Chapter-1

PRELIMINARY

Why Companies Act 2013 ?

- ✓ 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.

Assent of the Hon'ble president

- ✓ The Companies Act, 2013 received the assent of the Hon'ble President of India on 29th August 2013
- ✓ 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.

Enforcement of sections

- ✓ 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.

Features of Companies Act 2013

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

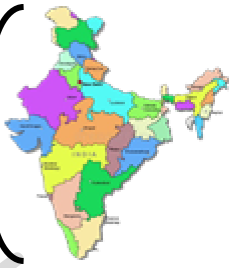
2 SHORT TITLE, EXTENT, COMMENCEMENT & APPLICATION

Short Title of the Act

Section-1: The Act may be called as the Companies Act 2013.

Extent to the applicability of the Act

The Act Shall be extend to the whole India.



Commencement of the Act

Section 1 came into force at once and the remaining provisions on different dates through Notifications.

Applicability of the Act (Section 1)

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 producing/supplying 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.

(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.

3 DEFINITIONS (Section -2)

- Sections or Clauses, are 'internal aids to construction' and immense help in interpreting or construing the enactment or any of its parts.
- 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.

Definitions

Abridged Prospectus [Section 2(1)]

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.

Accounting Standards [Section 2(2)]

The standards of accounting or any addendum thereto for companies or class of companies referred to in section 133

The Central Government to Prescribe Accounting Standards (Section-133)	The Central Government may prescribe - 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.
Rule 7 of the Companies (Accounts) Rules, 2014	i. The standards of accounting as specified under the Companies Act, 1956 shall be deemed to be the accounting standards until accounting standards are specified by the Central Government under section 133. ii. Till the National Financial Reporting Authority* is constituted under section 132 of the Act, the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India in consultation with and after examination of the recommendations made by the National Advisory Committee on Accounting Standards constituted under section 210A of the Companies Act, 1956.

- Further, in exercise of the powers conferred by section 133, the Central Government in consultation with the National Advisory Committee on Accounting Standards prescribed that *Companies (Accounting Standards Rules, 2006* and the *Companies (Indian Accounting Standards) Rules, 2015* may be followed.

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

Alter or Alteration [Section 2(3)]

Alter or Alteration includes the making of additions, omissions and substitutions.

Article [Section 2(5)]

→ Article 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**

Associate Company [Section 2(6)]

Associate Company means:→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.

Meaning Significant Influence	Meaning of Joint Venture
"Significant influence" means ➢ control of at least 20% of total voting power, or ➢ control of or participation in business decisions under an agreement.	"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.

Clarification dated 25/06/2014

- ✓ 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***.

- ✓ **Meaning of Fiduciary:** 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)

Auditing Standards [Section 2(7)]

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.

Authorized Capital or Nominal Capital [Section 2(8)]

Means such capital as is authorized by the memorandum of a company to be the maximum amount of share capital of the company.

Board of Director or Board [Section 2(10)]

In relation to a company, means the collective body of the directors of the company.

Body corporate or Corporation [Section 2(11)]

It includes a company incorporated out side 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)

Book and Paper and Book or Paper [Section 2(12)]

Include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form.

Books of Account [Section 2(13)]

It 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.

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

Branch office [Section 2(14)]

In relation to a company, means any establishment described as such by the company.

Called Up Capital [Section 2(15)]

Such part of Capital, which has been called for payment.

Charge [Section 2(16)]

An interest or lien created on property or assets of a company or any of its undertakings or both as security and includes mortgage.

Chartered Accountant [Section 2(17)]

A chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act.

Chief Executive officer (CEO) [Section 2(18)]

Means an officer of a company, who has been designated as such by it.

Chief Financial officer (CFO) [Section 2(19)]

Means a person appointed as the Chief Financial Officer of a company.

Note: 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.

Company [Section 2(20)]

Means a company incorporated under this Act or under any previous company law.

Company limited by guarantee [Section 2(21)]

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.

Chief limited by Shares [Section 2(22)]

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.

Contributory [Section 2(26)]

- Means a person liable to contribute towards the assets of the company in the event of its being wound up.
- **Explanation:** For the purpose of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory.

Control [Section 2(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

Debenture [Section 2(30)]

- 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 treated as debenture

Director [Section 2(34)]

Means a director appointed to the Board of a company.

Dividend [Section 2(35)]

Dividend includes any interim dividend.

Document [Section 2(36)]

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.

Employees' stock option [Section 2(37)]

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.

Expert [Section 2(38)]

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.

Financial Statement [Section 2(40)]

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.

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.

Financial Year [Section 2(41)]

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

Free reserves [Section 2(43)]

- Means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend.
- Provided that
  1. Any amount representing unrealized gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise **or**
  2. 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

Global Depository Receipt [Section 2(44)]

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.

Government Company [Section 2(45)]

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.

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

Holding Company [Section 2(46)]

In relation to one or more other companies, means a company of which such companies are subsidiary companies.

Issued Capital [Section 2(50)]

Means such capital as the company issues from time to time for subscription.

Key Managerial Personnel [Section 2(51)]

In relation to a company, means

i. Chief Executive Officer or the managing director or the manager

ii. company secretary

iii. whole-time director

iv. Chief Financial Officer 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

v. such other officer as may be prescribed (However till now not other officer has been prescribed

Listed Company [Section 2(52)]

- Means a company which has any of its securities listed on any recognised stock exchange.
- 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 Securities and Exchange Board, shall not be considered as listed companies.
- 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:-
    a. Public companies which have not listed their equity shares on a recognized stock exchange but have listed their-
        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 **or**

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 recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;

c. Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.

Manager [Section 2(53)]

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.

Managing Director [Section 2(54)]

Means

- A director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.
- Explanation — For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as:
  - the power to affix the common seal of the company to any document or
  - to draw and endorse any cheque on the account of the company in any bank or
  - to draw and endorse any negotiable instrument or
  - to sign any certificate of share or to direct registration of transfer of any share

  shall not be deemed to be included within the substantial powers of management

Explanation- For any individual to be called as managing director, an individual shall first be a director duly appointed by the Company under the provisions of the Companies Act, 2013. This also implies that an individual who is not a director in the company cannot be appointed as Managing Director of that company.

Member [Section 2(55)]

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.

Memorandum [Section 2(56)]

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.

Net Worth [Section 2(57)]

Means

(Add) 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,

(Less) 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.

Question: The statutory auditors of a company were required to issue a certificate on the net worth of the company as per the requirement of the management as on 30th September 2020 computed as per the provision of section 2(57) of the Companies Act, 2013.

The company had fair valued its property, plant and equipment in the current year which was mistakenly taken into retained earnings of the company in its books of accounts. Advise whether this fair valuation would be covered in the net worth of the company as per the legal requirements.

Answer: As per sec 2(57) of the Companies Act 2013, any reserves created out of revaluation of assets doesn't form part of net worth. The company fair valued its property, plant and equipment and took that to retained earnings.

Even if the company has taken the fair valuation to the retained earnings in its books of accounts, the resultant credit in reserves (by whatever name called) would be in the category of 'reserves created out of revaluation of assets' which is specifically excluded in the definition of 'net worth' in section 2 (57) and hence should be excluded by the company.

Further the auditors should also consider the matter related to accounting of this reserve.

Notification [Section 2(58)]

A notification published in the Official Gazette and the expression "notify" shall be construed accordingly.

Officer [Section 2(59)]

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.

Officer who is in default [Section 2(60)]

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.

One Person Company [Section 2(62)]

A company which has only one person as a member.

Ordinary or Special resolution [Section 2(63)]

An ordinary resolution, or as the case may be, special resolution referred to in section 114 (Ordinary and Special Resolution).

Paid-up share capital or Share Capital Paid-up [Section 2(64)]

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.

Postal Ballot [Section 2(65)]

Means voting by post or through any electronic mode.

Prescribed [Section 2(66)]

Means prescribed by rules made under this Act.

Private Company [Section 2(68)]

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

Note: Nothing has been prescribed so far, thus, there is no minimum paid up share capital to form a private company.

Note: The requirement of having a minimum paid up share capital shall not apply to a section 8 company (Formation of companies with charitable objects, etc.) *vide notification dated 5th June 2015.*

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

Promoter [Section 2(69)]

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.

Prospectus [Section 2(70)]

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.

Public Company [Section 2(71)]

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;

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

Note: Nothing has been prescribed so far, thus, there is no minimum paid up share capital to form a public company.

Register of Companies [Section 2(74)]

The register of companies maintained by the Registrar on paper or in any electronic mode under this Act.

Registrar [Section 2(75)]

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.

Related Party [Section 2(76)]

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 or 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

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.

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

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.

Relative [Section 2(77)]

- 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.

Remuneration [Section 2(78)]

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.

Share [Section 2(84)]

Means a share in the share capital of a company and includes stock.

Small Company [Section 2(85)]

Means a Company, other than a Public Company-

(i) **Paid Up Share Capital** of which does not exceed **50 Lakhs Rupees** Or such higher amount as may be prescribed*, which shall not be more than 10 Crore Rupees and

(ii) **Turnover** of which as per Profit and Loss account for the immediately preceding financial year does not exceed **2 Crore Rupees** or Such higher amount as may be prescribed*, which shall not be more than 100 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

c. A company or body corporate governed by any special Act.

*As per Rule 2(1)(t) of Companies (Specification of Definitions Details) Rules, 2014 **Paid up Capital** and **Turnover** of the **Small company** shall not exceed **Rupees 4 crores** and **Rupees 40 crores** respectively.

Subscribed Capital [Section 2(86)]

Means such part of the capital which is for the time being subscribed by the members of a company.

Subsidiary Company or Subsidiary [Section 2(87)]

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

Clarification- 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.

Sweat Equity Shares [Section 2(88)]

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.

Total Voting Power [Section 2(89)]

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.

Tribunal [Section 2(90)]

Means the National Company Law Tribunal constituted under section 408.

Turnover [Section 2(91)]

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.

Unlimited Company [Section 2(92)]

Means a company not having any limit on the liability of its members.

Voting Right [Section 2(93)]

Means the right of a member of a company to vote in any meeting of the company or by means of postal ballot.

The End