

FINAL COURSE STUDY MATERIAL

PAPER 4

CORPORATE AND ALLIED LAWS

[Relevant for **November, 2016** Examination and onwards]

MODULE – 1



BOARD OF STUDIES
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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A WORD ABOUT STUDY MATERIAL

The liberalisation and globalisation of our economic policies in tune with the global changes brought several reforms in the Corporate and Allied Laws of our country. A scheme of well-structured Corporate and Allied Laws is sine qua non for the corporate growth. These laws are being amended and fine tuned from time to time in accordance with the changes that are taking place within the country as well as outside. This process will continue to be more dynamic in times to come, vibrant for corporate growth, infusing more capital into the country and at the same time protecting and safeguarding the interests of various stakeholders. The Companies Act, 2013 received the assent of the Hon'ble President of India on 29th August, 2013 and 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. The Companies Act, 2013 is rule based legislation with 470 sections and seven schedules. The entire Act has been divided into 29 chapters. The Companies Act, 2013 aims to improve corporate governance, simplify regulations, strengthens the interests of minority investors and for the first time legislates the role of whistle-blowers.

The major developments under the Companies Act, 2013 are as follows:

- (i) The Ministry of Corporate Affairs (MCA) has notified 98 sections of the Companies Act, 2013 on 12th September, 2013, which came into force with immediate effect i.e. from the issue date, 12th September, 2013.
- (ii) The MCA has notified section 135 on 27th February, 2014 along with Companies (Corporate Social Responsibility Policy) Rules, 2014 and Revised Schedule VII effective from 1st April, 2014.
- (iii) The MCA has further notified 183 new sections of the Companies Act, 2013 on 26th March, 2014 and the remaining six schedules effective from 1st April, 2014.

The study material has been prepared on the basis of the legislative developments made up till 31st October, 2015. The provisions of the Companies Act, 1956 which are still in force for which the corresponding or new provisions of the Companies Act, 2013 have not been notified are also comprised chapter-wise at the end of each chapter, if any.

Further, if any legislative amendments are notified for the period 1st November, 2015 till 31st March, 2016, students would be informed about the developments through revisionary test paper(RTP) for November 2016 examination. Students are advised to check the Board of Studies Knowledge Portal regularly for further development.

Also, for the benefit of the students, the changes in the Laws have been briefly indicated in the *Highlights* which all the students must go through in order to get updated and have grip on the subject. The amendments have been incorporated into the study material in the bold cum italics form so that students may trace them easily.

We hope that students will find this study material very user friendly and in case of any queries that they may have while reading the material, the same may be addressed to the Board of Studies.

Students can also address their queries (subject and other queries separately) to the Director, Board of Studies ICAI Bhawan, Plot A/29, Sector 62, Noida-201309 (U.P.).

Happy Reading and Best Wishes!

SIGNIFICANT ADDITIONS/ MODIFICATIONS IN 2015 EDITION OVER 2016

SECTION – A: COMPANY LAW

S.NO.	CONTENT/AMENDMENT	REFERENCE IN THE STUDY MATERIAL
1.	Vide Notification G.S.R. 722(E) dated 14th October 2014, the Central Government amended the Companies (Audit and Auditors) Rules, 2014	Page no. 2.42-2.43
2.	Vide Notification G.S.R. 723(E), dated 14th October, 2014, the Central Government amended the Companies (Accounts) Rules, 2014.	Page no. 2.6
3.	Vide General Circular 38/2014, dated 14th October 2014 clarification issued by the MCA with respect to the Refund of deposit under section 160 of the Companies Act, 2013 in certain cases.	Page no. 3.20
4.	Vide General Circular No, 39/2014, dated 14th October, 2014, clarifications has been issued on the matters relating to Consolidated Financial Statement (CFS).	Page no. 2.6
5.	Vide Notification G.S.R. 741(E) dated 24th October, 2014, the Central Government hereby made further amendments to Schedule VII of the Companies Act, 2013.	Page no. 2.18
6.	Vide Notification G.S.R. 37(E) dated 16th January 2015 the Central Government amended the Companies (Accounts) Rules, 2014 by notifying the Companies (Accounts) Amendment Rules, 2015.	Page no. 2.6
7.	Vide Notification G.S.R. 42(E) dated 19th January 2015 the Central Government further amended the Companies (Appointment and Qualification of Directors) Rules, 2014 by issuing the Companies (Appointment and Qualification of Directors) Amendment Rules, 2015	Page no. 3.28
8.	Vide Notification G.S.R. 43 (E) dated 19th January 2015, Central Government amended the Companies (Corporate Social Responsibility	Page no. 2.16

	Policy) Rules, 2014 by issuing The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2015	
9.	Vide Order S.O. 504(E) dated 13 February, 2015, the Central Government issued an order to remove the difficulties having arisen in giving effect to the provisions contained under sections 2(85) and 186(11)(b) of the Companies Act, 2013 through the Companies (Removal of Difficulties) Order, 2015	Page no. 5.26
10.	Vide General Circular No, 04/2015, dated 10/3/2015 clarification has been issued with regard to section 185 and 186 of the Companies Act 2013 - loans and advances to employees.	Page no. 5.23
11.	Vide Notification G.S.R. 206 (E) dated 18th March, 2015, the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014 by issuing the Companies (Meetings of Board and its Powers) Amendment Rules, 2015.	Page no. 5.14
12.	General Circular no. 06/2015 dated 9 th April, 2015	Page no. 5.25
13.	Vide General Circular 07/2015 dated 10th April, 2015 Clarification has been issued with respect to the remuneration to managerial person under Schedule XIII of the Companies Act, 1956.	Page no. 4.22
14.	Vide Order S.O. 990(E) dated 10th April 2015, the Central Government, after consultation with the Institute of Chartered Accountants of India, issued the Companies (Auditor's Report) Order, 2015.	Page no. 2.43
15.	Vide Notification dated 29th May 2015, Central Government declared the date of enforcement of provisions of sections 1 to 12 and 15 to 23 of the Companies (Amendment) Act, 2015.	Page nos. 1.2, 2.9, 17.25
16.	Vide Notification G.S.R. 441(E) dated 29th May 2015, the Central Government through the issue of the Companies (Declaration and Payment of Dividend) Second Amendment Rules, 2015, omitted sub-rule (5) of Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.	Page no. 1.3

17.	Notification G.S.R. 438(E) dated 29 May 2015, the Central Government further amends the Companies (Registration Offices and Fees) Rules, 2014, through the issue of notification the Companies (Registration Offices and Fees) Second Amendment Rules, 2015. According to which in rule 15, the following proviso shall be inserted: "Provided that no person shall be entitled under section 399 to inspect or obtain copies of resolutions referred to in clause (g) of sub-section (3) of Section 117 of the Act."	Page no. 17.11
18.	Vide Notification no. G.S.R. 464(E), dated 5 th June 2015 the Central Government in the interest of public, hereby directs that certain provisions of the Companies Act, 2013, shall not apply or shall apply with certain exceptions, modifications and adaptations to a private company.	Page nos. 2.39, 3.21, 3.23, 4.3, 5.6, 5.22
19.	Vide Notification G.S.R. 466(E) dated 5 th June 2015, the Central Government in the interest of public, hereby directs that certain provisions of the Companies Act, 2013, shall not apply or shall apply with certain exceptions, modifications and adaptations to a body to which a license is granted under the section 8 of the Act.	Page nos. 2.20, 3.1, 3.9, 3.13, 3.21, 3.25, 5.1, 5.5, 5.8, 5.20, 5.34,
20.	Vide Notification G.S.R. 465(E) dated 5 June 2015 the Central Government hereby directs that certain provisions of the Companies Act, 2013, shall not apply or shall apply with such exceptions, modifications and adaptations to Nidhis.	Page nos. 1.3, 1.5, 2.21, 3.20, 4.7, 5.22, 17.12
21.	Vide Notification dated G.S.R.463(E) dated 5 June 2015 the Central Government hereby directs that certain provisions of the Companies Act, 2013, shall not apply or shall apply with such exceptions, modifications and adaptations to a Government company.	Page nos. 1.3, 2.8, 2.11, 3.1, 3.5, 3.6, 3.13, 3.15, 3.21, 3.23, 3.25, 3.30, 4.3, 4.7, 4.15, 5.8, 5.12, 5.22, 5.30, 13.1, 16.2,
22.	Vide General Circular No. 11/2015, dated 21st July 2015, clarification was issued by Ministry of Corporate Affairs with regards to circulation and filing of financial statement.	Page no. 2.21
23.	Vide Notification dated 9th Sep 2015 Central Government hereby made the rules called the Companies (Filing of Documents and Forms in Extensible Business Reporting language) Rules, 2015, in supersession of the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011	Page no. 2.22

SECTION – B: ALLIED LAWS

S.NO.	CONTENT/AMENDMENT	TOPICS COVERED IN THE STUDY MATERIAL
1.	SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2015 vide Notification dated 24th March, 2015 issued by SEBI	Page no. 19.29
2.	Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2015, vide Notification dated 5th May 2015 issued by SEBI	Page no. 19.69
3.	The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2015 vide Notification dated 11th August 2015 issued by SEBI	Page no. 19.34
4.	The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2015, vide Notification dated 14th August 2015 issued by SEBI	Page no. 19.63
5.	The SEBI (Issue of Capital and Disclosure Requirements) (Sixth Amendment) Regulations, 2015 vide Notification dated 10th September 2015 issued by SEBI	Page no. 19.45
6.	Various amendments have been inserted in the Securities Contracts (Regulation) Act, 1956 by Part II of Chapter VIII of the Finance Act 2015, w.e.f. 28.09.2015 vide Gazette Notification F. No. 1/9/SM/2015.	Page nos. 20.3, 20.4, 20.6, 20.17, 20.32
7.	The Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) (Amendment) Regulations, 2015 issued by RBI vide Notification No. FEMA. 335/2015-RB, dated 4th Feb, 2015	Page no. 21.21
8.	The Foreign Exchange Management (Permissible Capital Account Transactions) (Second Amendment) Regulations, 2015 issued by RBI vide Notification No. FEMA. 337/2015-RB dated 2nd March, 2015.	Page no. 21.18

9.	the Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2015 issued by RBI vide Notification No. FEMA.342/RB-2014, dated 23rd April, 2015	Page nos. 21.22, 21.24
10.	The Foreign Exchange Management (Permissible Capital Account Transactions) (Third Amendment) Regulations, 2015 vide Notification No. FEMA. 341/2015-RB dated May 26, 2015 issued by RBI	Page no. 21.17
11.	The Foreign Exchange Management (Export of Goods and Services) (Second Amendment) Regulations, 2015 vide Notification No. FEMA. 347/2015-RB, dated 24th July 2015 issued by RBI	Page no. 21.23
12.	The Insurance Laws (Amendment) Act, 2015, vide Notification dated 23rd March, 2015 issued by Ministry of Law and Justice .	Page no. 23.13- 21.25

SYLLABUS

PAPER – 4: CORPORATE AND ALLIED LAWS

(One paper - Three hours - 100 marks)

SECTION A: COMPANY LAW (70 MARKS)

Level of Knowledge: Advanced knowledge

Objective:

To be able to analyze and apply various provisions of the Company Law in practical situations

Contents:

1. The Companies Act, 2013 and Rules framed thereunder in its entirety with specific reference to
 - (a) Declaration and payment of Dividend
 - (b) Accounts and audit
 - (c) Appointment and Qualifications of Directors
 - (d) Appointment and remuneration of Managerial Personnel
 - (e) Meetings of Board and its powers
 - (f) Inspection, inquiry and Investigation
 - (g) Compromises, Arrangements and Amalgamations
 - (h) Prevention of Oppression and Mismanagement
 - (i) Revival and Rehabilitation of Sick Companies
 - (j) Winding Up
 - (k) Producer Companies
 - (l) Companies incorporated outside India
 - (m) Offences and Penalties
 - (n) E-governance
 - (o) National Company Law Tribunal and Appellate Tribunal

- (p) Special Courts
- (q) Miscellaneous Provisions
- 2. Corporate Secretarial Practice–Drafting of Resolution, Minutes, Notices and Reports

Note: The provisions of the Companies Act, 1956 which are still in force would form part of the syllabus till the time their corresponding or new provisions of the Companies Act, 2013 are enforced.

SECTION B: ALLIED LAWS (30 MARKS)

Objective:

To develop ability to analyse the requirements of laws stated in the Section.

Contents:

- 3. An overview of the following laws –
 - (a) The Securities and Exchange Board of India Act, 1992, Rules, Regulations and Guidelines issued thereunder.
 - (b) Securities Contracts (Regulation) Act, 1956
 - (c) The Foreign Exchange Management Act, 1999
 - (d) The Competition Act, 2002
 - (e) The Banking Regulation Act, 1949, The Insurance Act, 1938. The Insurance Regulatory and Development Authority Act, 1999. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
 - (f) The Prevention of Money Laundering Act, 2002
- 4. Interpretation of Statutes, Deeds and Documents.

Note: If new legislations are enacted in place of the existing legislations, the syllabus would include the corresponding provisions of such new legislations with effect from a date notified by the Institute.

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MODULE – 2

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- Chapter 24: Prevention of Money Laundering Act, 2002
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SECTION A

COMPANY LAW

NOTIFIED DEFINITIONS UNDER THE COMPANIES ACT, 2013

Section 2 of the Companies Act, 2013 has provided 95 definitions. Out of this, Clauses 23, 29(iv), 67(ix), proviso to clause 87 are not notified upto 30th September, 2014. Given below are the definitions for the easy understanding of the Act:

Clause 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.

Clause (2) – Accounting Standards - means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133.

Clause (3) – Alter or Alteration - includes the making of additions, omissions and substitutions.

Clause (4) – Appellate Tribunal - means the National Company Law Appellate Tribunal constituted under section 410.

Clause (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 of this Act.

Clause (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(JVC).

Whereas the term “Significant influence” used in the definition means control of at least 20% of total share capital, or of business decisions under an agreement.

According to the Companies (Specification of definitions detail) Rules, 2014,

“Total Share Capital”, means the aggregate of the -

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

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

Clause (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.

Clause (9) – Banking company - means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949.

Clause (10) – Board of Directors or Board - in relation to a company, means the collective body of the directors of the company.

Clause (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.

Clause (12) – Book and paper and book or paper- “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.

Clause (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;

Clause (14) – Branch Office - in relation to a company, means any establishment described as such by the company.

Clause (15) – Called up capital- “Called-up capital” means such part of the capital, which has been called for payment.

Clause (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.

Clause (17) – Chartered Accountant - means a chartered accountant as defined in section 2(1)(b) of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under section 6(1) of that Act.

Clause (18) – Chief Executive Officer (CEO)- means an officer of a company, who has been designated as such by it.

Clause (19) – Chief Financial Officer (CFO)- means a person appointed as the Chief Financial Officer of a company.

Clause (20) – Company- means a company incorporated under this Act or under any previous company law.

Clause (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.

Clause (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.

¹Clause (24) – Company secretary or secretary - means a company secretary as defined in section 2(1)(c) of the Company Secretaries Act, 1980 who appointed by a company to perform the functions of a company secretary under this Act.

Clause (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.

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

Clause (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.

Clause (28) – Cost Accountant- means a cost accountant as defined in section 2(1)(b) of the Cost and Works Accountants Act, 1959.

Clause (29) – Court- which 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.

***[The law contained in point (iv) is yet to be notified]**

Clause (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.

Clause (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.

¹ Vide Notification No. G.S.R. 466(E) dated 5th June 2015, this Clause of Section 2 shall not apply to section 8 Companies.

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

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

Clause (34) – Director - means a director appointed to the Board of a company.

Clause (35) – Dividend- includes any interim dividend.

Clause (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.

Clause (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.

Clause (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.

Clause (39)) – Financial institution- includes a scheduled bank, and any other financial institution defined or notified under the Reserve Bank of India Act, 1934.

Clause (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.

Clause (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 any company /body corporate 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.

Exception: Where 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, there the

Tribunal² may, if it is satisfied, allow any period as its financial year, whether or not that period is a year.

Definition further provides that where a company or body corporate is 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.

Clause (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.

Clause (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 recognised 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.

Clause (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.

Clause (45) – Government company- means any company in which not less than fifty one per cent 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.

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

Clause (47) – Independent director- means an independent director referred to in section 149(5).

Clause (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;

² Pursuant to the Companies (Third) Removal of Difficulties order, 2014, till the Tribunal comes into existence, application under this clause can be file to Company Law Board.

Clause (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;

Clause (50) – Issued capital- means such capital as the company issues from time to time for subscription.

Clause (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.

Clause (52) – Listed company- means a company which has any of its securities listed on any recognised stock exchange.

Clause (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.

Clause (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.

Clause (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.

Clause (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.

Clause (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.

Clause (58) – Notification- means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly.

Clause (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.

Clause (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;
- (ii) key managerial personnel;
- (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.

Clause (61) – Official Liquidator- means an Official Liquidator appointed under section 359(1).

Clause (62) – One Person Company (OPC) - means a company which has only one person as a member.

Clause (63) – Ordinary or special resolution- means an ordinary resolution, or as the case may be, special resolution referred to in section 114.

Clause (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.

Clause (65) – Postal Ballot - means voting by post or through any electronic mode.

Clause (66) – Prescribed- means prescribed by rules made under this Act.

Clause (67) – Previous company law - means any of the laws specified in—

- (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 *sociedades anonimas*; and
- (ix) the Registration of Companies (Sikkim) Act, 1961.*

**[sub-clause (ix) is yet to be notified.]*

³**Clause (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;

³ In section 2(68) requirement of having minimum paid up share capital shall not apply to section 8 companies [Vide Notification G.S.R. 466(E) dated 5th June 2015]. This definition has been modified as per the Companies (Amendment) Act, 2015, w.e.f. 29-5-2015.

- (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;

Clause (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.

Clause (70) – prospectus- means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 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.

⁴Clause (71) – Public company- means a company which—

- (a) is not a private company;
- (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.

Clause (72) – Public financial institution-means—

- (i) the Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;
- (ii) the Infrastructure Development Finance Company Limited, referred in section 4A(1)(vi) of

⁴ In section 2(71) requirement of having minimum paid up share capital shall not apply to section 8 companies [Vide Notification G.S.R. 466(E) dated 5th June 2015]. This definition has been modified as per the Companies (Amendment) Act, 2015, w.e.f. 29-5-2015.

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 section 4A(2) 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.

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

Clause (74) – Register of companies - means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act.

Clause (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.

Clause (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 ⁵**or his relative** is a member or director;
- (v) a public company in which a director or manager is a director ⁶**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

⁵ Inserted by the Companies (Removal of Difficulties) Sixth Order, 2014, w.e.f. 24-7-2014

⁶ Substituted for “or” by the Companies (Removal of Difficulties) Fifth Order, 2014 w.e.f. 9-7- 2014

instructions given in a professional capacity;

⁷(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;

(ix) such other person as may be prescribed.

According to Rule 3 *the Companies (Specification of definitions details) Rules, 2014*,

‘Such other person’ may represent, a director ⁸**(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.

Clause (77) – Relative - with reference to any person, means any one 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

According to Rule 4 *the Companies (Specification of definitions details) Rules, 2014*,

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 (term “Father” includes step-father).
- (2) Mother (term “Mother” includes the step-mother).
- (3) Son (term “Son” includes the step-son).
- (4) Son’s wife
- (5) Daughter
- (6) Daughter’s husband
- (7) Brother (the term “Brother” includes the step-brother)
- (8) Sister (term “Sister” includes the step-sister).

Clause (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.

Clause (79) – Schedule- means a Schedule annexed to this Act.

Clause (80) – Scheduled bank- means the scheduled bank as defined in section 2(e) of the

⁷ In case of private companies section 2(76)(viii) shall not apply with respect to section 188[Vide Notification no. G.S.R. 464(E), dated 5th June 2015]

⁸ Inserted by the Companies(Specification of Definitions Details)Amendment Rules, 2014 w.e.f. 17-7-2014

Reserve Bank of India Act, 1934.

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

Clause (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.

Clause (83) – Serious Fraud Investigation Office (SFIO)- means the office referred to in section 211.

Clause (84) – Share- means a share in the share capital of a company and includes stock.

Clause (85) – Small company - means a company, other than a public company, of which—

- (i) paid-up share capital does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; ⁹**and**
- (ii) turnover 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:

Exception: This clause shall not 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;

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

Clause (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.

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 point (i) & (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 at its discretion can appoint or remove all or a majority of the directors;
- (c) the expression “company” includes any body corporate;

⁹ Substituted for “or” by the Companies(Removal of Difficulties) Order, 2015, w.e.f. 13-2-2015

(d) “layer” in relation to a holding company means its subsidiary or subsidiaries.

**[the proviso to clause (87) is yet to be notified]*

The Ministry vide General Circular No. 20 /2013 issued a clarification with regard to holding of shares or exercising power in a fiduciary capacity for determining the Holding and Subsidiary relationship under Section 2(87) of the Companies Act, 2013. The 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-sub subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.

According to *the Companies (Specification of definitions details) Rules, 2014*,

For the purpose of this section the term “Total Share Capital”, means the aggregate of the -

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

Clause (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.

Clause (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.

Clause (90) – Tribunal -means the National Company Law Tribunal constituted under section 408.

Clause (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.

Clause (92) – Unlimited company- means a company not having any limit on the liability of its members.

Clause (93) – Voting rights -means the right of a member of a company to vote in any meeting of the company or by means of postal ballot.

Clause (94) – Whole time director - includes a director in the whole-time employment of the company.

Clause (95) – Meaning of certain words and expressions not defined in the Act- 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.