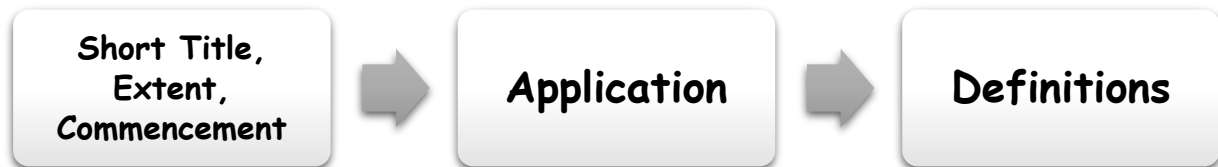


# Chapter 1: Preliminary

## Chapter Overview



## Introduction

The Companies Act, 2013 was enacted to consolidate and amend the law relating to the companies. The Companies Act, 2013 was preceded by the Companies Act, 1956. 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**.

The Companies Act, 2013 contains **470 sections** and **seven schedules**. The entire Act has been divided into 29 chapters.

The Companies Act, 2013 aims to improve corporate governance, simplify regulations, and strengthen the interests of minority investors. Thus, this enactment seeks to make our corporate regulations more contemporary.

## Short Title, Extent, Commencement (Section 1)

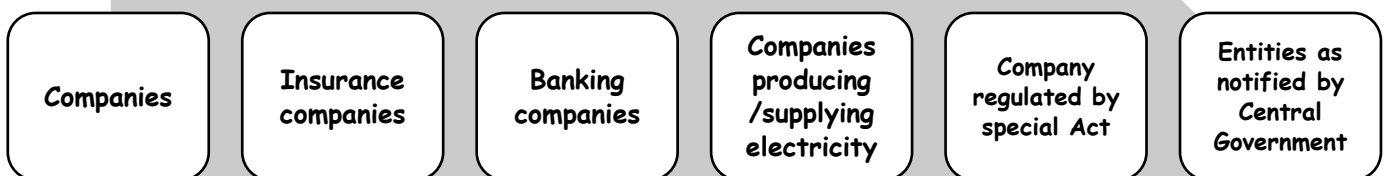
**Short Title-** Companies Act, 2013

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

**Commencement-** From date as appointed by CG by notification in Official gazette.

## Application (Section 1)

The provisions of this Act shall **apply** to-



<b>Companies</b>	Companies incorporated under this Act or under any previous company law.
<b>Insurance companies</b>	Insurance companies, <u>except</u> 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;
<b>Banking companies</b>	Banking companies, <u>except</u> in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;
<b>Companies engaged in the generation or supply of electricity</b>	Companies engaged in the generation or supply of electricity, <u>except</u> in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;
<b>Company governed by any special Act</b>	Any other company governed by any special Act for the time being in force, <u>except</u> in so far as the said provisions are inconsistent with the provisions of such special Act, and
<b>Body corporate</b>	Such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify on this behalf. <u>Example:</u> Food Corporation of India (FCI), National Highway Authority of India (NHAI) etc.

### Is the Company a Citizen?

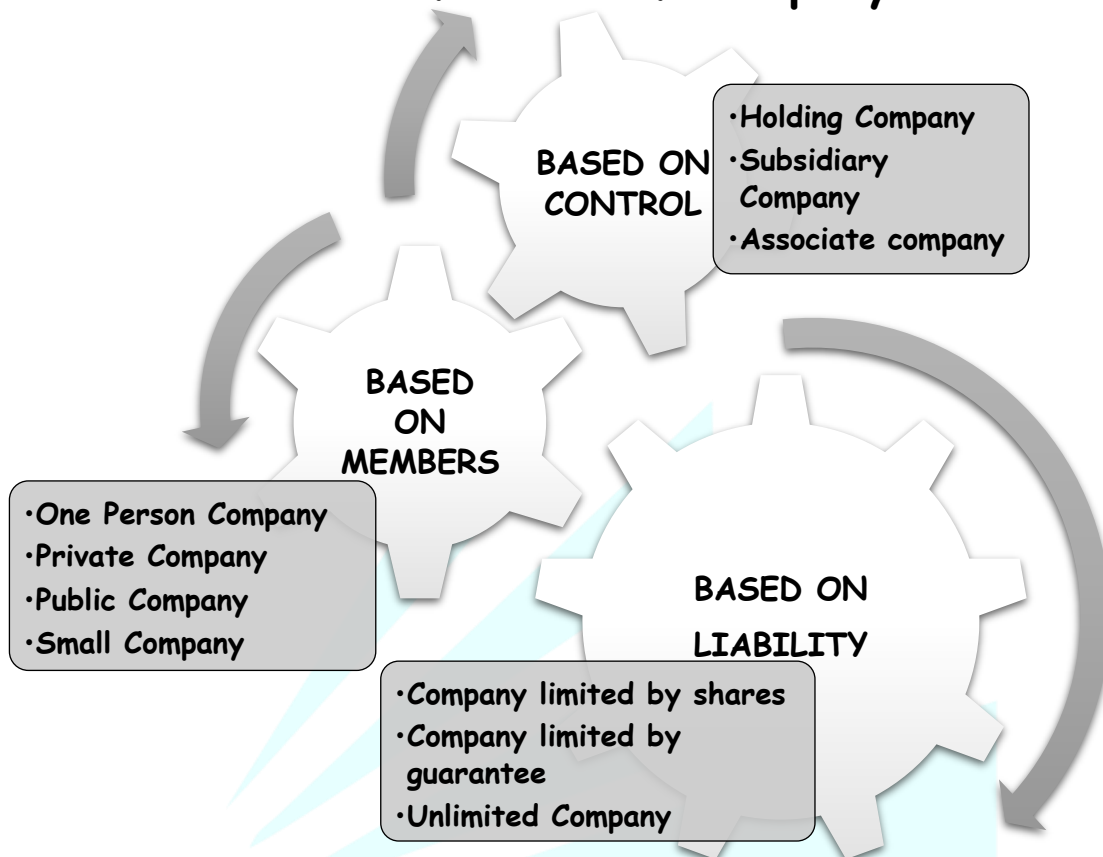
Although a company is regarded as a legal person (though artificial), it is not a citizen either under the Constitution of India or the Citizenship Act, 1955.

### Does a Company have Nationality and Residence?

It is established through judicial decisions that a company cannot be a citizen, yet it has nationality, domicile and residence.



## Classification of Company



### BASED ON LIABILITY

#### 1. Company limited by shares Section 2(22)

**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 rupees 75 on a share of face value rupees 100 can be called upon to pay the balance of rupees 25 only.

#### 2. Company limited by guarantee Section 2(21)

**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**. Clubs, trade associations and societies for promoting different objects are **examples** of companies limited by guarantee.

#### 3. Unlimited Company Section 2(92)

**means** a company **not having any limit on the liability** of its members; Thus, the maximum liability of the members of such a company could extend to their **entire personal property** to meet the debts and obligations of the company.



## BASED ON MEMBERS

### 1. One Person Company Section 2(62)

**means** a company which has only **one person** as a member; it is basically a private company with **some unique features**.

As regards the name of a One Person Company, the Act provides that the words "One Person Company" or 'OPC' shall be mentioned in brackets below the name of such Company, wherever its name is printed, affixed or engraved. 'OPC' was **recommended by J.J. Irani Committee**.

### 2. Private Company Section 2(68)

**means** a company having a minimum paid-up share capital as may be prescribed, and which by its articles:

- (a) **Restricts** the right to **transfer** its shares;
- (b) **Limits** the number of its **members to two hundred** (**Except in case of One Person Company**);

The clause provides that where **two or more persons** hold **one or more shares** in a company **jointly**, they shall be treated as a **single member**:

However, following shall **not be included** in the number of members:

- Persons who are in the **employment** of the company; and
- 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**.

(c) **Prohibits** any invitation to the **public to subscribe** for any securities of the company.

There should be at least **two persons** to form a private company. A private company should have at least **2 directors**. The name of a private limited company must end with the words "**Private Limited**".

### 3. Public Company Section 2(71)

**means** a company which:

- 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**)
- iii. Seven or more members are required to form the company.

**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;

**Example:** A Pvt. Ltd. is wholly owned subsidiary of AB Ltd., a public company incorporated under the Companies Act, 2013. 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.

#### 4. Small Company Section 2(85)

**means** a company, **other than a public company:**

- i. Paid Up Share Capital(PUSC) of which does not exceed Rs. 50 lakh or such higher amount as may be prescribed which shall not be more than Rs. 10 crores; and
- ii. **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 more than 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 **section 2(85), PUSC and Turnover of small companies shall not exceed Rs. 4 crores and Rs. 40 crores respectively.**

### BASED ON CONTROL

#### 1. Holding Company Section 2(46)

**means** a company having one or more subsidiary companies.

**Explanation-** The Company term shall include body corporate for purposes of this clause.

#### 2. Subsidiary Company Section 2(87)

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.

**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 (ii) is of another subsidiary company of the holding company;



- b) the composition of a company's BOD 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 anybody corporate;
- d) layer in relation to a holding company means its subsidiary or subsidiaries;

### Companies (restriction on number of layers) Rules 2017, w.e.f 20.09.2017

√No company shall have more than 2 layers of subsidiaries

√Nothing in this rule shall prevent a company from acquiring company incorporated outside India which has subsidiaries layer more than 2 as per foreign law

√If a layer contains wholly owned subsidiaries, then that layer shall not be counted.

• Existing companies which already have more than 2 layers as on 20.9.17 Shall submit form CRL1 within 150 days of commencement of rules (20.09.2017) Cannot increase its layers.

If reduces voluntarily then maximum layers it can have is

• No. of layers after such reduction or 2 layers (whichever is higher)

Fine for contravention ₹10,000 & ₹1,000/day till default continues.

Non-Applicability of these rules:

- Banking Company
- Insurance Company
- Government Company
- Systemically important NBFC (asset size as per latest audited balance sheet minimum 500 crore.)

### 3. Associate company Section 2(6)

In relation to another company, it 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) "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.



**Authors Note:** 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.

## BASED ON CAPITAL

### 1. Listed company Section 2(52)

**means** a company which has any of its securities listed on any recognised stock exchange ("RSE");

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**.

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 **recognised stock exchange** RSE but have listed there:

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 recognised stock exchange 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 **recognised stock exchange** RSE but whose equity shares are listed on a stock exchange in a foreign stock exchange.

### 2. Unlisted company Section 2(92)

**means** a company other than a listed company.

## OTHER COMPANIES

### 1. Government Company Section 2(45)

**Means** any company in which **not less than fifty- one percent of the paid-up share capital** is held by-

(i) the Central Government, or



(ii) by any State Government or Governments, or  
(iii) partly by the Central Government and partly  
by one or more State Governments,

And the section **includes** a company which is a subsidiary company of such a government company "Paid-up share capital" shall be construed as "**total voting power**", where shares with differential voting rights have been issued.

**Example:** X Industries Ltd. is a company in which 25% of shareholding is held by Central Government; 10% shareholding is held by Government of Maharashtra and 15% shareholding is held by Central Government and Government of Rajasthan. Here, X Industries Ltd. 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 or partly by the Central Government and partly by one or more State Government.

## 2. Foreign Company Section 2(42)

**means** any company or body corporate incorporated outside India which-

- (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (ii) conducts any business activity in India in any other manner.

## 3. Dormant company Section 455

**means** a company incorporated for a future project or for holding any asset or intellectual property and has no significant **accounting transactions**. Such a company or **inactive company** is called Dormant company.

**Provided that all transactions** are regarded significant accounting transactions except the following: -

- Payment of fees to ROC
- Any other statutory fee. E.g audit fee
- Maintenance of office & records
- Share allotment.

**Explanation:** **Inactive company means** which has not filed financial statements & annual returns for the **last 2 financial years continuously**. For obtaining status of dormant company, submit **form MSC 1 to ROC & ROC shall issue certificate of dormant company in form MSC 2.**



#### 4. Nidhi company Section 406

**Means** company formed with the object of cost cutting & savings amongst the members, receiving deposits from & lending to members only for their mutual benefit.

"Nidhi" or "mutual benefit society" means a company which the CG may, by notification in official gazette, declare to be a Nidhi or mutual benefit society as the case may be - **COMPANIES (AMENDMENT)ACT 2017 (15.08.2019)**

#### 5. STARTUP COMPANIES (defined by DPIIT) (Department for Promotion of Industry & Internal Trade)

Working towards improvement or development of new products/ processes/ services. And having a scalable business model having potential of wealth generation & employment creation.

**Must** be a private company/LLP/unregistered firm.

Within **10 years of incorporation**, turnover **never exceed 100 crores** in any financial year. **Not formed** by splitting up or reconstruction.

### OTHER IMPORTANT DEFINITIONS

<b>Section 2</b>	<b>(1)</b>	<b>Abridged Prospectus</b>	<b>Means</b> a memorandum containing such <b>salient features of a prospectus</b> as may be specified by the Securities and Exchange Board by making regulations in this behalf
	<b>(2)</b>	<b>Accounting Standards</b>	<p><b>Means</b> the <b>standards of accounting or any addendum</b> thereto for companies or class of companies referred to in <b>section 133</b>;</p> <p><b><u>Section 133: Central Government to Prescribe Accounting Standards</u></b> As per Section 133, <b>CG may prescribe the AS or any addendum thereto</b>, as recommended by ICAI, constituted under section 3 of the CA Act, 1949, <b>in consultation with and after examination of recommendations made by National Financial Reporting Authority (NFRA)</b></p> <p><b><u>Rule 7 of Companies (Accounts) Rules, 2014: Accordingly,</u></b></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 u/s 133.</p>



			<p>ii. Till the NFRA is constituted u/s 132 of the Act, the CG may prescribe AS 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 Companies 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)	Alter or Alteration	<b>Includes</b> the making of additions, omissions and substitutions;
	(5)	Articles	<b>Means</b> <u>the articles of association</u> of a company: →as originally framed, or →as altered from time to time, or →applied in pursuance of any previous company law or this Act.
	(7)	Auditing standards	<b>means</b> the standards of auditing or any addendum thereto for companies or class of companies referred to <b>u/s 143(10)</b>  <b>Section 143(10) - CG may prescribe the standards of auditing or any addendum</b> 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. <b>Provided that</b> until any auditing standards are notified, any standard or standards of auditing specified by the <b>ICAI shall be deemed to be the auditing standards.</b>
	(8)	Authorised Capital or Nominal Capital	<b>means</b> 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	<b>means</b> the collective body of the directors of the company



(11)	Body corporate or Corporation	<b>Includes</b> a company incorporated outside India, but does not include: i. a <u>co-operative society</u> registered under any law relating to co-operative societies; and ii. <u>any other body corporate</u> (not being a company as defined in this Act), notified by CG
(12)	"Book and Paper" and "Book or Paper"	<b>Includes</b> Books of Accounts, Deeds, Voucher, Documents, Minutes, anything in writings, Registers maintained on paper or in electronic form.
(13)	Books of account	<b>Includes</b> 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.
(16)	Charge	<b>means</b> an interest or lien created on the property or assets of a company or any of its undertakings or both as <u>security</u> and includes a mortgage;
(17)	Chartered accountant	<b>means</b> a CA as defined in section 2(1)(b) of the Chartered Accountants Act, 1949 who holds a valid certificate of practice u/ss 6(1) of that Act;
(20)	Company	<b>means</b> a company incorporated under this Act or under any previous company law. <b>Example:</b> 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 for being treated as a Company.



	(26)	<b>Contributory</b>	<p><b>means</b> a person liable to contribute towards the assets of the company in the event of its being wound up.</p> <p><b>Explanation:</b> 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;</p>
	(27)	<b>Control</b>	<p>shall <b>include:</b></p> <p>→the right to <u>appoint majority of the directors</u> or</p> <p>→to <u>control</u> the management or policy decisions exercisable by a person(s) acting individually or in concert, directly or indirectly,</p> <p>→including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.</p>
	(30)	<b>Debenture</b>	<p><b>includes</b> debenture stock, bonds or any other instrument of a company <u>evidencing a debt, whether constituting a charge</u> on the assets of the company <u>or not</u>.</p> <p>→Provided that, following instrument shall not be treated as debenture:</p> <p>a. instruments referred to in Chapter III-D of the RBI Act, 1934; and</p> <p>b. such other instrument, as may be prescribed by CG in consultation with RBI, issued by a company.</p>
	(36)	<b>Document</b>	<p><b>includes</b> <u>summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance</u> of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form.</p>
	(37)	<b>Employees stock option</b>	<p><b>means</b> <u>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</u> directors, officers or employees, the benefit or</p>



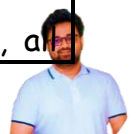
			right to purchase, or to subscribe for, the shares of the company at a future date at a predetermined price;
	(40)	<b>Financial statement</b>	<p>in relation to a company, <u>includes</u>:</p> <p>i. <b>Balance sheet</b> as at the end of the financial year;</p> <p>ii. <b>a profit and loss account</b>, or in the case of a company carrying on any activity <b>not for profit</b>, <b>an income and expenditure account</b> for the financial year;</p> <p>iii. <b>cash flow statement (CFS)</b> for the financial year;</p> <p>iv. <b>a statement of changes in equity</b>, if applicable; and</p> <p>v. any <b>explanatory note</b> annexed to, or forming part of, any doc. referred to in sub-clause (i) to (iv):</p> <p>→<b>Provided that</b> the FS, with respect to OPC, small company and dormant company and Private company (startup), <b>may not include cash flow statement (CFS)</b>.</p>
	(41)	<b>Financial Year</b>	<p>→In relation to a company or body-corporate it <u>means</u> a period ending on the 31st day of March every year. However, if the company got incorporated on or after 1st January, then it will be 31st day of March of the following year.</p> <p>→<b>Provided that</b> a company which is either holding or subsidiary or associate of a company incorporated outside India &amp; is following a <u>different financial year</u> then the company for purposes of consolidation of accounts can <u>apply to CG (RD)</u> for following a different FY.</p> <p>→<u>Procedure for making an application to CG(RD) for change in financial year:</u></p> <ol style="list-style-type: none"> <li>1. Submit form <b>RD-1</b></li> <li>2. Attach <b>4 documents</b> with RD-1       <ul style="list-style-type: none"> <li>* <u>Minutes of BM</u> in which it was decided to change FY</li> <li>* <u>Reasons</u> for change of FY</li> <li>* <u>Memorandum of appearance</u> or power of</li> </ul> </li> </ol>



			<p>attorney to appear in front of RD.</p> <p>* Details of <u>any applications</u> that were made in <u>last 5 FYs</u> for change FY</p> <p>3. If any <u>defects</u> in documents, RD may allow 15 days to rectify &amp; re-submit</p> <p>4. Maximum 2 such re-submissions are allowed. Within 30 days of receipt of proper documents, RD shall either allow or reject such request.</p> <p>If RD has allowed the company shall submit <b>INC 28</b> to ROC within 30 days of RD's order.</p> <p>→(If IFSC co. Is a subsidiary of foreign company then it may follow different FY just like that foreign company without any approval)</p>
		<b>Free reserves</b>	<p><b>means</b> such reserves which, <b>as per the latest audited balance sheet of a company</b>, are available for distribution as dividend.</p> <p><b>Provided that</b>, following shall <b>not be treated</b> as free reserve:</p> <p>i. any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or</p> <p>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;</p>
	<b>(51)</b>	<b>Key Managerial Personnel</b>	<p>in relation to a company, <u>means</u>:</p> <p>i. the <b>CEO</b> or the <b>managing director</b> or the manager;</p> <p>ii. the <b>company secretary</b>;</p> <p>iii. the <b>whole-time director</b>;</p> <p>iv. the <b>Chief Financial Officer</b></p> <p>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</p> <p>vi. such other officers as may be prescribed.</p>



	(53)	<b>Manager</b>	<p><b>means</b> an individual who, subject to the <b>superintendence, control and direction of the Board of Directors</b>, has the management of the whole, or substantially the whole, of the affairs of a company, <b>and includes</b> a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;</p>
		<b>Managing Director</b>	<p><b>means</b> a <b>director</b> who,</p> <ul style="list-style-type: none"> <li>▶ by virtue of the articles of a company or an agreement with the <b>company or a resolution passed in its general meeting</b>, or by its Board of Directors,</li> <li>▶ is entrusted with <b>substantial powers of management</b> of the affairs of the company and</li> <li>▶ <b>includes</b> a director occupying the position of managing director, by whatever name called.</li> </ul> <p><b>Explanation.</b> — For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as:</p> <ul style="list-style-type: none"> <li>• the <b>power to affix the common seal</b> of the company to any document or</li> <li>• to <b>draw and endorse</b> any cheque on the account of the company in any bank or</li> <li>• to draw and endorse any negotiable instrument or</li> <li>• to <b>sign any certificate of share or to direct registration</b> of transfer of any share, shall not be deemed to be included within the substantial powers of management;</li> </ul> <p><b>Explanation.</b> - 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.</p>
	(57)	<b>Net worth</b>	<p><u>means</u> the → <b>aggregate value</b> of (paid-up share capital, and</p>



		<p>reserves created out of the profits, Securities premium account &amp; debit or credit balance of P&amp;L)</p> <p>→ <b>Deduct from aggregate value</b> (the accumulated losses, deferred expenditure &amp; miscellaneous expense not written off)</p> <p>→ <b>Does NOT include in net worth</b> (Reserve created out of revaluation of assets, Write-back of depreciation and amalgamation).</p> <p><b>Example:</b> 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.</p>
	<p><b>Officer who is in default</b></p>	<p>for the purpose of any provision in this Act which enacts that an officer of the company who is in <b>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: -</b></p> <p>(i) whole-time director (<b>WTD</b>);</p> <p>(ii) key managerial personnel (<b>KMP</b>);</p> <p>(iii) where there are <b>no key managerial personnel</b>, such director or directors as <b>specified by the Board in this behalf and who has or have given his or their consent in writing</b> to the Board to such specification, or all the directors, if <b>no director is so specified</b>;</p> <p>(iv) <b>any person who</b>, under the <u>immediate authority of the Board or any key managerial personnel</u>, 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;</p> <p>(v) <b>any person</b> in accordance with <b>whose advice, directions or instructions the Board of Directors</b> of the company is accustomed to act, other than a person who gives advice to the Board in</p>



			<p><u>professional capacity</u>;</p> <p>(vi) <b>every director</b>, in respect of a <u>contravention</u> 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 <u>where such contravention had taken place with his consent or connivance</u>;</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> <p><b>Example:</b> 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.</p>
	(69)	Promoter	<p><u>means</u> a person</p> <p>a) who has been named as such in a prospectus or is identified by company in annual return u/s 92,</p> <p>b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or</p> <p>c) in accordance with whose advice, directions or instructions the Board of the company is accustomed to act (except where such person is acting merely in professional capacity)</p>
	(70)	Prospectus	<p><u>means</u> 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 public for subscription or purchase of an securities of a body corporate;</p>



	(76)	<b>Related party,</b>	<p>with reference to a company, means—</p> <ul style="list-style-type: none"> <li>(i) a <b>director</b> or his relative;</li> <li>(ii) <b>key managerial personnel</b> or his relative;</li> <li>(iii) a <b>firm</b>, in which a director, manager or his relative is a partner;</li> <li>(iv) a <b>private company</b> in which a director or manager or his relative is a member or director;</li> <li>(v) a <b>public company</b> 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;</li> <li>(vi) any <b>body corporate</b> 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;</li> <li>(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;</li> <li>(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;</li> </ul> <p><b>Explanation.</b> - 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.</p> <ul style="list-style-type: none"> <li>(ix) such other person as may be prescribed;</li> </ul>
	(77)	<b>Relative</b>	<p>Anyone who is related to another and covers the following:</p> <ul style="list-style-type: none"> <li>a) they are members of a HUF (Hindu Undivided Family);</li> <li>b) they are husband and wife; or</li> <li>c) one person is related to the other in the prescribed manner as under:           <ul style="list-style-type: none"> <li>i. Father (including stepfather);</li> </ul> </li> </ul>



			ii.Mother (including stepmother); iii.Son (including stepson); iv.Son's wife; v.Daughter vi.Daughter's husband; vii.Brother (including the stepbrother); viii.Sister (including the stepsister).
	(88)	<b>Sweat equity shares</b>	<u>means</u> 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.
	(91)	<b>Turnover</b>	<u>means</u> 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.

