

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.
- ☐ Gain Familiarity 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.

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, this enactment makes our corporate regulations more contemporary.



2. SHORT TITLE, EXTENT, COMMENCEMENT AND APPLICATION

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.

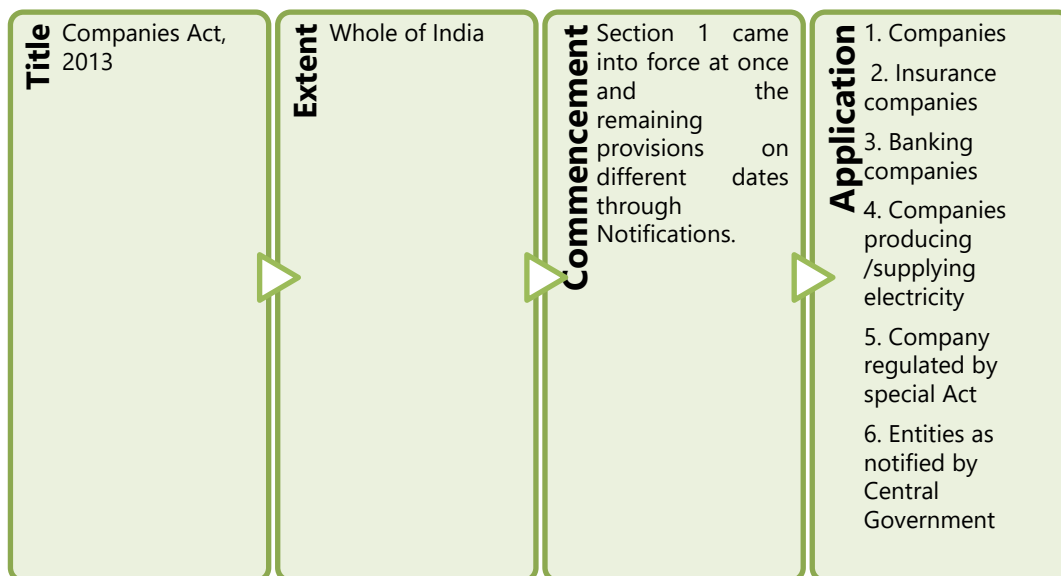
This Section furthermore states of the applicability of the Act. The provisions of this Act shall apply to-

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

Note: The term "except in so far as" shall mean excluding to the extent of i.e. if any provision of the Companies Act is inconsistent with any of the provisions of other Act (Insurance Act, Banking Regulation Act, Electricity Act, etc.) to which the company is regulated than that company shall comply with the provisions of respective Act/Acts to which it is governed and regulated by.

Example 2: ABC Ltd. was incorporated on 1.1.1972 under the Companies Act, 1956. 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 2¹ 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;

¹ The number given in brackets i.e. () at the start of definition, denotes the clauses to section 2.

- (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.

*The Central Government hereby appoints the 1st October 2018 as the date of constitution of National Financial Reporting Authority.

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

- (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 purpose of this clause, —

- (a) the expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;
- (b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;

Vide Circular dated 25/06/2014 it has been clarified that the shares held by a company in another company in a fiduciary capacity (a fiduciary is a person who holds a legal or ethical relationship of trust with one of more parties (persons or group of persons. Typically, a fiduciary prudently takes care of money or other assets for another person) 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

* Just for information of the students

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;
- (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;
- (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;

Example 3: Reliance Industries Limited incorporated in year 1973, Tata Steel Limited incorporated in year 1907, Infosys Limited incorporated in year 1981. Such companies are incorporated under Companies Act, 1956 (previous company law) are also included in the above definition for being treated as a Company.

- (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;

Example 4: A shareholder who has paid rupees 75 on a share of face value rupees 100 can be called upon to pay the balance of rupees 25 only.

- (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 purpose of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as 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.

- (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;

Provided that—

- (a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and
- (b) such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company,

shall not be treated as debenture;

- (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;

(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;

Exemption: For private companies, the proviso to section 2(40) shall be read as follows:

"Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement;

Explanation. - For the purposes of this Act, the term "start-up" or "start-up company" means a private company incorporated under the Companies Act, 2013 or the Companies Act, 1956 and recognised as start-up in accordance with the notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry."

The exceptions, modifications and adaptations shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar.

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.

(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:²

Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.

Provided also that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Ordinance, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.

Provided also 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.

Note: The term "company incorporated outside India" refers to Foreign Company incorporated under any applicable laws for the constitution of company outside India.

Example 5: Reliance Industries Limited, a company incorporated in year 1973, follows 1st January to 31st December as its financial year. Now after the commencement of Companies Act, 2013, Reliance Industries Limited is required to align its financial year as financial year ending as on 31st March of every year within 2 years from such commencement.

(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

² With respect to specified IFSC public company & specified IFSC Private company, a proviso has been inserted vide *notification dated 5th 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.

- (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;

- (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;

³Explanation. - For the purposes of this clause, the "paid-up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued.

Example 6: X Industries Ltd. is a company in which 25% of shareholding is held by Central Government; 10% shareholding is held by Government of Maharashtra and 15% shareholding is held by Central Government and Government of Rajasthan. Here, X Industries Ltd. 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 or partly by the Central Government and partly by one or more State Government.

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

Explanation. — For the purposes of this clause, the expression "company" includes any body corporate.

For meaning of "subsidiary company" refer the definition given in section 2(87) 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;

³ Inserted by Exemptions to Government Companies under section 462 of the CA 2013, notification dated 02.03.2020 (Effective From 03rd March 2020)

- (iii) the whole-time director;
- (iv) the Chief Financial Officer;
- (v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
- (vi) such other officer as may be prescribed;

Note: 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;

Explanation.- For any individual to be called as managing director, an individual shall first be a director duly appointed by the Company under the

provisions of the Companies Act, 2013. This also implies that an individual who is not a director in the company cannot be appointed as Managing Director of that company.

(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;
- (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, securities premium account and debit or credit balance of profit and loss 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 7: 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.

- (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;

(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 (Formation of companies with charitable objects, etc.) *vide notification dated 5th June 2015*.

The above-mentioned exemption shall be applicable to a section 8 company which has not committed a default in filing its financial statements under section 137 of the Companies Act, 2013, or annual return under section 92 of the said Act with Registrar. [Vide amendment notification G.S.R. 584(E) dated 13th June 2017.]

*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 referred to in section 92, 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;

(71) Public company means a company which—

- (a) is not a private company; and
- (b) has a minimum paid-up share capital as may be prescribed*:

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 8: A Pvt. Ltd. is wholly owned subsidiary of AB Ltd., a public company incorporated under the Companies Act, 2013. 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.

(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;

⁴(viii) any **body corporate** which is-

- (A) a holding, subsidiary or an associate company of such company;
- (B) a subsidiary of a holding company to which it is also a subsidiary; or
- (C) an investing company or the venturer of the company;

Explanation.- For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

Exemption - This Clause (viii) shall not apply with respect to section 188 (Related Party transactions) to a private company *vide Notification No. G.S.R. 464(E) dated 5th June, 2015*.

⁴ The above clause (viii) shall not apply with respect to section 188 to a Specified IFSC Public company *vide Notification no. G. S.R. 08(E) dated 4th January, 2017*

- (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.

Example 9: 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).

Example 10: 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 be 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

(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 ten crore rupees; and
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred 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 11: H Ltd. is the holding company of S Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2019 of S Pvt. Ltd., its turnover was to the extent of ₹ 1.50 crores; and paid up share capital was ₹ 40 lacs. Since S Pvt. Ltd., as per the turnover and paid up share capital norms, qualifies for the status of a 'small company' it wants to be categorized as 'small company'. S Pvt. Ltd. cannot be categorized as a 'small company' because it is the subsidiary of another company (H Ltd.). [Proviso to section 2(85)].

(86) Subscribed capital means such part of the capital which is for the time being subscribed by the members of a company;

Example 12: ABC Ltd. was registered with Registrar with an Authorised capital of ₹ 2,00,00,000 where each share is of ₹ 10.

In response to the advertisements made by the company to buy shares in the company, applications have been received for 10,00,000 shares but company actually issued 700,000 shares where company has called for ₹ 8 per share.

All the calls have been met in full except three shareholders who still owe for their 6000 shares in total.

Amount of various share capital

Authorized share capital = ₹ 2,00,00,000 (2 crores)

Subscribed capital = 10,00,000 x 10 = ₹ 1,00,00,000 (1 Crore)

Issued capital = 7,00,000 x 10 = ₹ 70,00,000

Called-up capital = 7,00,000 x 8 = ₹ 56,00,000

Paid-up capital = 56,00,000 – (6000 x ₹ 8) = ₹ 55,52,000

(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 voting power 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.

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;

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.

- (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 gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year;
- (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.

TEST YOUR KNOWLEDGE

Question 1

MNP Private Ltd. is a company registered under the Companies Act, 2013 with a paid-up share capital of ₹ 45 lakh and turnover of ₹ 3 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:

- (i) Whether the MNP Private Ltd. can avail the status of small company?
- (ii) What will be your answer if the turnover of the company is ₹ 1.50 crore?

Answer

Small Company: According to Section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company,—

- (1) 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 ten crore rupees; and
- (2) 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 one hundred crore rupees.

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.
 - (i) In the present case, MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of ₹ 45 lakh and having turnover of ₹ 3 crore. Since only one criteria of share capital not exceeding ₹ 50 Lakhs is met, but the second criteria of turnover not exceeding ₹ 2 crores is not met and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.
 - (ii) If the turnover of the company is ₹ 1.50 crore, then both the criteria will be fulfilled and MNP Ltd. can avail the status of small company.

Question 2

Flora Fauna Limited was registered as a public company. There are 230 members in the company as noted below:

(a)	Directors and their relatives	50
(b)	Employees	15
(c)	Ex-Employees (Shares were allotted when they were employees)	10
(d)	5 couples holding shares jointly in the name of husband and wife (5*2)	10
(e)	Others	145

The Board of Directors of the company propose to convert it into a private company. Also advise whether reduction in the number of members is necessary.

Answer

According to section 2(68) of the Companies Act, 2013, "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, except in case of One Person Company, limits the number of its members to two hundred.

However, 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.

It is further provided 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.

In the instant case, Flora Fauna Limited may be converted* into a private company only if the total members of the company are limited to 200. Total Number of members

(i)	Directors and their relatives	50
(ii)	5 Couples (5*1)	5
(iii)	Others	145
	Total	200

Therefore, there is no need for reduction in the number of members since existing number of members are 200 which does not exceed maximum limit of 200.

*The provisions relating to conversion of public company to private company is covered in the Chapter 2 – Incorporation of Company and Matters incidental thereto.