

Chapter 1 - Preliminary

Objective of this Act:

Act to consolidate and amend the law relating to companies

Enactment:

- Received the assent of the Hon'ble President of India on 29th August 2013
- Notified in Official Gazette on 30th August 2013 (different dates may be appointed for enforcement)

Flow:

- 29 Chapters (+Rules)
- 470 Sections (Sec 1 to 148 covered in Intermediate)
- 7 Schedules

Section 1: Short Title, Extent, Commencement and Application:

Short Title - Companies Act, 2013

Extent - Whole of India (by default includes J&K)

Commencement - From date as appointed by CG by notification in OG

Applicability - The provision of this Act shall apply to:

- a. **companies incorporated** under this Act or under any previous company law
- b. **insurance** cos., except where provisions are inconsistent with that of Insurance Act, 1938 or IRDA Act, 1999;
- c. **banking** companies, except where provisions are inconsistent with that of Banking Regulation Act, 1949
- d. cos. engaged in generation/supply of **electricity**, except where provisions are inconsistent with that of Electricity Act, 2003
- e. other company governed by any **Special Act**, except where provisions are inconsistent with that of Special Act
- f. such **body corporate**, incorporated by any Act for the time being in force, as may be **notified by CG** [Example - Food Corporation of India (FCI), National Highway Authority of India (NHAI)]

Section 2: Definitions:

Definitions are considered as 'Internal aids to construction'

In this Act, unless the context otherwise requires:

Cla use	Definition:
1	<p><u>Abridged Prospectus</u> 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</p>
2	<p><u>Accounting Standards</u> Means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133;</p> <p><u>Section 133: Central Government to Prescribe Accounting Standards</u> As per Sec 133, CG may prescribe the AS or any addendum thereto, as recommended by ICAI, constituted u/s 3 of the CA Act, 1949, in consultation with and after examination of recommendations made by National Financial Reporting Authority (NFRA)</p> <p><u>Rule 7 of Companies (Accounts) Rules, 2014:</u> Accordingly,</p>

	<p>i. The standards of accounting as specified under Companies Act, 1956 shall be deemed to be AS until AS are specified by CG under section 133.</p> <p>ii. Till the NFRA* is constituted u/s 132 of the Act, the CG may prescribe the standards of accounting or any addendum thereto, as recommended by ICAI in consultation with and after examination of recommendations made by National Advisory Committee(NAC) on AS constituted u/s 210A of Cos Act, 1956.</p> <p>Further, in exercise of powers conferred u/s 133, the CG in consultation with the National Advisory Committee on AS prescribed that Companies (AS) Rules, 2006 and Companies (Ind AS) Rules, 2015 may be followed.</p>
3	<p><u>Alter or Alteration</u> Includes the making of additions, omissions and substitutions;</p>
5	<p><u>Articles</u> Means the articles of association of a company:</p> <ul style="list-style-type: none"> • as originally framed, or • as altered from time to time, or • applied in pursuance of any previous company law or this Act;
6	<p><u>Associate Company</u> 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</p> <p><u>Explanation:</u> For the purpose of this clause: (a) "significant influence" means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement; (b) "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</p> <p><u>Clarification:</u> 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</p> <p>A fiduciary is a person who holds a legal or ethical relationship of trust with one of more parties (persons or group of persons). Typically, a fiduciary prudently takes care of money or other assets for another person.</p>
7	<p><u>Auditing standards</u> means the standards of auditing or any addendum thereto for companies or class of companies referred to u/s 143(10)</p> <p>Section 143(10) - Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by ICAI, constituted u/s 3 of the CA Act, 1949, in consultation with and after examination of recommendations made by NFRA</p> <p>Provided that until any auditing standards are notified, any standard or standards of auditing specified by the ICAI shall be deemed to be the auditing standards.</p>
8	<p><u>Authorised Capital or Nominal Capital</u> means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;</p>

10	Board of Directors or Board 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), notified by CG ;							
12	"Book and Paper" and "Book or Paper": Includes: <table border="1" style="margin-left: 20px; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Books of Accounts</td> <td style="padding: 5px;">Deeds</td> <td style="padding: 5px;">Voucher</td> <td style="padding: 5px;">Writings</td> <td style="padding: 5px;">Documents</td> <td style="padding: 5px;">Minutes</td> <td style="padding: 5px;">Registers</td> </tr> </table> maintained on paper or in electronic form;	Books of Accounts	Deeds	Voucher	Writings	Documents	Minutes	Registers
Books of Accounts	Deeds	Voucher	Writings	Documents	Minutes	Registers		
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 u/s 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 CA as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;							
18	Chief Executive Officer 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; Example: Reliance Industries Limited incorporated in year 1973, Tata Steel Limited incorporated in year 1907, Infosys Limited incorporated in year 1981. Such companies are incorporated under Companies Act, 1956 (previous company law) are also included in the above definition							
21	Company limited by guarantee means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up ;							
22	Company limited by shares means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them; Example: A shareholder who has paid Rs. 75 on a share of face value Rs. 100 can be called upon to pay the balance of Rs. 25 only.							
26	Contributory means a person liable to contribute towards the assets of the company in the event of its being wound up . Explanation: For the 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
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, following instrument shall not be shall not be treated as debenture: a. instruments referred to in Chapter III-D of the RBI Act, 1934; and b. such other instrument, as may be prescribed by CG in consultation with RBI, issued by a company,
34	Director means a director appointed to the Board of a company;
35	Dividend includes any interim dividend;
36	Document includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;
37	Employees stock option means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;
38	"Expert" includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;
40	Financial statement in relation to a company, includes: i. 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 doc. referred to in sub-clause (i) to (iv): Provided that the FS, with respect to OPC, small company and dormant company, may not include the cash flow statement;
41	Financial Year , in relation to any company or BC, means period ending on 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 FS of the company or BC is made up. Provided that where a company or BC, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different FY for consolidation of its accounts outside India, the CG may, on an application made by that company or BC in such form and manner as may be prescribed, allow any period as its FY, whether or not that period is a year.
43	Free reserves means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend. <u>Provided that, following shall not be treated as free reserve:</u> 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;

45	Government company means any company in which not less than 51% of the paid-up share capital is held by CG , or by any SG , or partly by CG and partly by one or more SG , 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 ;
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: <ul style="list-style-type: none"> i. the CEO 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;
52	Listed company means a company which has any of its securities listed on any recognised stock exchange ("RSE") ; <p>Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the SEBI, shall not be considered as listed companies.</p> <p>According to Rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:</p> <ul style="list-style-type: none"> a. Public companies which have not listed their equity shares on a RSE but have listed their: <ul style="list-style-type: none"> i. non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or ii. non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; iii. both categories of (i) and (ii) above. b. Private companies which have listed their non-convertible debt securities on private placement basis on a RSE in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; c. Public companies which have not listed their equity shares on a RSE but whose equity shares are listed on a stock exchange in a jurisdiction as specified in section 23(A) of the Act.
53	Manager means an individual who: <ul style="list-style-type: none"> • subject to the <u>superintendence, control and direction</u> 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 <ul style="list-style-type: none"> • 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 **shall not be deemed** to be included within the substantial powers of management;

Power to do administrative act:

power to affix the common seal to any document	draw and endorse any cheque in any bank	draw and endorse any negotiable instrument	sign any certificate of share	direct registration of transfer of any share
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55 **Member** in relation to a company, means:
 i. the **subscriber to the memorandum** of co. 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 **MoA** 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: 1. paid-up share capital, 2. All reserves created out of the profits*, 3. Securities premium account and 4. debit or credit balance of P&L account	After deducting aggregate value of: 1. the accumulated losses, 2. deferred expenditure and 3. miscellaneous expenditure not written off
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*but **does not include reserves** created out of **revaluation** of assets, **write-back** of depreciation and amalgamation

58 **Notification** means **a notification published in OG** and expression "notify" to be construed accordingly;

59 **Officer** includes any **director, manager** or **KMP** or any person in accordance with whose directions or instructions the BoD 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) KMP;
 (iii) where there is **no KMP**, 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 KMP, 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 BoD of 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

	<p>in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;</p> <p>(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;</p>
62	One Person Company (OPC) means a company which has only one person as a member ;
63	Ordinary or Special Resolution means an OR/SR as referred to in section 114;
64	<p>Paid-up share capital or share capital paid-up means:</p> <p>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;</p>
65	Postal ballot means voting by post or through any e-mode ;
66	Prescribed means prescribed by rules made under this Act;
68	<p>Private Company means a company having a minimum paid-up share capital as may be prescribed, and which by its articles:</p> <ol style="list-style-type: none"> i. restricts the right to transfer its shares; ii. except in case of OPC, limits the number of its members to 200: <p>Provided that in case joint holding - Treat them as single member</p> <p>Provided further, following shall not be included in number of members:</p> <ol style="list-style-type: none"> a. persons who are in the employment of the company; and b. persons who, having been formerly in employment of company, were members of company while in that employment and have continued to be members after the employment ceased <p>iii. prohibits any invitation to the public to subscribe for any securities of the company;</p> <p>The requirement of having a Minimum PUSC shall not apply to a Section 8 company (Formation of companies with charitable objects, etc.) provided it has not committed a default in filing its financial statements u/s 137 of the Companies Act, 2013, or annual return u/s 92 of the said Act with RoC.</p>
69	<p>Promoter means a person:</p> <ol style="list-style-type: none"> i. who has been named as such in a prospectus or is identified by the company in annual return u/s 92, ii. who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or iii. in accordance with whose advice, directions or instructions the Board of the company is accustomed to act: <p>Provided that nothing in sub-clause (c) shall apply to person who is acting merely in a professional capacity;</p>
70	Prospectus means any document described or issued as a prospectus and includes a red herring prospectus or shelf prospectus or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate ;
71	<p>Public company means a company which:</p> <ol style="list-style-type: none"> i. is not a private company; and ii. has a minimum paid-up share capital as may be prescribed (N.A. to Sec 8 companies) <p>Provided that subsidiary of a public 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;</p>

	Example: A Pvt. Ltd. is wholly owned subsidiary of AB Ltd., a public company. 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.
74	Register of companies means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;
75	Registrar means a Registrar , an Additional Registrar , a Joint Registrar , a Deputy Registrar or an Assistant Registrar , having the duty of registering companies and discharging various functions under this Act
76	<p>Related Party:</p> <pre> graph TD Root[Related Party] --> Person[Person] Root --> Firm[Firm] Root --> Private[Private Company] Root --> Public[Public Company] Root --> Body[Body Corporate (N.A to Private Company)] Root --> Any[Any person] Root --> Other[Other person] Person --- P1[Director and Relatives] Person --- P2[KMP and Relatives] Firm --- F1[Director, Manager or relative is a partner] Private --- PR1[Director, Manager or Relative is - Member or Director] Public --- PU1[Such director or manager of Relative is - a director AND holds along with relatives >2% of PUSC] Body --- B1[BOD / MD / Manager is accustomed to act per advice or instruction of director or manager and relative] Body --- B2[holding, subsidiary, co-subsidiary or associate of such company] Body --- B3[Investing company or venturer of the company (such investment leads to the company becoming associate)] Any --- A1[on whose advice or instruction of director or manager and relative is accustomed to act] Other --- O1[As may be prescribed] O1 --- O2[Director (other than I.D), KMP of the holding co. or relatives of such directors or KMP] </pre>
77	<p>Relative:</p> <p>Anyone who is related to another and covers the following:</p> <ol style="list-style-type: none"> they are members of a HUF (Hindu Undivided Family); they are husband and wife; or one person is related to the other in the prescribed manner as under: <ol style="list-style-type: none"> Father (including step-father); Mother (including step-mother); Son (including step-son); Son's wife; Daughter (including step-daughter); Daughter's husband; Brother (including the step-brother); Sister (including the step-sister).
78	Remuneration means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income Tax Act, 1961
84	Share means a share in the share capital of a company and includes stock ;
85	<p>Small company means a company, other than a public company:</p> <ol style="list-style-type: none"> PUSC of which does not exceed Rs. 50 lakh or such higher amount as may be prescribed which shall not be > Rs. 10 crores; and turnover of which as per P&L account for the immediately preceding FY does not exceed Rs. 2 crores or such higher amount as may be prescribed which shall not be > Rs. 100 crores

Provided that nothing in this clause shall apply to:

- i. a **holding** company or a **subsidiary** company;
- ii. a company registered under **section 8**; or
- iii. a company or body corporate governed by any **special Act**.

As per the Companies (Specification of Definitions Details) Rules, 2014, for the purposes of sub-clause (i) and sub-clause (ii) of section 2(85), **PUSC and T/O of the small company shall not exceed rupees two crores and rupees twenty crores respectively.**

Example: H Ltd. is the holding company of S Pvt. Ltd. As per the last profit and loss account for the year ending 31st March, 2019 of S Pvt. Ltd., its turnover was to extent of Rs. 1.50 crores; and paid-up share capital was Rs. 40 lacs. Since S Pvt. Ltd., as per the turnover and paid-up share capital norms, qualifies for the status of a 'small company' it wants to be categorized as 'small company'. S Pvt. Ltd. cannot be categorized as a 'small company' because it is the subsidiary of another company (H Ltd.)

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

Example: ABC Ltd. was registered with Registrar with an Authorised capital of Rs. 2,00,00,000 where each share is of Rs. 10. In response to the advertisements made by the company to buy shares in the company, applications have been received for 10,00,000 shares but company actually issued 700,000 shares where company has called for Rs. 8 per share. All the calls have been met in full except three shareholders who still owe for their 6000 shares in total.

Amount of various share capital

Authorized share capital = Rs. 2,00,00,000 (2 crores)

Subscribed capital = 10,00,000 shares x 10 = Rs. 1,00,00,000 (1 Crore)

Issued capital = 7,00,000 x 10 = Rs. 70,00,000

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

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

87 **Subsidiary company or Subsidiary**, in relation to any other 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 $\frac{1}{2}$ 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;

	Note - 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.
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 .
89	Total voting power , in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes ;
90	Tribunal means the NCLT constituted u/s 408;
91	Turnover means the gross amount of revenue recognised in the P&L account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a FY ;
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;