

# 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.

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

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



## 2. SHORT TITLE, EXTENT, COMMENCEMENT AND APPLICATION

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

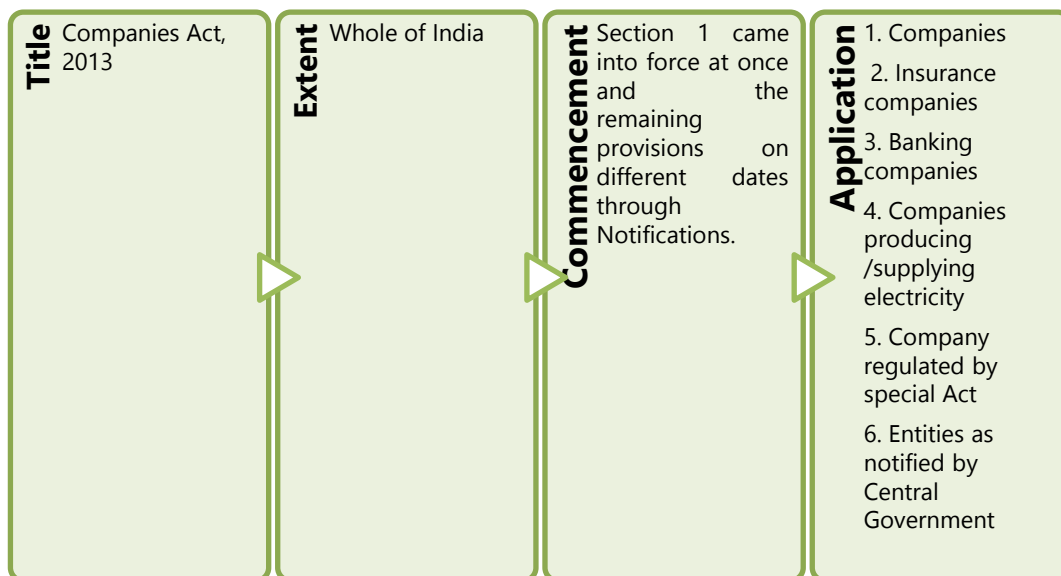
Further, section deals with the extent to the applicability of the Act. It says that the Act shall extend to the whole of India.

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

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

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

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



### 3. DEFINITIONS

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

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

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

Section 2<sup>1</sup> 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;

<sup>1</sup> 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.

- (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 shall not be counted for the purpose of determining the relationship of associate company.

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

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

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

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

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\* Just for information of the students

- (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;

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

- (13) "**Books of account**" includes records maintained in respect of—
- (i) **all sums of money received and expended by a company** and matters in relation to which the receipts and expenditure take place;
  - (ii) **all sales and purchases of goods and services by the company**;
  - (iii) the **assets and liabilities** of the company; and
  - (iv) the **items of cost** as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;

Section 148 of the Companies Act, 2013 authorises Central Government to Specify Audit of Items of Cost in Respect of Certain Companies.

- (14) **Branch office**, in relation to a company, means any establishment described as such by the company;
- (15) **Called-up capital** means such part of the capital, which has been called for payment;

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

(19) **Chief Financial Officer (CFO)** means a person appointed as the Chief Financial Officer of a company;

These definitions of CEO & CFO should be read with section 2(51) and 203 which deals with the definition and appointment of Key Managerial Personnel (KMP) of the Companies Act, 2013.

(20) **Company** means a company incorporated under this Act or under any previous company law;

[Refer clause 67 of section 2 (Previous Company Law) along with the above definition]

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

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

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

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

(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;
- (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. **For example:** Schedule III.

- (41) Financial year**, in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:<sup>2</sup>

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.

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

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<sup>2</sup> With respect to specified IFSC public company & specified IFSC Private company, a proviso has been inserted vide *notification dated 4<sup>th</sup> 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.

Provided that—

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

shall not be treated as free reserves;

**(45) Government company** means any company in which **not less than 51%** of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;

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

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

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;
- (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;

**(55) Member**, in relation to a company, means—

- (i) **the subscriber to the memorandum** of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members even if the subscription money has not been paid to the company;
- (ii) **every other person who agrees in writing** to become a member of the company and whose name is entered in the register of members of the company;
- (iii) **every person holding shares of the company** and whose name is entered as a beneficial owner in the records of a depository;

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

**(57) Net worth** means the aggregate value of the paid-up share capital and all reserves created out of the profits, 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;

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

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

- (i) whole-time director (WTD);
- (ii) key managerial personnel (KMP);

- (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
- (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
- (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
- (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
- (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

**Example:** In a company, a default was committed with respect to the allotment of shares by the officers. In company there were no managing director, whole time director, a manager, secretary, a person charged by the Board with the responsibility of complying with the provisions of the Act, and neither any director/directors specified by the board. Therefore, in such situation, all the directors of the company may be treated as officers in default.

- (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.

<sup>3</sup>**(68) Private company** means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—

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

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

Provided further that—

- (A) persons who are in the employment of the company; and
- (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members; and

- (iii) prohibits any invitation to the public to subscribe for any securities of the company;

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

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 13<sup>th</sup> June, 2017.]

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

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<sup>3</sup> Exemptions given to specified IFSC private company *vide notification dated 4<sup>th</sup> January, 2017*.

**(69) Promoter** means a person—

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

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

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

<sup>4</sup>**(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:** A Pvt. Ltd. is wholly owned subsidiary of AB Ltd. A Pvt. Ltd. wanted to avail exemptions as provided to private companies. In this case since A Pvt. Ltd. is subsidiary of AB Ltd., which is a public company, therefore A Pvt. Ltd. will be deemed to be a public company and will be not allowed to avail exemptions provided to a private company.

The requirement of having a minimum paid up share capital shall not apply to a section 8 company *vide notification dated 5<sup>th</sup> 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;

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<sup>4</sup> Exemptions given to specified IFSC public company *vide notification dated 4<sup>th</sup> January, 2017*.

**(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;

<sup>5</sup>(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.

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<sup>5</sup> 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 4<sup>th</sup> January, 2017



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

- (ix) such other person as may be prescribed;

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

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

(2) Now suppose, XYZ Ltd. a public company, has two subsidiary companies, Y Pvt. Ltd and Z Pvt. Ltd. Here as per section 2(71), a private company which is a subsidiary of a public company will 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.

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

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

**(87) Subsidiary company or Subsidiary**, in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total 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 27<sup>th</sup> December 2013, Ministry clarified that the shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for the purpose of determining the holding –subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.

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

- (88) **Sweat equity shares** means such equity shares as are issued by a company to its **directors or employees** at a **discount** or for consideration, **other than cash**, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;
- (89) **Total voting power**, in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes;

- (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;