

# THE COMPANIES ACT, 2013

## ACT NO. 18 OF 2013

[29th August, 2013.]

An Act to consolidate and amend the law relating to companies.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

### CHAPTER I

#### PRELIMINARY

**1. Short title, extent, commencement and application.**—(1) This Act may be called the Companies Act, 2013.

(2) It extends to the whole of India.

(3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date<sup>1</sup> 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.

(4) 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 (4 of 1938) or the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);

(c) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949 (10 of 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 (36 of 2003);

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1. 1<sup>st</sup> April 2014 – S. 2(2), (7), (13), (31), (41), (42), (47), (48), (62), (83), (85) and *Explanation (d)* of clause (87); ss. 3, 4, 5, 6; s. 7 [except sub-section (7)]; s. 8 [except sub-section (9)]; ss. 9, 10, 11, 12 and 13; s. 14 [except second proviso to sub-section (1) and sub-section (2)]; ss. 15, 16, 17 and 18; section 20; clause (b) of sub-section (1) and sub-section (2) of section 23; sub-section (3) of section 25; ss. 26, 27 and 28; sub-section (3) of s. 33; clause (e) of sub-section (1) of s. 35; sub-section (4) of s. 39; sub-section (6) of s. 40; ss. 41, 42 and 43; ss. 46 and 47; ss. 52, 53 and 54; s. 55 [except sub-section (3)]; s. 56; s. 61 [except proviso to clause (b) of sub-section (1)]; s. 62 [except sub-sections (4) to (6)]; ss. 63 and 64; ss. 67 and 68; sub-section (2) of section 70; s. 71 [except sub-sections (9) to (11)]; ss. 72 and 73; sub-section (1) of s. 74; ss. 76, 77, 78, 79, 80, 81, 82, 83, 84 and 85; ss. 87, 88, 89 and 90; ss. 92, 93, 94, 95 and 96; sub-section (6) of s. 100; s. 101; third and fourth provisos to sub-section (1) and sub-section (7) of s. 105; ss. 108, 109 and 110; clause (b) of sub-section (1) of s. 113; s. 115; ss. 117 and 118; s. 119 [except sub-section (4)]; ss. 120, 121, 122 and 123; s. 126; ss. 128 and 129; s. 134; ss. 136, 137, 138 and 139; s. 140 [except second proviso to sub-section (4) and sub-section (5)]; ss. 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159 and 160; sub-section (2) of s. 161; ss. 164, 165, 166, 167 and 168; s. 169 [except sub-section (4)]; ss. 170, 171, 172, 173, 174 and 175; ss. 177, 178 and 179; s. 184; ss. 186, 187, 188, 189, 190 and 191; s. 193; ss. 196, 197, 198, 199, 200 and 201; ss. 203, 204, 205, 206, 207, 208, 209, 210 and 211; s. 212 [except references of sub-section (10) of s. 66, sub-section (5) of s. 140], s. 213, sub-section (1) of s. 251 and sub-section (3) of s. 339 made in sub-section (6) and also sub-sections (8) to (10)]; ss. 214, 215; s. 216 [except sub-section (2)]; s. 217; ss. 219 and 220; s. 223; s. 224 [except sub-sections (2) and (5)]; s. 225; ss. 228 and 229; ss. 366, 367, 368 and 369; s. 370 (except the proviso); s. 371; s. 374; ss. 380 and 381; ss. 384 and 385; clause (a) of s. 386; ss. 387, 388, 389 and 390; sub-section (1) of s. 391; ss. 392 and 393; ss. 395, 396, 397 and 398; s. 399 [except reference of word Tribunal in sub-section (2)]; ss. 400, 401, 402, 403 and 404; s. 406; s. 442; ss. 454 and 455; s. 464; Schs. I, II, III, IV, V and VI, *vide* notification No. S.O. 902(E), dated 26th March, 2014, *see* Gazette of India, Extraordinary, Part II, sec.3(ii).

1st April, 2014 – S. 135 and Sch. VII, *vide* notification No. S.O. 582(E), dated 27th February, 2014, *see* Gazette of India, Extraordinary, Part II, sec. 3 (ii).

6th June, 2014 – Sub-sections (2) and (3) of s. 74, *vide* notification No. S.O. 1459(E), dated 6th June, 2014, *see* Gazette of India, Extraordinary, Part II, sec. 3(ii).

(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.

**2. Definitions.**— In this Act, unless the context otherwise requires,—

(1) “abridged prospectus” means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf;

(2) “accounting standards” means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133;

(3) “alter” or “alteration” includes the making of additions, omissions and substitutions;

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

(5) “articles” means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act;

(6) “associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

*Explanation.*—For the purposes of this clause, “significant influence” means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;

(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;

(8) “authorised capital” or “nominal capital” means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;

(9) “banking company” means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(10) “Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company;

(11) “body corporate” or “corporation” includes a company incorporated outside India, but does not include—

(i) a co-operative society registered under any law relating to co-operative societies; and

(ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;

(12) “book and paper” and “book or paper” include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;

(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;

(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 (38 of 1949) who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;

(18) “Chief Executive Officer” means an officer of a company, who has been designated as such by it;

(19) “Chief Financial Officer” means a person appointed as the Chief Financial Officer of a company;

(20) “company” means a company incorporated under this Act or under any previous company law;

(21) “company limited by guarantee” means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

(22) “company limited by shares” means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;

(23) “Company Liquidator”, in so far as it relates to the winding up of a company, means a person appointed by—

(a) the Tribunal in case of winding up by the Tribunal; or

(b) the company or creditors in case of voluntary winding up,

as a Company Liquidator from a panel of professionals maintained by the Central Government under sub-section (2) of section 275;

(24) “company secretary” or “secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) who is appointed by a company to perform the functions of a company secretary under this Act;

(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 (56 of 1980);

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

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

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

(28) “cost accountant” means a cost accountant as defined in clause (b) of subsection (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959);

(29) “court” means—

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

(ii) the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district;

(iii) the Court of Session having jurisdiction to try any offence under this Act or under any previous company law;

(iv) the Special Court established under section 435;

(v) any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law;

(30) “debenture” includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;

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

(32) “depository” means a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996);

(33) “derivative” means the derivative as defined in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

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

(35) “dividend” includes any interim dividend;

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

(37) “employees’ stock option” means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;

(38) “expert” includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;

(39) “financial institution” includes a scheduled bank, and any other financial institution defined or notified under the Reserve Bank of India Act, 1934 (2 of 1934);

(40) “financial statement” in relation to a company, includes—

(i) a balance sheet as at the end of the financial year;

(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

(iii) cash flow statement for the financial year;

(iv) a statement of changes in equity, if applicable; and

(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

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

(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:

Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:

Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;

(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.

(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;

(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;

(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;

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

(47) “independent director” means an independent director referred to in sub-section (6) of section 149;

(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;

(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;

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

(51) “key managerial personnel”, in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

(v) such other officer as may be prescribed;

(52) “listed company” means a company which has any of its securities listed on any recognised stock exchange;

(53) “manager” means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a

company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;

(54) “managing director” means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

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

(55) “member”, in relation to a company, means—

(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;

(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;

(56) “memorandum” means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act;

(57) “net worth” means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;

(58) “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(59) “officer” includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;

(60) “officer who is in default”, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

(i) whole-time director;

(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;

(61) “Official Liquidator” means an Official Liquidator appointed under sub-section (1) of section 359;

(62) “One Person Company” means a company which has only one person as a member;

(63) “ordinary or special resolution” means an ordinary resolution, or as the case may be, special resolution referred to in section 114;

(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;

(66) “prescribed” means prescribed by rules made under this Act;

(67) “previous company law” means any of the laws specified below:—

(i) Acts relating to companies in force before the Indian Companies Act, 1866 (10 of 1866);

(ii) the Indian Companies Act, 1866 (10 of 1866);

(iii) the Indian Companies Act, 1882 (6 of 1882);

(iv) the Indian Companies Act, 1913 (7 of 1913);

(v) the Registration of Transferred Companies Ordinance, 1942 (Ord. 54 of 1942);

(vi) the Companies Act, 1956 (1 of 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 (7 of 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 (62 of 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 (25 of 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 (Sikkim Act 8 of 1961);

(68) “private company” means a company having a minimum paid-up share capital <sup>1\*\*\*</sup> 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:

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1. The words “of one lakh rupees or such higher paid-up share capital” omitted by Act 21 of 2015, s. 2 (w.e.f. 29-5-2015).