



PRELIMINARY



LEARNING OUTCOMES

At the end of this chapter, you will be able to:

- To know about the extent and commencement of the Companies Act, 2013.
- Know about the application of the Act.
- Familiar with the definition clause given in the Act.

CHAPTER OVERVIEW



Preliminary chapter of the Act covers

Short title, extent and commencement

Application

Definitions

1. INTRODUCTION

The Companies Act, 2013 is an Act to consolidate and amend the law relating to companies. The legislation was necessitated to meet changes in the national and international economic environment and for expansion and growth of economy of our country.

The Companies Act, 2013 received the assent of the Hon'ble President of India on 29th August, 2013 and was notified in the Official Gazette on 30th August, 2013 for public information stating that different dates may be appointed for enforcement of different provisions of the Companies Act, 2013, through notifications.

Example: Section 1 came into force on 30th August, 2013; 98 sections came into force on 12th September, 2013; 143 sections were enforced from 1st April, 2014 and so on.

The Companies Act, 2013 is rule based legislation with 470 sections and seven schedules. The entire Act has been divided into 29 chapters. Each chapter has at least one set of Rules. The Companies Act, 2013 aims to improve corporate governance, simplify regulations and strengthen the interests of investors. Thus, the enactment making our corporate regulations more contemporary.

2. SHORT TITLE, EXTENT, COMMENCEMENT AND APPLICATION

This Section 1 of the Companies Act, 2013 deals with the title of the Act. According to which this Act may be called as the Companies Act, 2013.

Further, section deals with the extent to the applicability of the Act. It says that the Act shall extend to the whole of India.

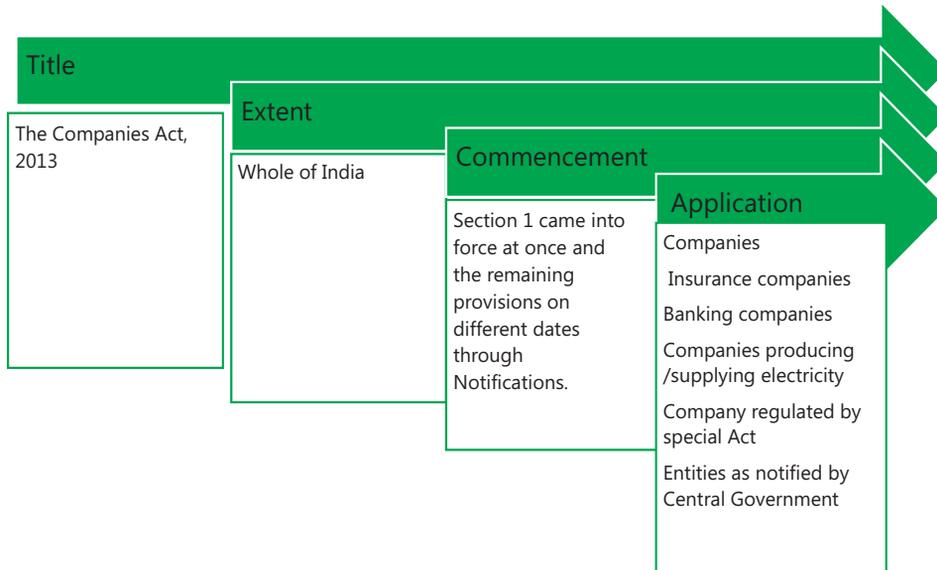
This section also specifies the date of commencement of this Act. Accordingly, this section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

This Section furthermore states of the applicability of the Act. The provisions of this Act shall apply to-

- (a) companies incorporated under this Act or under any previous company law*;
- (b) insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;
- (c) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;
- (d) companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;
- (e) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act, and
- (f) such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.

Example: Food Corporation of India (FCI), National Highway Authority of India (NHAI) etc.

***For example:** ABC Ltd. was incorporated on 1.1.1912 under the Indian Companies Act, 1882. So, the Companies Act, 2013 shall also be applicable on ABC Ltd.



3. DEFINITIONS

Section 2 of the Companies Act, 2013 is a definition section. It provides various terminologies used in the Act. Definitional Sections or Clauses, are known as 'internal aids to construction' and can be of immense help in interpreting or construing the enactment or any of its parts.

Also, according to clause 95 of section 2, words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in those Acts.

When a word or phrase is defined as having a particular meaning in the enactment, it is that meaning alone which must be given to it while interpreting a Section of the Act unless there be anything repugnant in the context.

Section 2 states that- In this Act, unless the context otherwise requires,—

- (1) **Abridged prospectus** means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf;
- (2) **Accounting standards** means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133;

Section 133 of the Act deals with the Central Government to Prescribe Accounting Standards. As per the section, the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the

Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

Section 133 is to be read with Rule 7 of the *Companies (Accounts) Rules, 2014*. Accordingly,

- (i) The standards of accounting as specified under the Companies Act, 1956 shall be deemed to be the accounting standards until accounting standards are specified by the Central Government under section 133.
- (ii) Till the National Financial Reporting Authority is constituted under section 132 of the Act, the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India in consultation with and after examination of the recommendations made by the National Advisory Committee on Accounting Standards constituted under section 210A of the Companies Act, 1956.

Further, in exercise of the powers conferred by section 133, the Central Government in consultation with the National Advisory Committee on Accounting Standards prescribed that *Companies (Accounting Standards) Rules, 2006* and the *Companies (Indian Accounting Standards) Rules, 2015* may be followed.

(3) Alter or Alteration includes the making of additions, omissions and substitutions;

(4) Appellate Tribunal means the National Company Law Appellate Tribunal constituted under section 410;

(5) Articles means-

- the articles of association of a company as originally framed, or
- as altered from time to time, or
- applied in pursuance of any previous company law, or
- applied in pursuance of this Act;

(6) 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 purposes of this clause, “significant influence” means control of at least twenty per cent of total share capital, or of business decisions under an agreement;

As per the *Companies (Specification of Definitions Details) Rules, 2014* term total Share Capital, for the purposes of this clause, means the aggregate of the –

- (a) Paid-up equity share capital; and
- (b) Convertible preference share capital;

Vide Circular dated 25/06/2014 it has been clarified that the shares held by a company in another company in a fiduciary capacity shall not be counted for the purpose of determining the relationship of associate company.

Students may please note that the definition of Associate company as defined under AS 23/ Ind AS 28 (Accounting for Investments in Associates in Consolidated Financial Statements/Investment in Associates and Joint Ventures) is slightly different from the above definition as given in the Companies Act, 2013.

- (7) **Auditing standards** means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143.

Section 143 of the Companies Act, 2013 deals with the Powers and Duties of Auditors and Auditing Standards. Sub-section (10) to section 143 provides that the Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority:

Provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.

- (8) **Authorised capital** or **Nominal capital** means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;
- (9) **Banking company** means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949;
- (10) **Board of Directors** or **Board**, in relation to a company, means the collective body of the directors of the company;
- (11) **Body corporate** or **Corporation** includes a company incorporated outside India, but does not include—
- (i) a co-operative society registered under any law relating to co-operative societies; and
 - (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;
- (12) **Book and Paper** and **Book or Paper** include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;

As per the *Companies (Specification of definitions details) Rules, 2014*, "e-Form" means a form in the electronic form as prescribed under the Act or the rules made thereunder and notified by the Central Government under the Act;

- (13) **“Books of account”** includes records maintained in respect of—
- (i) **all sums of money received and expended by a company** and matters in relation to which the receipts and expenditure take place;
 - (ii) **all sales and purchases of goods and services by the company;**
 - (iii) **the assets and liabilities** of the company; and
 - (iv) the **items of cost** as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;
- Section 148 of the Companies Act, 2013 authorises Central Government to Specify Audit of Items of Cost in Respect of Certain Companies.
- (14) **Branch office**, in relation to a company, means any establishment described as such by the company;
- (15) **Called-up capital** means such part of the capital, which has been called for payment;
- (16) **Charge** means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage;
- (17) **Chartered Accountant** means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;
- (18) **Chief Executive Officer (CEO)** means an officer of a company, who has been designated as such by it;
- (19) **Chief Financial Officer (CFO)** means a person appointed as the Chief Financial Officer of a company;
- These definitions of CEO & CFO should be read with section 2(51) and 203 which deals with the definition and appointment of Key Managerial Personnel (KMP) of the Companies Act, 2013.
- (20) **Company** means a company incorporated under this Act or under any previous company law;
- [Refer clause 67 of section 2 (Previous Company Law) along with the above definition]
- (21) **Company limited by guarantee** means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;
- (22) **“Company limited by shares** means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;

(23) Company Liquidator means a person appointed by the Tribunal as the Company Liquidator in accordance with the provisions of section 275 for the winding up of a company under this Act;

This definition is the modified definition given in line with the Insolvency and Bankruptcy Code, 2016. This is relevant for the provisions related to the winding up.

(24) Company secretary or Secretary means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act;

Exemption: This clause shall not apply to a section 8 (Formation of Companies with Charitable Objects, etc.) company as per the Notification dated 5th June, 2015.

(25) Company secretary in practice means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980;

(26) Contributory means a person liable to contribute towards the assets of the company in the event of its being wound up.

Explanation—For the purposes of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory;

(27) Control shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

It is an inclusive definition and relevant for the provisions relating to subsidiary and holding companies. This definition is also relevant for the definition of subsidiary given under section 2(87) and section 185(1) explanation (d).

(28) 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;

(29) Court means—

- (i) the **High Court** having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii);
- (ii) the **district court**, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the

jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district;

- (iii) the **Court of Session** having jurisdiction to try any offence under this Act or under any previous company law;
- (iv) the **Special Court** established under section 435;
- (v) any **Metropolitan Magistrate** or a Judicial **Magistrate of the First Class** having jurisdiction to try any offence under this Act or under any previous company law;

(30) 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;

(31) Deposit includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;

(32) Depository means a depository as defined in section 2(1)(e) of the Depositories Act, 1996;

As per the Depositories Act, depository means a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under sub-section (1A) of section 12 of the SEBI Act, 1992.

(33) Derivative means the derivative as defined in section 2(ac) of the Securities Contracts (Regulation) Act, 1956 ;

According to section 2(ac) of the Securities Contracts (Regulation) Act, 1956, term derivative includes-

- a security derived from a debt instrument , share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;
- a contract which derives its value from prices, or index of prices, of underlying securities;

(34) Director means a director appointed to the Board of a company;

(35) Dividend includes any interim dividend;

(36) "Document" includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;

(37) Employees' stock option means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit

or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;

- (38) **Expert** includes an engineer, a valuer, a Chartered Accountant, a Company Secretary, a Cost Accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;
- (39) **Financial institution** includes a scheduled bank [as given under section 2(80)], and any other financial institution defined or notified under the Reserve Bank of India Act, 1934;
- (40) **Financial statement** in relation to a company, includes—
- (i) **a balance sheet** as at the end of the financial year;
 - (ii) a **profit and loss account**, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
 - (iii) **cash flow statement** for the financial year;
 - (iv) a statement of changes in **equity**, if applicable; and
 - (v) any **explanatory note** annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

Note: Students may note that 'Profit and Loss Account' may also be referred as 'Statement of Profit and Loss' under the Act at some places. **For example :** Schedule III.

- (41) **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:¹

Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a 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;

1. With respect to specified IFSC public company & specified IFSC Private company, a proviso has been inserted vide notification dated 4th January, 2017 stating that above stated company which is subsidiary of a foreign company, the financial year of the subsidiary may be same as the financial year of its holding company & approval of Tribunal shall not be required.

Example: If the incorporation date of company is 1st of September 2016, the first financial year shall be from 1st September 2016 to 31st March 2017. If the incorporation date is 1st January 2016 then the first financial year shall be from 1st January 2016 to 31st March, 2017.

(42) Foreign company means any company or body corporate incorporated outside India which,—

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner.

As per the Rule given in the *Companies (Specification of Definitions Details) Rules, 2014*, term "**electronic mode**", means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-

- (i) Business to business and business to consumer transactions, data interchange and other digital supply transactions;
- (ii) Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
- (iii) Financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
- (iv) Online services such as telemarketing, telecommuting, telemedicine, education and information research; and
- (v) All related data communication services,

whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

(43) Free reserves means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that—

- (i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
- (ii) any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value,

shall not be treated as free reserves;

(44) Global Depository Receipt means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts;

This definition is to be read with section 41 of the Companies Act, 2013 which provides for issue of global depository receipts.

(45) Government company means any company in which not less than 51% of the paid-up share capital is held 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, and includes a company which is a subsidiary company of such a Government company;

Example: X is a company in which 50% of shareholding is held by Central Government. Here X is not a government company as there is no compliance of minimum holding of paid-up share capital i.e. at least 51 % by the Central Government, or by any State Government or Governments.

(46) Holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies;

For meaning of "subsidiary company" refer the definition given in section 2(87) of the Companies Act, 2013.

(47) Independent director means an independent director referred to in section 149(5);

(48) Indian Depository Receipt means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts;

This section is to be read with section 390 which deals with the offer of Indian Depository Receipts.

(49) 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;

This definition is relevant for section 174 relating to quorum for meetings of the Board of Directors, for section 184 relating to disclosure of interest by directors and also for section 188 relating to related party transactions of the Companies Act, 2013.

(50) Issued capital means such capital as the company issues from time to time for subscription;

(51) 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; and
- (v) such other officer as may be prescribed;

However, till now no other officer has been prescribed.

- (52) **Listed company** means a company which has any of its securities listed on any recognised stock exchange;
- (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;
- (54) **Managing director** means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Explanation—For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management;

- (55) **Member**, in relation to a company, means—
- (i) **the subscriber to the memorandum** of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members even if the subscription money has not been paid to the company;
 - (ii) **every other person who agrees in writing** to become a member of the company and whose name is entered in the register of members of the company;
 - (iii) **every person holding shares of the company** and whose name is entered as a beneficial owner in the records of a depository;
- (56) **Memorandum** means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act;
- (57) **Net worth** means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium 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;

- (58) **Notification** means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;
- (59) **Officer** includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;
- (60) **Officer who is in default**, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—
- (i) **whole-time director** (WTD);
 - (ii) **key managerial personnel** (KMP);
 - (iii) where there is no key managerial personnel, such **director or directors as specified by the Board** in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
 - (iv) **any person** who, under the immediate authority of the Board or any key managerial personnel, **is charged with any responsibility** including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
 - (v) **any person** in accordance with whose advice, directions or instructions **the Board of Directors of the company is accustomed to act**, other than a person who gives advice to the Board in a professional capacity;
 - (vi) **every director**, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
 - (vii) in respect of the issue or transfer of any shares of a company, **the share transfer agents, registrars and merchant bankers** to the issue or transfer;
- Example** : In a company, a default was committed with respect to the allotment of shares by the officers. In company there were no managing director, whole time director, a manager, secretary, a person charged by the Board with the responsibility of complying with the provisions of the Act, and neither any director/directors specified by the board. Therefore, in such situation, all the directors of the company may be treated as officers in default.
- (61) **Official Liquidator** means an Official Liquidator appointed under sub-section (1) of section 359;

- (62) **One Person Company** means a company which has only one person as a member;
- (63) **Ordinary** or **special resolution** means an ordinary resolution, or as the case may be, special resolution referred to in section 114 (Ordinary and Special Resolution);
- (64) **Paid-up share capital or share capital paid-up** means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;
- (65) **Postal ballot** means voting by post or through any electronic mode;
This definition is related to section 110 to be read with Rule 22 of the *Companies (Management and Administration) Rules, 2014* specifying the procedure to be followed for conducting of business through postal ballot and provides the list of items of business which should be transacted only by means of voting through a postal ballot.
- (66) **Prescribed** means prescribed by rules made under this Act;
- (67) **Previous company law** means any of the laws specified below:—
- (i) Acts relating to companies in force before the Indian Companies Act, 1866
 - (ii) the Indian Companies Act, 1866
 - (iii) the Indian Companies Act, 1882
 - (iv) the Indian Companies Act, 1913
 - (v) the Registration of Transferred Companies Ordinance, 1942
 - (vi) the Companies Act, 1956 ; and
 - (vii) any law corresponding to any of the aforesaid Acts or the Ordinances and in force—
 - (A) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913; or
 - (B) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956 , in so far as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968, in so far as other corporations are concerned;
 - (viii) the Portuguese Commercial Code, in so far as it relates to sociedadesanonimas; and
 - (ix) the Registration of Companies (Sikkim) Act, 1961

²**(68) Private company** means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—

- (i) restricts the right to transfer its shares;
- (ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

- (A) persons who are in the employment of the company; and
- (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- (iii) prohibits any invitation to the public to subscribe for any securities of the company;

The requirement of having a minimum paid up share capital shall not apply to a section 8 company *vide notification dated 5th June 2015*.

*Since nothing has been prescribed so far. Thus, there is no minimum paid up share capital to form a private company.

(69) Promoter means a person—

- (a) who has been **named as such in a prospectus** or is identified by the company in the annual return, or
- (b) who has **control over the affairs of the company**, directly or indirectly whether as a shareholder, director or otherwise; or
- (c) in accordance with whose **advice, directions or instructions** the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

(70) Prospectus means any document described or issued as a prospectus and includes a red herring prospectus or shelf prospectus or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate;

³**(71) Public company** means a company which—

- (a) is not a private company;

2. Exemptions given to specified IFSC private company *vide notification dated 4th January, 2017*.

3. Exemptions given to specified IFSC public company *vide notification dated 4th January, 2017*.

(b) has a minimum paid-up share capital as may be prescribed³:

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 ;

Example: A Pvt. Ltd. is wholly owned subsidiary of AB Ltd. A Pvt. Ltd. wanted to avail exemptions as provided to private companies. In this case since A Pvt. Ltd. is subsidiary of AB Ltd., which is a public company, therefore A Pvt. Ltd. will be deemed to be a public company and will be not allowed to avail exemptions provided to a private company.

The requirement of having a minimum paid up share capital shall not apply to a section 8 company *vide notification dated 5th June 2015*.

Since nothing has been prescribed so far. Thus, there is no minimum paid up share capital to form a public company.

(72) Public financial institution means—

- (i) the **Life Insurance Corporation of India**, established under section 3 of the Life Insurance Corporation Act, 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 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;
- (iv) **institutions notified by the Central Government** under sub-section (2) of section 4A of the Companies Act, 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; 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;

(73) Recognised stock exchange means a recognised stock exchange as defined in section 2(f) of the Securities Contracts (Regulation) Act, 1956 .

- (74) **Register of companies** means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;
- (75) **Registrar** means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act;
- (76) **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 company which is—
 - (A) a holding, subsidiary or an associate company of such company; or
 - (B) a subsidiary of a holding company to which it is also a subsidiary;⁴This Clause (viii) shall not apply with respect to section 188 to a private company *vide Notification No. G.S.R. 464(E) dated 5th June, 2015*.
 - (ix) such other person as may be prescribed;

As per Rule 3 given in the *Companies (Specification of Definitions Details) Rules, 2014*, for the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director (other than an independent director) or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

4. This clause 2(76)(viii), shall not apply with respect to section 188 on the specified IFSC public company.

Example : (1) XYZ Pvt. Ltd has two subsidiary companies, Y Pvt. Ltd and Z Pvt. Ltd. Here as per the section 2(76)(viii)(B), Y Pvt. Ltd and Z Pvt. Ltd. are related parties. However, as per the Notification No. G.S.R. 464(E) dated 5th June, 2015, clause (viii) shall not apply with respect to section 188 to a private company. Therefore Y Pvt. Ltd and Z Pvt. Ltd are not related parties for the purpose of section 188. However, if Y Pvt. Ltd and Z Pvt. Ltd. have common directors, then they will be deemed to be related parties because of section 2(76)(iv).

(2) Now suppose, XYZ Ltd. a public company, has two subsidiary companies, Y Pvt. Ltd and Z Pvt. Ltd. Here as per section 2(71), a private company which is a subsidiary of a public company will deemed to be a public company, so Y Pvt. Ltd and Z Pvt. Ltd will not be eligible to avail exemption under the Notification No. G.S.R. 464(E) dated 5th June, 2015. Therefore, as per section 2(76)(viii)(B), Y Pvt. Ltd and Z Pvt. Ltd are related parties. In addition XYZ Ltd. will also be related Party to Y Pvt. Ltd and Z Pvt. Ltd.

(77) Relative, with reference to any person, means anyone who is related to another, if—

- (i) they are members of a Hindu Undivided Family;
- (ii) they are husband and wife; or
- (iii) one person is related to the other in such manner as may be prescribed;

Rule 4 given in the *Companies (Specification of Definitions Details) Rules, 2014* provides of the List of Relatives in terms of Clause (77) of section 2. Accordingly, a person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-

- (1) Father: Provided that the term "Father" includes step-father.
- (2) Mother: Provided that the term "Mother" includes the step-mother.
- (3) Son: Provided that the term "Son" includes the step-son.
- (4) Son's wife.
- (5) Daughter.
- (6) Daughter's husband.
- (7) Brother: Provided that the term "Brother" includes the step-brother;
- (8) Sister: Provided that the term "Sister" includes the step-sister.

(78) Remuneration means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961.

(79) Schedule means a Schedule annexed to this Act;

(80) Scheduled bank means the scheduled bank as defined in section 2(e) of the Reserve Bank of India Act, 1934;

(81) Securities means the securities as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956 .

As per the section 2(h) of the Securities Contracts (Regulation) Act, 1956, the term securities includes-

- (i) Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
- (ia) derivative;
- (ib) units or any other instruments issued by any collective investment scheme to the investors in such schemes;
- (ic) security receipt as defined in clause(2g) under section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- (id) units or any other such instrument issued to the investors under any mutual fund scheme. Securities however, shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938.
- (ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case maybe;
- (ii) Government securities;
- (ia) such other instruments as may be declared by the Central Government to be securities; and
- (iii) rights or interests in securities;

Example: As per the section 2(h)(iii) of the Securities Contracts (Regulation) Act, 1956 share warrant can be considered as securities. As the share warrant gives right to the holder to subscribe equity shares at a pre-determined price on or after pre-determined time period.

(82) Securities and Exchange Board means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;

(83) Serious Fraud Investigation Office means the office referred to in section 211;

(84) Share means a share in the share capital of a company and includes stock;

(85) 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 five crore rupees; **and**
- (ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty 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;

Example: P Ltd. is a company registered under the Companies Act, 2013 with paid up capital of Rs. 10 Lacs and turn over 2 crore. According to section 2(85) a small company is a company other than a public company with the paid up of capital not exceeding fifty lakh rupees and turnover not exceeding two crore rupees. Since the P Ltd. is a public company though complying with other requirements, it cannot avail the status of a small company.

- (86) Subscribed capital** means such part of the capital which is for the time being subscribed by the members of a company;
- (87) 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 share capital 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.⁵

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;

⁵. Not yet enforced as on date 30.4.2017.

As per the *Companies (Specification of Definitions Details) Rules, 2014*, “**Total Share Capital**”, for the purposes of clause (87) of section 2, means the aggregate of the -

- (a) paid-up equity share capital; and
- (b) convertible preference share capital;

As per the notification dated 27th December 2013, Ministry clarified that the shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for the purpose of determining the holding –subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.

Students may please note that the definition of Associate company as defined under AS 21/ Ind AS 110 (Consolidated Financial Statement) is slightly different from the above definition as given in the Companies Act, 2013.

- (88) **Sweat equity shares** means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;
- (89) **Total voting power**, 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;
- (90) **Tribunal** means the National Company Law Tribunal constituted under section 408;
- (91) **Turnover** means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;
Note : There is in ambiguity in definition. So, there is a need for amendment in this definition. Further, the change in definition is pending in the Companies (Amendment) Bill, 2016.
- (92) **Unlimited company** means a company not having any limit on the liability of its members;
- (93) **Voting right** means the right of a member of a company to vote in any meeting of the company or by means of postal ballot;
- (94) **Whole-time director (WTD)** includes a director in the whole-time employment of the company;

As per the *Companies (Specification of Definitions Details) Rules, 2014* “Executive Director” means a whole time director as defined in section 2(94) of the Act;

- (94A) **Winding up** means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016, as applicable.

