,
Coimbatore
Tamil Nadu - 641018
Tel: + 91 (0422) 439 2801
Fax: +91 (0422) 222 3615

Kolkata

13th and 14th Floor,
Building – Omega
Bengal Intelligent Park
Block – EP & GP
Sector V, Salt Lake City,
Kolkata – 700091
Tel : + 91 (033) 6612 1000
Fax : + 91 (033) 6612 1001

Bangalore

19th Floor, 46 - Prestige Trade
Tower, Palace Road, High Grounds,
Bengaluru,
Karnataka – 560001.
Tel: + 91 (079) 6627 6000
Fax: +91 (080) 6627 6010

Delhi/Gurgaon

Building 10,
Tower B, 7th Floor,
DLF Cyber City,
Gurgaon 122 002
Tel : +91 (0124) 679 2000
Fax : + 91 (0124) 679 2012

Mumbai

Indiabulls Finance Centre,
Tower 3, 28th Floor,
Elphinstone Mill Compound,
Senapati Bapat Marg, Elphinstone
(W),
Mumbai – 400013
Tel: + 91 (022) 6185 4000
Fax: + 91 (022) 6185 4101

Chennai

No.52, Venkatanarayana Road,
7th Floor, ASV N Ramana Tower,
T-Nagar,
Chennai 600 017.
Tel: +91 (044) 6688 5000
Fax: +91 (044) 6688 5050

Hyderabad

KRB Towers, Plot No. 1-4,
Survey No. 65 to 67,
1st -3rd Floor
Madhapur, Serilingampally(M),
RR District, Hyderabad.
Tel: +91 (040) 6603 2600
Fax: +91 (040) 6603 2714

Pune

706, B-Wing, 7th Floor,
ICC Trade Tower,
Senapati Bapat Road,
Pune – 411 016.
Tel: + 91 (020) 6624 4600
Fax: +91 (020) 6624 4605



Deloitte makes an impact that matters

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

This material and the information contained herein prepared by Deloitte Touche Tohmatsu India LLP (DTTI LLP) is intended to provide general information on a particular subject or subjects and is not an exhaustive treatment of such subject(s). This material contains information sourced from third party sites (external sites). DTTI LLP is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such external sites. None of DTTI LLP, Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this material, rendering professional advice or services. This information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this material.

©2018 Deloitte Touche Tohmatsu India LLP. Member of Deloitte Touche Tohmatsu Limited