

Ministry of Defence
D(Vigilance)

Subject: Guidelines of the Ministry of Defence for Penalties in Business Dealings with Entities.

Reference is invited to Guidelines of the Ministry of Defence for Penalties in Business Dealings with Entities promulgated vide MoD ID No.31013/1/2016-D(Vig.) Vol.II dated 21.11.2016.

2. Para B.3 of ibid guidelines provides that, "All firms/companies which come within the sphere of effective influence of the entities shall be treated as its allied firms. In determining this, the following factors may be taken into consideration:-

- (i) Whether the management is common or the majority interest in the management is held by the partners or directors of the entities.
- (ii) Majority shares are owned by the entity, their directors/shareholders and by virtue of this it has a controlling voice."

3. The term 'common management' in the above para involves some degree of ambiguity in interpretation. The issue has therefore, been deliberated in consultation with Ministry of Corporate Affairs, Ministry of Law & Justice and the Ld. AG.

4. Accordingly, it is clarified that following criteria would be adopted for determining when the management of two or more companies/entities can be said to be common, for the purpose of Clause B.3 (i) of the guidelines:-

- (i) If the Managing Director of one body is also the Managing Director of the other body,
- (ii) If the majority of the directors of one body constitute or at any time within six months immediately preceding constituted, a majority of the directors of the other body;
- (iii) If not less than 1/3rd of the total voting power with respect of any matter relating to each of the two bodies corporate is exercised or controlled by the same individual or body corporate;

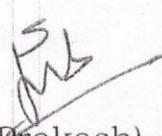
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- (iv) If the holding company of one body corporate is under the same management as other body corporate within the meaning of the above situations;
- (v) If one or more directors of one body corporate while holding whether by themselves or together with their relatives, the majority of shares in that body corporate also hold, the majority of shares in the other body corporate.

5. The above clarification is issued with the approval of RM and in consultation with Ministry of Law & Justice vide Dy. No. 287116/17 dated 16.10.2017.


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MoD ID No.31013/1/2017-D (Vig) Pt.II dated 06.03.2018

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