

‘Promoter’ & ‘Control’ [Sec 2(69) read with Sec 2(27)] Part-2

(Continued from Geeta Saar 38th edition)

5. De jure or de facto control

The control may be either De Jure control i.e. as a matter having a legal right and de facto control i.e. factual control, whether accompanied with rights or not. In general the control over the Company the exercise of power by voting rights and a person or group is said to have controlling interest if he or it has power by exercise of voting rights to carry a resolution at a General Meeting. However, in certain cases the control may be exercised without having controlling interest but having control over the affairs in fact i.e. control the decisions of the Board.

The expression “controlling interest” denotes a means of determining the policy of a business etc., especially by ownership of a majority of the stock. According to Random House Webster’s unabridged Dictionary it means ownership of enough stock in a Company to exert control over policy and management.

6. Management decisions, policy decision or business decisions

In case of private equity investment, the investor in general exercises the control over the business decisions or policy decisions such as change in the business policy, capital expenditure, expansion of business etc. In such situations the investor though is not a majority shareholder may in fact exercise the control over the management decision or policy decisions of the Company through the clause like reserve matters through the shareholders agreements.

7. Departure from the definition

The definition of ‘Control’ as discussed above is to be referred for all the purposes except where the context otherwise provides. In the following context, the definition given is not required to be referred.

Section 2	Definition/ Term	Term used in other sections of Companies Act, 2013	Relevant Text
(27)	Control	2(53)	“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;

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			(Control is a generic word here)
		13(8)	<p>(ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.</p> <p>(Control is to be construed as per SEBI Guidelines here)</p>
		283(1)	<p>Where a winding up order has been made or where a provisional liquidator has been appointed, the Company Liquidator or the provisional liquidator, as the case may be, shall, on the order of the Tribunal, forthwith take into his or its custody or control all the property, effects and actionable claims to which the company is or appears to be entitled to and take such steps and measures, as may be necessary, to protect and preserve the properties of the company.</p> <p>(Control is a generic word here)</p>
		283(3)	<p>(3) On an application by the Company Liquidator or otherwise, the Tribunal may, at any time after the making of a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, officer or other employee of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the Tribunal directs, to the Company Liquidator, any money, property or books and papers in his custody or under his control to which the company is or appears to be entitled.</p> <p>(Control is a generic word here)</p>
		290(2)	<p>The exercise of powers by the Company Liquidator under sub-section (1) shall be subject to the overall control of the Tribunal.</p> <p>(Control is a generic word here)</p>
		293(2)	Any creditor or contributory may,

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			<p>subject to the control of the Tribunal, inspect any such books, personally or through his agent. (Control is a generic word here)</p> <p>(b) does not deliver up to the Company Liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control and which he is required by law to deliver up.</p>
		336(1)	<p>(c) does not deliver up to the Company Liquidator, or as he directs, all such books and papers of the company as are in his custody or under his control and which he is required by law to deliver up.</p> <p>(Control is a generic word here)</p>
		342(2)	<p>If it appears to the Company Liquidator in the course of a voluntary winding up that any person, who is or has been an officer, or any member, of the company has been guilty of any offence in relation to the company under this Act, he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any books and papers, being information or books and papers in the possession or under the control of the Company Liquidator and relating to the matter in question, as the Registrar may require.</p> <p>(Control is a generic word here)</p>
		352(1)	<p>Where any company is being wound up and the liquidator has in his hands or under his control any money representing</p> <p>(Control is a generic word here)</p>
		361(3)	<p>The Official Liquidator shall forthwith take into his custody or control all assets, effects and actionable claims to which the company is or appears to be entitled.</p> <p>(Control is a generic word here)</p>

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		418(2)	<p>The officers and other employees of the Tribunal and the Appellate Tribunal shall discharge their functions under the general superintendence and control of the President, or as the case may be, the Chairperson, or any other Member to whom powers for exercising such superintendence and control are delegated by him.</p> <p>(Control is a generic word here)</p>
		429(1)	<p>The Tribunal may, in any proceeding relating to a sick company or winding up of any other company, in order to take into custody or under its control all property, books of account or other documents, request, in writing, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector within whose jurisdiction any such property, books of account or other documents of such sick or other company, are situate or found, to take possession thereof, and the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, as the case may be, shall, on such request being made to him,—</p> <p>(a) take possession of such property, books of account or other documents; and (b) cause the same to be entrusted to the Tribunal or other person authorised by it.</p> <p>(Control is a generic word here)</p>

(Concluded)

Contents of Geeta Saar, as extracted from ICSI Premier on Company Law, is as per notified law as on 30th September, 2016.