

❖ Short Title, Extent, Commencement and Application [Section 1]

(1) This Act may be called the Companies Act, 2013.

(2) It extends to the whole of India.

(3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

(4) The provisions of this Act shall apply to—

- (a) companies incorporated under this Act or under any previous company law;
- (b) insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 (4 of 1938) or the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);
- (c) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949 (10 of 1949);
- (d) companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003 (36 of 2003);
- (e) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act; and
- (f) such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.

❖ Definitions

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

- (1) “**abridged prospectus**” means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf;
- (2) “**accounting standards**” means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133;
- (3) “**alter**” or “**alteration**” includes the making of additions, omissions and substitutions;
- (4) “**Appellate Tribunal**” means the National Company Law Appellate Tribunal constituted under section 410;
- (5) “**articles**” means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act;
- (6) “**associate company**”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. 1 [Explanation.—For the purpose of this clause,—
 - (a) the expression “**significant influence**” means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;
 - (b) the expression “**joint venture**” means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;]
- (7) “**auditing standards**” means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143;
- (8) “**authorised capital**” or “**nominal capital**” means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;
- (9) “**banking company**” means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
- (10) “**Board of Directors**” or “**Board**”, in relation to a company, means the collective body of the directors of the company;
- (11) “**body corporate**” or “**corporation**” includes a company incorporated outside India, but does not include— (i) a co-operative society registered under any law relating to co-operative societies; and (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;
- (12) “**book and paper**” and “**book or paper**” include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;
- (13) “**books of account**” includes records maintained in respect of—
 - (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
 - (ii) all sales and purchases of goods and services by the company;
 - (iii) the assets and liabilities of the company; and

(iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;

(14) **“branch office”**, in relation to a company, means any establishment described as such by the company;

(15) **“called-up capital”** means such part of the capital, which has been called for payment;

(16) **“charge”** means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage;

(17) **“chartered accountant”** means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;

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

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

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

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

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

[(23) **“Company Liquidator”** means a person appointed by the Tribunal as the Company Liquidator in accordance with the provisions of section 275 for the winding up of a company under this Act;]

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

(25) **“company secretary in practice”** means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980 (56 of 1980);

(26) **“contributory”** means a person liable to contribute towards the assets of the company in the event of its being wound up. Explanation.—For the purposes of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory;

(27) **“control”** shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in

concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

(28) **“Cost Accountant”** means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;]

(29) **“court”** means—

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

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

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

(iv) the Special Court established under section 435;

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

(30) **“debenture”** includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not: [Provided that—

(a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934 (2 of 1934); and

(b) such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company, shall not be treated as debenture;

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

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

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

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

(35) **“dividend”** includes any interim dividend;

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

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

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

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

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

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

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

(iii) cash flow statement for the financial year; (iv) a statement of changes in equity, if applicable; and

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

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

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

Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary 1 [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 Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:

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

(42) “**foreign company**” means any company or body corporate incorporated outside India which— (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner;

(43) **“free reserves”** means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend: Provided that—

(i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or

(ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves;

shall not be treated as free reserves;

(44) **“Global Depository Receipt”** means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts;

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

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

[Explanation.—For the purposes of this clause, the expression “company” includes any body corporate;]

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

(48) **“Indian Depository Receipt”** means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts;

(49) omitted

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

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

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

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer;

[(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and

(vi) such other officer as may be prescribed

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

(53) **“manager”** means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;

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

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

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

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

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

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

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

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

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

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

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

(i) whole-time director;

(ii) key managerial personnel;

(iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

(61) **“Official Liquidator”** means an Official Liquidator appointed under sub-section (1) of section 59;

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

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

(64) **“paid-up share capital” or “share capital paid-up”** means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;

(65) **“postal ballot”** means voting by post or through any electronic mode; (66) **“prescribed”** means prescribed by rules made under this Act

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

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

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

- (ii) the Indian Companies Act, 1866 (10 of 1866);
- (iii) the Indian Companies Act, 1882 (6 of 1882);
- (iv) the Indian Companies Act, 1913 (7 of 1913);
- (v) the Registration of Transferred Companies Ordinance, 1942 (Ord. 54 of 1942);

(vi) the Companies Act, 1956 (1 of 1956); and

(vii) any law corresponding to any of the aforesaid Acts or the Ordinances and in force—

(A) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913 (7 of 1913); or

(B) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956 (62 of 1956), in so far as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968 (25 of 1968), in so far as other corporations are concerned; (viii) the Portuguese Commercial Code, in so far as it relates to sociedades anonimas; and (ix) the Registration of Companies (Sikkim) Act, 1961 (Sikkim Act 8 of 1961);

68) “**private company**” means a company having a minimum paid-up share capital 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; (69) “promoter” means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or in directly whether as a share holder, director or otherwise; or (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act: Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

(70) “**prospectus**” means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 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) “**public company**” means a company which—

(a) is not a private company; [and]

(b) has a minimum paid-up share capital as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles

(72) “**public financial institution**” means—

(i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);

(ii) the Infrastructure Development Finance Company Limited, referred to in clause (vi) of sub-section (1) of section 4A of the Companies Act, 1956 (1 of 1956) so repealed under section 465 of this Act;

(iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002);

(iv) institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act, 1956 (1 of 1956) so repealed under section 465 of this Act;

(v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless—

(A) it has been established or constituted by or under any Central or State Act [other than this Act or the previous company law]; or

(B) not less than fifty-one per cent. of the paid-up share capital is held or controlled 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;

(73) “**recognised stock exchange**” means a recognised stock exchange as defined in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956)

(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) “**related party**”, with reference to a company, means—

(i) a director or his relative;

- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager [or his relative] is a member or director;
- (v) a public company in which a director 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];

- (ix) such other person as may be prescribed;
- (77) “**relative**”, with reference to any person, means any one 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;
- (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 (43 of 1961); (79) “**Schedule**” means a Schedule annexed to this Act;
- (80) “**scheduled bank**” means the scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934);
- (81) “**securities**” means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (82) “**Securities and Exchange Board**” means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (83) “**Serious Fraud Investigation Office**” means the office referred to in section 211;

(84) **“share”** means a share in the share capital of a company and includes stock;

(85) **“small company”** means a company, other than a public company,—

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than 1 [ten crore rupees]; [and]

(ii) turnover of which

[as per profit and loss account for the immediately preceding financial year] does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than [one hundred crore rupees]: Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or (C) a company or body corporate governed by any special Act;

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

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

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the [total voting power] either at its own or together with one or more of its subsidiary companies: Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.—For the purposes of this clause—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(c) the expression **“company”** includes any body corporate;

(d) **“layer”** in relation to a holding company means its subsidiary or subsidiaries;

(88) **“sweat equity shares”** means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

(89) **“total voting power”** in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes;

(90) **“Tribunal”** means the National Company Law Tribunal constituted under section 408;

(91) **“turnover”** means gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year;]

(92) **“unlimited company”** means a company not having any limit on the liability of its members;

(93) **“voting right”** means the right of a member of a company to vote in any meeting of the company or by means of postal ballot;

(94) **“whole-time director”** includes a director in the whole-time employment of the company;

(94A) **“winding up”** means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016 (31 of 2016), as applicable;]

(95) words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Depositories Act, 1996 (22 of 1996) shall have the meanings respectively assigned to them in those Acts.

❖ **Classification of Companies**

Classification of Companies as follows: --

1. Public Company;
2. Private Company;
3. One Person Company
4. Small Company
5. Dormant Company;
6. Associate Company;
7. Company with charitable objectives;
8. Listed Company;
9. Body Corporate;
10. Holding Company
11. Subsidiary Company;
12. Foreign Company;
13. Government Company.

1. Public Company [Section 2(71)]

In simple terms, a public company is a company whose shares can be subscribed by members of the public. As per the Companies Act, 2013 a public company is

- A company that is not a private company

- Has a minimum of seven members, no maximum limit is mentioned
- Which, as amended by the Companies (Amendment) Act, 2015, has a minimum paid up share capital, as may be prescribed [the word “of 5 lacs rupees or such higher paid up capital” are omitted by the above amendment];
- A private company that is a subsidiary of a public company, will be considered a public company (a private company which is again a subsidiary of a public company shall be deemed to be a public company for the purpose of this Act even where such subsidiary company continues to be a private company in its article);
- Whose share are freely transferable without any restriction;
- Which is entitled to invite public to subscribe for its shares, debentures and deposits generally through issue of prospectus.

There are certain documents required to be filled by a public company with the Registrar of companies, so let us take a look at these documents

- Memorandum of Association: This is the constitution of a company. States the objective of the company, the total capital, the name of the company, the registered address etc.
- Articles of Association: This document contains rules and regulations of the internal management of the company.
- Prospectus: Because the company wishes to invite funds from the public it must register and issue a prospectus or a document in lieu of a prospectus. Any material mis-statement in the prospectus by the directors, promoter, or the experts is a criminal liability.

2. Private Company [Section 2(68)]

This is a type of company that finds mention in the Companies Act, 2013. The purpose of private companies is when the business is not very large, but the owners/management still want to opt for a company over a partnership or proprietorship. Let us look at some of the features/characteristics of a private company.

- Minimum numbers of members required to incorporate a private company are 2. There is also a maximum limit of 200 members. However, joint members of shares are counted as one member.
- Which as amended by the Companies (Amendment) Act, 2015 means a company having a minimum paid up share capital, as may be prescribed [the words “of one lakh rupees or such higher paid-up capital” are omitted by the above amendment].
- Transferability of shares by its members is restricted. Such transfers are not absolutely prohibited, but there are certain restrictions put by the Companies Act. This is to avoid takeovers by larger companies and multinationals and ensure the sanctity of private companies
- Private companies under no circumstances can accept deposits from the public. It cannot invite members of the public to subscribe to its shares either.
- The number minimum of directors to be appointed are 2. No independent directors are required.

Privileges of a Public Company

Now a private company under the Companies Act enjoys certain privileges over a public company. Since a private company does not take deposits from the public, certain rules have been relaxed in their favour. Let us take a look at all the privileges that private companies enjoy.

- The minimum number of members are restricted to 2. So it does not require many promoters to start a private company.
- Since the members of the public are not invited to subscribe shares there is no need to issue a prospectus on any such similar document.
- There is no need to wait for a minimum subscription amount to be received. The members can allot shares within themselves and immediately incorporate the company.
- While incorporation with the registrar of companies is compulsory, there is no commencement certificate in the case of private companies. The business can start functioning immediately after receiving the certificate of incorporation.
- In case of a private company, there is no need to maintain a register of shareholders.
- It can allot any type of shares to its members. even shares with differential voting rights which are prohibited for public companies.
- Its financial accounts are not accessible by any member of the public. It can maintain some secrecy in the matter.
- The directors need not retire by rotation and there is no limit on their remuneration as well.

Restrictions applicable to a Private Company:

1. Articles of Private Company must restrict the right to transfer shares. [section 2(68)]
2. Cannot invite public to subscribe for its securities or shares is prohibited to private company.
3. Maximum number of members limited to 200 only.
4. Alteration of articles to incorporate entrenchment provisions in the articles requires consent of all members of the company unless such provision is incorporated in the articles at the time of formation of the company.
5. Private company is prohibited from making a public offer.

3. One Person Company

Section 2(62) of Companies Act defines a one-person company as a company that has only one person as to its member. Furthermore, members of a company are nothing but subscribers to its memorandum of association, or its shareholders. So, an OPC is effectively a company that has only one shareholder as its member.

Such companies are generally created when there is only one founder/promoter for the business. Entrepreneurs whose businesses lie in early stages prefer to create OPCs instead of sole proprietorship business because of the several advantages that OPCs offer.

Eligibility to form a One Person Company

By virtue of Rule 3(1)(a) of the Companies (Incorporation) Rules, 2014 a sole member shall be eligible to form and incorporate a one person company (OPC) if he is –

- (i) A Natural Person
- (ii) An Indian Citizen and
- (iii) A resident in India.

Features of a One Person Company

Here are some general features of a one-person company:

- a. **Private company:** Section 3(1)(c) of the Companies Act says that a single person can form a company for any lawful purpose. It further describes OPCs as private companies.
- b. **Single-member:** OPCs can have only one member or shareholder, unlike other private companies.
- c. **Nominee:** A unique feature of OPCs that separates it from other kinds of companies is that the sole member of the company has to mention a nominee while registering the company.
- d. **No perpetual succession:** Since there is only one member in an OPC, his death will result in the nominee choosing or rejecting to become its sole member. This does not happen in other companies as they follow the concept of perpetual succession.
- e. **Minimum one director:** OPCs need to have minimum one person (the member) as director. They can have a maximum of 15 directors.
- f. **No minimum paid-up share capital:** Companies Act, 2013 has not prescribed any amount as minimum paid-up capital for OPCs.
- g. **Special privileges:** OPCs enjoy several privileges and exemptions under the Companies Act that other kinds of companies do not possess.

***** No such OPC can be incorporated or converted into a company with charitable objectives u/s – 8 of the Companies Act, 2013**

No voluntary conversion into any other type of company before expiry of 2 years

No such One person Company (OPC) can be converted voluntarily into any other kind of company unless 2 years have expired from the date of incorporation of OPC except when paid up capital has increased beyond 50 lacs rupees or its average annual turnover during the relevant period exceeds 2 crore rupees.

Turnover/Capital threshold for conversion of OPC into Private/Public Company

- If Paid-up share capital exceeds Rupees 50,00,000/-
 - If Average Annual Turnover exceeds Rupees 2,00,00,000/-
- Then, OPC needs to alter its MOA/AOA within 6 months for conversion into private company or public company and give notice to Registrar within 60 days for such conversion.

Formation of One Person Companies

A single person can form an OPC by subscribing his name to the memorandum of association and fulfilling other requirements prescribed by the Companies Act, 2013. Such memorandum

must state details of a nominee who shall become the company's sole member in case the original member dies or becomes incapable of entering into contractual relations.

This memorandum and the nominee's consent to his nomination should be filed to the Registrar of Companies along with an application of registration. Such nominee can withdraw his name at any point in time by submission of requisite applications to the Registrar. His nomination can also later be cancelled by the member.

As laid down in Rule 3(5) of the Companies (Incorporation) Rules, 2014, an OPC cannot be incorporated as, or converted into, a company under section 8 of the Act.

As laid down in Rule 3(4) of the Companies (incorporation) rules, 2014, no minor can become member or nominee of such One Person Company and neither he can hold share with beneficial interest in OPC.

Membership in One Person Companies

Only natural persons who are Indian citizens and residents are eligible to form a one-person company in India. The same condition applies to nominees of OPCs. Further, such a natural person cannot be a member or nominee of more than one OPC at any point in time.

It is important to note that only natural persons can become members of OPCs. This does not happen in the case of companies wherein companies themselves can own shares and be members. Further, the law prohibits minors from being members or nominees of OPCs.

Conversion of OPCs into other Companies

Rules regulating the formation of one-person companies expressly restrict the conversion of OPCs into Section 8 companies, i.e. companies that have charitable objectives. OPCs also cannot voluntarily convert into other kinds of companies until the expiry of two years from the date of their incorporation.

Nomination for OPC

The subscriber to the memorandum of a One Person Company shall nominate a person, after obtaining prior written consent of such person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of that One Person Company.

The name of the person nominated as mentioned above shall be mentioned in the memorandum of One Person Company and [such nomination in Form No. INC-32 (SPICE) along with consent of such nominee obtained in Form No. INC-3] and fee as provided in the **Companies (Registration offices and fees) Rules, 2014** shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.

Change of Nominee

The person nominated by the subscriber or member of a One Person Company may, withdraw his consent by giving a notice in writing to such sole member and to the One

Person Company. The sole member shall nominate another person as nominee within fifteen days of the receipt of the notice of withdrawal and shall send an intimation of such nomination in writing to the Company, along with the written consent of such other person so nominated in Form No.INC.3. The company shall within thirty days of receipt of the notice of withdrawal of consent under sub-rule (3) file with the Registrar, a notice of such withdrawal of consent and the intimation of the name of another person nominated by the sole member in Form No INC.4 along with fee as provided in the Companies (Registration offices and fees) Rules, 2014 and the written consent of such another person so nominated in Form No.INC.3.

Management

- **Minimum one** director is required.
- **First director** shall be the person whose name is mentioned in Articles of Association.
- The first director shall hold the office until the holding of general meeting. However, the first director can be re-appointed or another person can be appointed on that meeting.
- The OPC may have a maximum number of 15 directors.

Types of OPC [Section 3(2)]

Newly introduced OPC under section 3(1). In section 3(2) it was stated that a company formed under section 3(1) may be either –

- (a) A company limited by shares; or
- (b) A company limited by guarantee; or
- (c) An unlimited company.

(a) **Company limited by shares:** 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.

(b) **Company limited by guarantee:** Company limited by guarantees 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.

(c) **Unlimited Company:** Unlimited Company means a company not having any limit on the liability of its members.

4. Small Company Definition as per Companies Act 2013

Section 2(85) of the Companies Act, 2013 defines “Small Company” in the following manner:

The small company” means a company, other than a public company,-

1. paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees;
2. turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees: Provided that nothing in this clause shall apply to – A) a holding company or a subsidiary company; B) a company registered under section 8; or C) a company or body corporate governed by any special Act;

As per Companies Act, 2013 a company may be treated as a 'small company' if it meets either of the conditions (1) or (2) provided above. However, most companies were being classified as a small company since they meet criteria one but exceeded the monetary limit in respect of second criteria excessively.

- (i) As modified by companies Amendment Act, 2017, - paid up share capital of which does not exceed 50 lacs rupees or such higher amount as may be prescribed which shall not be more than 10 crore rupees; or
- (ii) As modified by Companies Amendment Act, 2017, 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 contained in this clause shall apply to –

- (a) A holding company or a subsidiary company.
- (b) A company registered under section 8 which lays down the provisions for formation of companies with charitable objects; or
- (c) A company or body corporate governed by any Special Act.

5. Dormant Company [Section 455]

The concept of Dormant Company is introduced under section 455 of the Companies Act, 2013 read with The **Companies (Miscellaneous) Rules, 2014** and came into effect from 1st April, 2014. Basically it's the status of company which is becomes dormant.

Dormant company in general means temporarily inactive. As per provision of **Companies Act, 2013** any company can apply for dormant status of the company by making application to Registrar, if it fulfils the required conditions.

The purpose of dormant company is/are – (a) future project or holding an asset or intellectual property; and (b) has no significant accounting transactions.

It is in fact, an inactive company which –

- (i) Has not been carrying on any business; or
- (ii) Has no significant accounting transaction in last two years;

- (iii) Has not filed financial statements and annual returns in last two years.

Registration of Dormant Company:

Procedure for registering as a dormant company

To obtain the status of dormant company, the following steps must be followed by the company:

Board Resolution

The company must first conduct a General Meeting of the Board and pass a special resolutions for applying to become a dormant company or send notice of the same to all shareholders and obtain consent of at least 3/4 of the shareholders in value.

Filing Form MSC-1

Once, the Board Resolution or shareholders approval is obtained, the same can filed with MSC-1 (Application for status of dormant company) with the requisite fees.

Certificate of dormant company

If the Registrar is satisfied with the application, then a Certificate will be issued by the Registrar in MSC-2 allowing the status of dormant company. Details of all dormant companies are maintained by the Registrar and also published on the MCA (Ministry of Corporate Affairs) website.

Maintaining dormant company status

Dormant companies are required to file a “Return of Dormant Company” each year before April 30th with the Ministry of Corporate Affairs. The return of dormant company must include detail of financial position of the company duly audited by a Chartered Accountant in practice. The return of dormant company is filed using Form MSC-3.

Returning to active company status

To restore the active company status, an application can be made to the Registrar in form MSC-4. If the Registrar is satisfied with the application, the company will be restored to active status by issuance of MSC-5.

Advantages of dormant company

Some of the Advantages of dormant company are:-

1. Company needs not to file two (2) forms for Annual filing i.e. MGT- 7¹ and AOC-4² each year;
2. No requirement to hold Annual General Meeting every year;
3. No need to hold and convene four (4) Board Meetings in a year, etc.

¹ MGT-7 is an electronic form provided by the Ministry of Corporate affairs to all the corporates in order to fill their annual return details. This e-form is maintained by the Registrar of Companies via electronic mode and on basis of the statement of correctness given by the company.

² it is all about balance sheet items and values (Financial Statement)

➤ Which company can apply for dormant status?

Any company which is incorporated for future project or hold an asset or intellectual Property and has no significant accounting transaction or inactive company can apply for dormant status of the company.

Note that “Inactive Company” means company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.

6. An Associate Company [Section 2(6)]

The definition of Associate Company given in Section 2(6) of Companies Act, 2013:

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

Explanation – For the purposes of this clause, — “**significant influence**” means control of at least twenty per cent of total share capital, or of business decisions under an agreement. (Amendment 2017)

Before going further we should first understand the meaning of term “control” used in the above explanation provided under the Act.

As per section 2(27) of Companies Act, 2013 the term control means and shall include:

“**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. (Amendment 2017)

7. Company with Charitable Objectives [section 8]

The Companies Act defines a Section 8 company as one whose objectives is to promote fields of arts, commerce, science, research, education, sports, charity, social welfare, religion, environment protection, or other similar objectives. These companies also apply their profits towards the furtherance of their cause and do not pay any dividend to their members.

These companies were previously defined under Section 25 of Companies Act, 1956 with more or less the same provisions. The new Act has, however, prescribed more objectives that Section 8 companies can have.

For example- Federation of Indian Chambers of Commerce and Industry (FICCI), Confederation of Indian Industries (CII).

Features of a Section 8 Company with charitable objectives:

A Section 8 company comprises of the following distinct features that most other kinds of companies do not have:

- i. **Charitable objectives:** Section 8 companies do not aim to make profits. Their objectives are purely charitable in nature. They aim to further causes like science, culture, research, sports, religion, etc.
- ii. **No minimum share capital:** Section 8 companies, unlike all other companies, do not require a prescribed minimum paid-up share capital.
- iii. **Limited liability:** Members of these companies can only have limited liability. Their liabilities cannot be unlimited in any case.
- iv. **Government license:** Such companies can function only if they have the Central Government's license. The Government can revoke this license as well.
- v. **Privileges:** Since these companies possess charitable objectives, the Companies Act has accorded several benefits and exemptions to them.
- vi. **Firms as members:** Apart from individuals and associations of persons, Section 8 also allows firms to be members of these companies.

Formation of Section 8 Company

A person or an association of persons can make an application to the Registrar of Companies using requisite forms to form a company with charitable objectives under Section 8 of Companies Act. The Central Government, if satisfied, can accept such an application upon any terms and conditions imposed under the license granted by it. Once accepted, the Registrar of Companies will register the company after the applicants pay all requisite fees.

It is important to note that such companies can only be limited companies. All privileges and obligations of limited companies apply in this case. Further, these companies also do not need to include the words "Limited" or "Private Limited" in their names, as all other companies have to.

Since the existence of such companies is based on the license granted to them, they cannot even alter their memorandum or articles of association without the Central Government's permission. They also cannot do anything that the license disallows.

A licence issued for a new company with charitable objectives

1. Prepare the draft memorandum and articles of association as per form rule 19(2) of the companies incorporation rules 2014.
2. Do not get them printed before they are vetted by the regional director.
3. Make an application to the registrar electronically in the prescribed e-Form INC-12. To whom the central government has delegated power, requesting for issue of a license under section 8 for registration of a company. The *company* without the component of the word to its name may be "Limited" or the words "Private Limited".
4. The application in the prescribed e-Form INC-12 should be accompanied by the following attachments with the e-Form filed in electronic mode.
 - (i) the articles of association and the draft memorandum of the proposed company.

(ii) A statement in Form No. INC-14 on non-judicial stamp paper of the registry value by an advocate. A company have their cost accountant, chartered accountant or company secretary in their **company** work. The articles of association and the draft memorandum have been drawn up in formality with the conditions of section 8. The duty of all of the acts. The regulations made there under associating to registration of the company.

(iii) An disbursal of the *company* and approximate of the future annual income for next three years. It specifies the root of the income. The formations of the expenditure.

(iv) The statement by each of the persons having the application in Form No. INC-15.

5. The fee for making the application to the registrar is Rs. 2,000. It is paid only in online. (companies registration offices and fees rules 2014).

6. The *company* is necessary to issue a notice in Form No. INC-26 at his own cost. It is published in vernacular newspaper in the principal vernacular language of the region.

7. The departmental instructions regarding the procedure to be followed in processing application must be observe.

8. The registrar, after considering the complaints. If any, within thirty days from the date of the issue of notice. Then referring any regulatory body, authority, department or ministry of state government or central government. It is discretion, regulate whether the license should or should not grant.

9. The licence contains in Form No. INC-17. The registrar shall have the rights to contain such other conditions as may be deemed necessary by him. The rules 2014 of (*Company registration offices and fees*).

10. The licence so granted shall. However, be revocable by the central government with the company's right of being heard. The registrar is given the copy of order. (Section 8 of the company act 2013).

11. After obtaining the license, get the memorandum and articles of association. It is approved by the registrar. The registrar see such conditions of the license issued by the registrar. It is received by the director of the company. The rules 2014 of (*Company registration offices and fees*).

12. Prepare and line up all other forms and papers. Which are necessary to be registered with the ROC along with the MOA and AOA. In case of a public limited company as specified in (the act 2014 of company registration rules). In case of a private limited company without having the MOA and AOA stamped. Since stamping is exempted under the Indian Stamps Act 1899.

13. Register electronically Form No. INC-29 or Form No. INC-7 with other required documents. The memorandum and articles of association, predication of professional in Form No. INC-8, affidavits from subscribers and first directors in Form No. INC-9. Particulars of first directors and their consent in Form No. DIR-12 and all other papers. It contains the ROC as attachments with necessary registration. The registered fees as served by the company (*Registration offices and Fees*) Rules 2014.

14. The ROC, on having made the necessary scrutiny and corrections. It will issue the certificate of incorporation in form no. INC-11 (Registration offices and Fees) Rules 2014. The *company* will come into being from the date thereof, the words “Private Limited” or “Public Limited” as the case may be without .

Cancellation of License

Section 8 companies require a grant of a license by the Central Government. All such licenses are revocable as well on the following grounds:

- the company contravenes provisions of Section 8;
- terms of the license are violated;
- when its conduct is fraudulent, or it violates its own objectives and public policy.

The Government can even order the company to be wound-up or amalgamated with another similar company under certain circumstances. The Government has to hear the company before passing such orders.

8. Listed Company [Section 2(52)]

A company whose shares are traded on an official stock exchange. It must adhere to the listing requirements of that exchange, which may include how many shares are listed and a minimum earnings level.

9. Body Corporate [Section 2(11)]

Body Corporate means “any corporate body, i.e., a body which has been or is incorporated under some statute and which has a perpetual succession, a common seal and is a legal entity apart from the members consisting it, will come within the definition of the term body corporate”.

Section 2(11) of Companies Act, 2013 provides -- “body corporate” or “corporation” includes a company incorporated outside India, but does not include —

- (i) a co-operative society registered under any law relating to co-operative societies; and
- (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.

10. Holding Company:

Section 2(46) of the Companies Act, 2013 -- Holding Company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Advantages of Holding Company:

Following are the advantages of Holding Company:

- (1) Subsidiary company maintained their separate identity.
- (2) The public may not be aware the existence of combination among the various company.

- (3) Holding company need not to be invest entire amount in the share capital in subsidiary company still enjoy controlling power in such company.
- (4) It would be possible to carry forward losses for income tax purposes.
- (5) Each subsidiary company prepares its own accounts and therefore financial position and profitability of each undertaking is known.
- (6) Holding company may additional acquired or disposed of and the shares in subsidiary company in market whenever if desired.

Disadvantages of Holding Company:

- (1) There is a possibility of fraudulent manipulation of accounts.
- (2) Inter company transaction may not be at a fair prices.
- (3) Minority share holders interest may not be properly protected.
- (4) The accounts of various companies may be made upon different dates to, manipulate profit or financial position of Group companies.
- (5) The shareholders in the holding company may not be aware of true financial position of subsidiary company.
- (6) Creditors and outsiders shareholder in the subsidiary company may not be aware of true financial position of subsidiary company.
- (7) The Subsidiary Companies may be force to appoint person of the choice of holding company such as Auditors, Directors other officers etc. at in dually high remuneration.
- (8) The Subsidiary Company may be force for purchases or sale of goods, certain assets etc. as per direction of holding company

11. Subsidiary Company [section 2(87)]

Section 2 (87) - Subsidiary Company or Subsidiary companies 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) As modified by Companies Amendment Act, 2017, Exercises or controls more than one-half of the total Voting power (total share capital omitted by amendment, 2017) 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;

(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 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.

12. Foreign Company [Section 2(42)]

As per definition given under Section 2 (42) of the Companies Act, 2013;

"foreign company" means –

(a) any company or body corporate;

(b) 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.

As spelt out in companies (specification of definitions details) rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to ---

- (i) business to business and business to consumer transactions, data interchange and other digital supply transaction;
- (ii) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securing, in India or from citizen of India;
- (iii) Financial statements, web-based marketing, advisory and transactional services, data-based service and products, supply chain management.
- (iv) Online services, such as, telemarketing, telecommunicating, information research etc.
- (v) All related data communication services whether conducted by email, mobile devices. Social media, cloud computing, document management, voice or data transmission or otherwise.

13. Government Company [Section 2(45)]

Section 2(45) provides definitions of “Government company” means -- (i) any company in which not less than fiftyone per cent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and (ii) includes a company which is a subsidiary company of such a Government company.

1. Appointment of Auditor of a Government Company By CAG (Comptroller of Auditor General)

every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed:

- Provided that the company shall place the matter relating to such appointment for ratification by members at every annual general meeting:
- Provided further that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor:
- Provided also that the certificate shall also indicate whether the auditor satisfies the criteria provided in section 141:
- Provided also that the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed.

** For the purposes of this Chapter, —appointmentl includes re-appointment

2. Appointment of First Auditor of a Government Company by CAG [Section 139(7)]

In the case of a Government company or any other company owned or controlled, directly or indirectly, 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, the first auditor shall be appointed by the Comptroller and Auditor-General of India within sixty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.

3. Registration of Auditor [Section 140(2)]

The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of companies referred to in sub-section (5) of section 139, the

auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation.

4. Copy of Audit Report to be submitted to CAG [Section 143(5)]

In the case of a Government company, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the Government company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereon and its impact on the accounts and financial statement of the company.

5. Annual Report of Government Company [Section 394(1)]

(1) Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be—

(a) prepared within three months of its annual general meeting before which the comments given by the Comptroller and Auditor-General of India and the audit report is placed under the proviso to sub-section (6) of section 143; and

(b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India.

(2) Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared under subsection (1) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report referred to in sub-section (1).

