

# THE COMPANIES ACT, 2013



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**Note: All the provisions mentioned in "Orange Bold and Italics" are as per the Companies (Amendment) Act, 2017", that are yet to be notified.**

# IMPORTANT DEFINITIONS

## Section 2(6): Associate Company

- Associate company is a company over which the other company has significant influence, it includes Joint Venture.
- “Significant Influence” means control of at least twenty per cent of the **total voting power** or *control of business decisions under an agreement*.
- “Joint Venture” means a joint agreement whereby the parties who have a joint control of the arrangement have rights to the net assets of the arrangement.

## Section 2(11): Body Corporate

- Body Corporate includes Companies incorporated outside India, but excludes Co-operative Societies.

## Section 2(41): Financial Year

- Financial Year means the period ending on the

31st Day of March every year .

- However, the company or subsidiary company, including Associate Company, of a company incorporated outside India are allowed to follow a different financial year, if approved by the tribunal.

## Section 2(46) : Holding Company

- Holding company, in relation to one or more other companies (*including all body corporates*) means a company of which such companies are subsidiary companies.

## Section 2(51): Key Managerial Personnel

A key Managerial Person (KMP) means:

- Chief Executive Officer
- Company Secretary
- Whole Time Director
- Chief Financial Officer
- *Such other Officer who is in whole time employment, designated as KMP by the Board.*

# IMPORTANT DEFINITIONS

## Section 2(57): Net Worth

- Net worth = Paid up Share Capital + Free Reserves + Securities Premium – Accumulated Loss – Miscellaneous Expenses.

## Section 2(62): One Person Company

- One Person Company means a company which has only one person as a member

### **Benefits and Other Provisions:**

- The Memorandum shall state the name of the person who shall become the member in case of death of the subscriber
- The words "One Person Company" shall be mentioned in brackets below the name of such company at all places
- Not required to hold Annual General Meeting or Extraordinary General Meeting

## Section 2(85): Small Company

A company, other than the public company, whose

(i) Paid up share capital  $\leq$  Rs. 50 Lakhs

AND

(ii) Turnover as per Profit and Loss A/c of the immediately preceding financial year  $\leq$  Rs 2 crores

A company will not be called a small company if it is:

- a holding company or a subsidiary company;
- a section 8 company; or
- a company or body corporate governed by any Special Act.

## Section 2(87): Subsidiary Company

Subsidiary is a company in which the holding company

Controls the composition of the Board of Directors; or

Controls more than one-half of the **total voting power** either at its own or together with one or more of its subsidiaries.

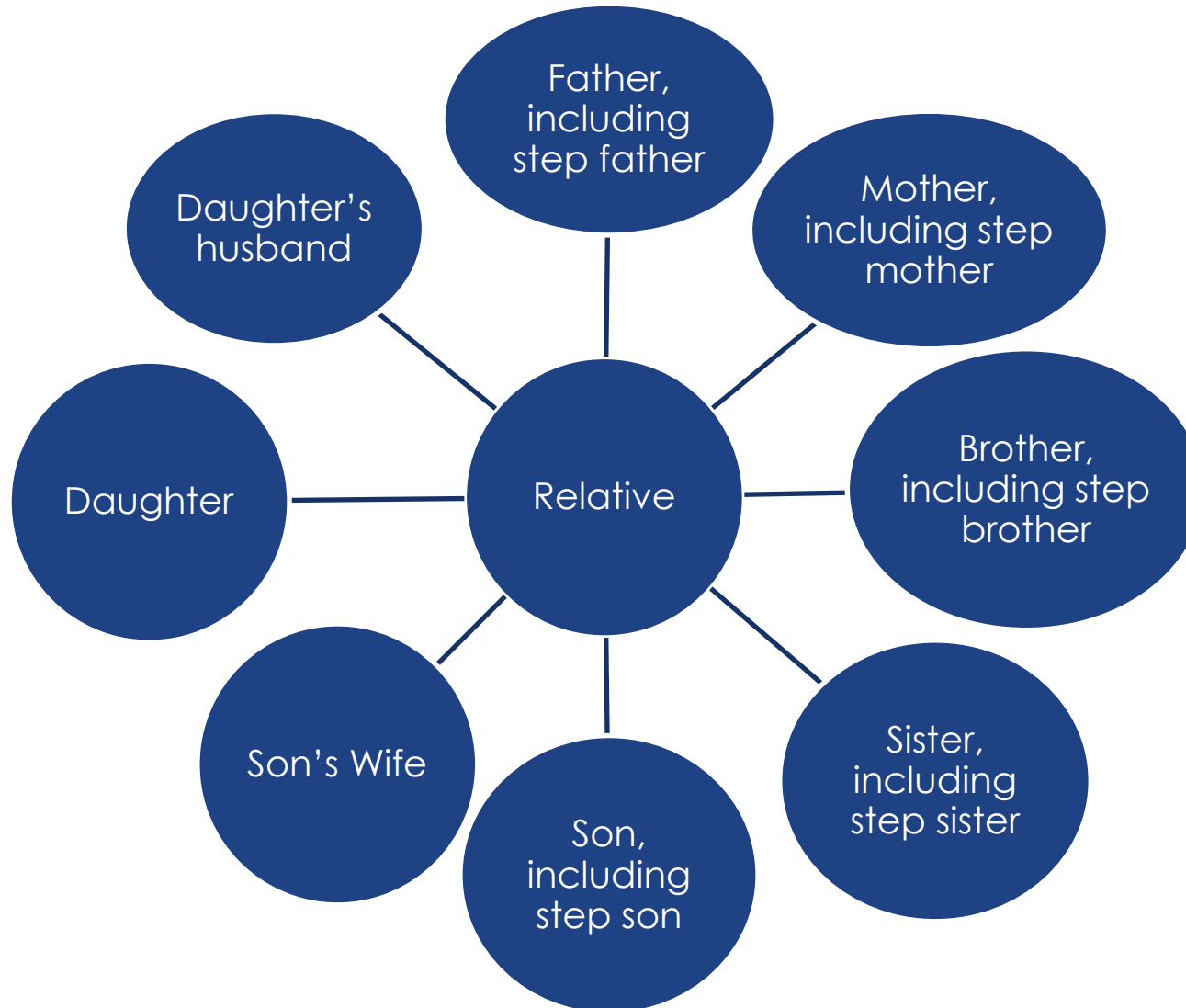
# IMPORTANT DEFINITIONS

## Section 2(76): Related Party

- Director, KMP or their relatives
- A firm where the director, manager or their relatives are partners
- Private company where director or manager are directors or members
- A public company in which director or member is a director and holds along with his relatives more than 2% of total voting power
- Any body corporate whose BoD or managers will act upon the advice of the director or manager.
- Any person on whose advice the BoD is accustomed to act
- Director or KMP of holding company or his relative.
- \* #[Any body corporate which is:
  - a holding , subsidiary or an associate company of such a company or
  - a subsidiary of a holding company to which it is also a subsidiary or
  - an investing company or the venture of the company]
- #Sub-clause viii of this definition is not applicable to private companies.
- \* “Investing company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

# IMPORTANT DEFINITIONS

## Section 2(77): Relatives



# CHAPTER III: ALLOTMENT OF SECURITIES

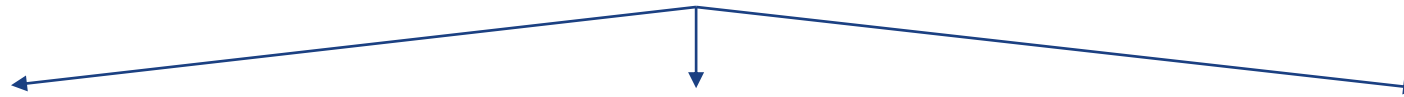


## Section 42: Private Placement

- Offer of Securities shall not be made to more than 200 persons, identified by the Board of Directors, in a financial year (Excluding QIB or ESOP).
- A company cannot have two private placements offer existing at the same time.
- Share Application Money shall be accepted in a separate bank account.
- Allotment of securities shall be made within 60 days other wise the money should be repaid within 15 days from the end of 60th day.
- Utilization of money –
  - a. Only for allotment of shares or
  - b. Repaying share application money.
- Funds can be utilized only after allotment of securities and Return of Allotment (PAS-3) is filed.
- No public advertisement of the offer of security should be made.
- Value of offer of security to each person - More than Rs. 20,000 (Face Value).
- A Private Placement Offer Letter cannot have a right of renunciation.
- Form Filing: PAS 3 within 15 days of allotment & e-GNL 2.

# CHAPTER IV: SHARE CAPITAL AND DEBENTURES

## Section 62: Further Issue of Share Capital



### Section 62(1)(a): RIGHT ISSUE

EXISTING Shareholders – EXISTING Shareholding.

The notice of offer of shares shall contain the following:

- No. of shares being offered
- Mention period of acceptance
- Include the right to renounce (Same to be authorized by AOA)
- Dispatched at least 3 days before opening of issue (**Proof of Delivery to be kept**).

On expiry the BOD may dispose the shares: not Disadvantageous to Shareholder or Company

### Section 62(1)(b): ESOP

Issue of Options to EMPLOYEE

- OR - Private Limited Companies
- SR – Public Companies

Employee includes:

- ✓ A permanent employee
- ✓ Any director except independent director

Exclusions:

- ✓ Employee who is a promoter
- ✓ Director holding more than 10% of shares directly or indirectly.

### Section 62(1)(c): PREFERENTIAL ALLOTMENT

Issue of Shares to ANY PERSON

- Special Resolution
- Compliance with Section 42
- Valuation Report from a registered valuer
- Issued for cash or consideration other than cash.
- Amount cannot be utilized until allotment of securities and Return of Allotment is filed with ROC



# CHAPTER IV: SHARE CAPITAL AND DEBENTURES

Private Placement	Preferential Allotment
<ul style="list-style-type: none"><li>• Governed by Sec 42 and rule 14 of Companies (Share Capital and Debentures) Rules, 2014</li></ul>	<ul style="list-style-type: none"><li>• Governed by Sec 62(1)(c) and rule 13 of Companies (Share Capital and Debentures) Rules, 2014</li></ul>
<ul style="list-style-type: none"><li>• Cannot be issued for Consideration other than Cheque, DD or other banking channels</li></ul>	<ul style="list-style-type: none"><li>• Can be issued for Consideration other than Cash.</li></ul>
<ul style="list-style-type: none"><li>• Valuation Report is not mandatory.</li></ul>	<ul style="list-style-type: none"><li>• Valuation Report is mandatory</li></ul>
<ul style="list-style-type: none"><li>• No such provision</li></ul>	<ul style="list-style-type: none"><li>• Issue price shall be the price as determined by the registered valuer in his valuation report.</li></ul>

# CHAPTER V: ACCEPTANCE OF DEPOSITS

## Section 73: Acceptance of Deposits

“**Deposit**” includes borrowing by way of deposit or loan or in any other form, but **does not include** :

Government Company or Statutory Authorities	Issue of Commercial Papers	Employee not exceeding annual salary
Foreign Sources	Any amount received by a Company from another Company	Raised from Secured Bonds or CCD
Loan received from Banks	Towards Subscription of Securities	Amount received as Advance or Security Deposit which shall be adjusted within 365 days.
PFI in consultation with RBI	Director or Relative of Director out of own funds	Promoters or their Relatives because of stipulation by lending financial institution

Contd..

# CHAPTER V: ACCEPTANCE OF DEPOSITS

Following **Companies** are not required to follow the **procedures for acceptance of deposit**:

- If Private Companies accept monies, from its members,  
**Not exceeding** 100% of aggregate paid-up share capital + free reserves + securities premium
- If it is a **start-up company** for the first 5 years from its incorporation; or
- if it fulfills the following conditions:
  - ✓ is not an associate or subsidiary company of another company
  - ✓ its borrowings from banks, financial institutions and body corporates is less than twice its paid-up share capital or fifty crore rupees, whichever is lower.
  - ✓ The company has not defaulted in repayment of such borrowings.

Although the company will have to file the details of such amounts accepted with the registrar in the Return of Deposits, and the same will be mentioned by the auditor of the company in CARO Report.

# CHAPTER VII: MANAGEMENT & ADMINISTRATION

## Section 92: Annual Return

- Company shall prepare a return in the MGT-7 containing particulars as on the close of financial year.

OPC & Small Company	Prescribed Companies*	Other Companies
Must be Signed by CS or the Director	Must be certified by a CS in MGT-8 in practice & signed by director	Must be Signed By CS & the Director

### \*Prescribed Companies:

- ✓ Listed Companies
  - ✓ Company having PSC of  $\geq$  Rs. 10 crores; or
  - ✓ Company having turnover  $\geq$  Rs. 50 crores
- To be filed with ROC – Within 60 days from the date of AGM
  - A copy of Annual Return to be placed on Website & a link to the same shall be given in the Board Report.

## Section 94: Place of Keeping the Registers, Returns etc.

- Registers and copies of annual return: Required to be kept at the registered office.
- **Open for inspection** by members, debenture-holders, or any other security holders during the business hours.
- Penalty if company fails to provide returns for inspection:

Company and Officer in Default



Rs. 1,000 per day for each day of default  
Maximum Rs. 1 Lakh

- The CG may by order, direct an immediate inspection of any document, or direct that the extract be allowed to be taken by the person requiring it.

# CHAPTER VII: MANAGEMENT & ADMINISTRATION

## Section 96: Annual General Meeting

- Every Company shall hold AGM every year and the difference between two AGM shall not exceed 15 months.

First AGM	→	Within 9 month from Closure of FY
Subsequent AGM	→	Within 6 month from Closure of FY

- Conditions to be followed for conducting AGM:
  - ✓ To be Held during Business Hours (9 a.m. to 6 p.m.)
  - ✓ Cannot be held on a National Holiday
  - ✓ To be held at the Registered office or at some place within the same city, town or village of Registered Office
- **The AGM of an unlisted company may be held at any place if consent is obtained from all the members of the company**

## Section 100: Calling of EGM

- The board may call for an extraordinary general meeting, whenever it deems fit.

EGM can be called at the requisition of members holding not less than 10% of the Paid up share Capital

The BOD shall Call a EGM within 21 days of receipt of requisition

If BOD fails to call EGM then requisitionists can call EGM and expenses to be reimbursed by the Company

- **The Extraordinary General Meeting of a company, other than the wholly owned subsidiary of a company incorporated outside India, will be held a place within India.**

# CHAPTER VIII: ACCOUNTS OF COMPANIES

## Section 129: Financial Statements (FS)

- Financial Statements should :
  - ✓ **give true and fair view**
  - ✓ **comply** with the **Accounting Standards** as prescribed u/s 133 and shall be prepared in Schedule III.
  - ✓ **Does not apply** to banking company, insurance company, electricity generating company or any other company governed by any other Act.

Note: Above specified companies would be said to be follow the rules even if certain disclosures are not made which are not required to be disclosed by their respective governing act.

- Rule for preparing FS shall apply to the subsidiary company in the same manner as it applies to Holding Company.
- Non Compliance of Accounting Standards shall be disclosed in the Financial Statements.
- Prepare Consolidated Financial Statements of its subsidiaries and Associate Companies in the same form.
- The same shall be laid at the AGM along with its own financial statements.
- The company shall attach a separate statement containing the salient features of the financial statements of its subsidiaries.

# CHAPTER VIII: ACCOUNTS OF COMPANIES

## Section 135: Corporate Social Responsibility

Net worth of Rs 500  
crore or more

Or

Turnover of Rs 1000  
crore or more

Or

Net profit of Rs 5  
crore or more

*The limits will be checked as per the figures of immediately preceding financial year.*

Constitute a  
CSR  
Committee

Formulate a  
CSR Policy

Spend atleast  
2% of the  
average net  
profits of last  
three  
immediately  
preceding  
Financial year  
on CSR  
Activities

Disclose  
composition of  
CSR Committee  
and CSR Policy  
and its  
implementation  
in Board Report

The company should disclose contents of Corporate Social Responsibility Policy in the Board's report and on the company's website, if any

If the company fails to spend such amount, the Board shall, in its report specify the reasons for not spending the amount.

# CHAPTER X: AUDIT AND AUDITORS

## Section 139: Appointment of Auditors

- First Auditor of Company should be appointed by Board of Directors (BoD) within 30 days from date of registration of company. If the BoD fails, the members shall appoint the auditor within 90 days at an EGM.
- ***The company is not required to ratify the appointment of the auditor every year.***
- Company is required to intimate to the ROC within 15 days of auditor's appointment.
- The following companies shall not reappoint an individual as auditor for more than 1 term of 5 consecutive years or an audit firm as auditor for more than 2 terms of 5 consecutive years :
  - ✓ Listed Companies
  - ✓ Unlisted Public Companies having PSC of Rs. 10 crore or more
  - ✓ ***Private Limited Companies having PSC of Rs. 50 crore or more***
  - ✓ Companies having borrowings from banks, financial institutions, or public deposits of Rs. 50 crore or more.
- In case of casual vacancy, the auditor shall be appointed by BoD within 30 days.



# CHAPTER X: AUDIT AND AUDITORS

## Section 141: Eligibility, Qualification and Disqualification

A person can be appointed as an auditor only if he is a Chartered Accountant.

A firm which in which majority of partners are Chartered Accountants may be appointed as the auditor of a company in the firms own name.

The following are not eligible to be appointed as auditors:

- An officer or employee of the company.
- Any person who is a partner, or in employment of an officer or employee of the company.
- A person, his partner or relative who:
  - ✓ holds any securities, exceeding the face value of one lakh rupees, of the company.
  - ✓ Is indebted to the company for an amount exceeding rupees five lakhs.
  - ✓ Has given any guarantee or security in connection with the indebtedness of any third party for an amount exceeding rupees one lakh.
  - ✓ A person or firm who has any business relationship with the company which is not at arm's length price.
  - ✓ A person who is a relative of a director or KMP of the company.
  - ✓ A person who is in full time employment elsewhere.
  - ✓ A person whose subsidiary, associate or any other entity is engaged, \*directly or indirectly, in providing consulting and specialized services u/s 144.

# CHAPTER X: AUDIT AND AUDITORS



## Section 144: Auditor Not to Render Certain Services

The auditor shall not render the following services to the company, its holding company or its subsidiaries, either directly or indirectly :

- Accounting and book keeping services
- Internal audit
- Design and implementation of any financial information systems
- Actuarial services
- Investment advisory services
- Investment banking services
- Management services

“Directly or indirectly” means :

In case the auditor is an individual, either himself, his relative or through any entity in which such individual has significant control, or whose name or trademark or brand is used by the individual

In case the auditor is a firm, either itself or through its partners, or through its parent, subsidiary or associate entity or any entity over which the firm or its partners have significant control, or whose name, trademark or brand is used by the firm.

# CHAPTER XII: MEETINGS OF BOARD AND ITS POWERS

## Section 185: Loan to Directors

- Company **cannot** advance loan to the following

- Director
- Director of Holding Company
- Relative of Such Director
- Firm in which Director or Relative is a Partner
- Partner of Director

- A company can give loan to the following**

- Any private company in which such director is a director or a member
- Any body corporate where the voting power exercised by one or more directors exceed 25% of the total voting power.
- Any body corporate whose BOD is accustomed to act as per the directions of the directors of the company

**Provided the following Conditions are fulfilled:**

- **Special Resolution shall be passed**
- **Loan shall be used for Principal Business**

### Section 185 Not Applicable

- A company which provides loans in its ordinary course of business.
- Any loans made by the holding company to its wholly owned subsidiary.
- Private Companies subject to the following conditions:
  - ✓ No body corporate is a shareholder
  - ✓ Loans from banks, financial institutions & body corporate shall not exceed twice its Paid up Share Capital or Rs. 50 crore whichever is lower
  - ✓ The company has not defaulted in the repayment of the above loan.

# CHAPTER XII: MEETINGS OF BOARD AND ITS POWERS

## Section 186: Loans and Investment by a Company

- A company shall make investment through not more than 2 layers of investment companies. Provided that 2 layers should not include any foreign subsidiary company.
- \*\*No company shall directly or indirectly -
  - Give any loan to any **person** or body corporate.
  - Give any guarantee or provide any security
  - Acquire by way of subscription, purchase or otherwise,

- Exceeding 60% of paid up Share Capital + free reserves + securities premium or  
- 100% of Securities Premium + Free Reserves whichever is higher.

**Person does not include employees of the company.**

Amount exceed limit\* → Special Resolution  
Amount does not exceed → Board Resolution

- \*The limit shall be calculated after adding the previous loan or guarantee given along with the loan or guarantee proposed to be given.
- However, where loan is given by holding company to wholly owned subsidiary company or a joint venture company then the requirement of passing Special Resolution shall not apply.

Contd..

# CHAPTER XII: MEETINGS OF BOARD AND ITS POWERS



## Section 186: Loans and Investment by a Company

\*\* The provision is not applicable to the following:

- To any loan, guarantee given or any security or investment made by banking company or an insurance company, or a housing finance company
- To any investment:
  - ✓ Made by an investment Company
  - ✓ Made in shares allotted u/s 62(1)(a): Right Issue
  - ✓ Made in respect of Investment or lending activities by a Non Banking Financial Company

# CHAPTER XII: MEETINGS OF BOARD AND ITS POWERS

## Section 188: Related Party Transactions

Without the consent of BOD the company cannot enter into a contract or arrangement with related parties with respect to :

- Sale , purchase or supply of goods or materials
- Selling , disposing or buying of property of any kind
- Leasing of property
- Availing or rendering of services
- Appointment of any agent
- Appointment of related party to any office or place of profit in company, its subsidiary or associate company
- Underwriting the subscription of any securities or derivatives of that company

Every contract or arrangement shall be referred in Board's report along with the justification for entering into such contract.

If any contract or arrangement is entered by director without the consent of Board or Shareholders,

- then within 3 months from the date of arrangement it becomes voidable at the option of the Board
- if the contract is with the related parties of the directors then the director concerned shall indemnify the company against any loss incurred.

# CHAPTER XXIV: REGISTRATION OFFICES & FEES



## Section 403: Fees for Filing

- Additional filing fees would now attract stringent additional fees based on per day default as against fixed number of times of normal filing fees prescribed earlier in case of defaults.
- Any document or forms filed beyond the prescribed due date attract additional filing fees of Rs. 100 per day.
- The said additional fees can be different for different classes of companies for the first default made.
- In case, if there are defaults in two or more occasions in filing, higher additional fee shall be charged which shall not be less than 200 rupees per day.

‘न चोर हार्यं न च राज हार्यं न भात्रू  
भाज्यं न च भारकारि  
व्ययं कृते वर्धत एव नित्यं  
विद्याधनं सर्वधनप्रधानम’

**Knowledge** is the **Wealth** that:

The **Thief** cannot **Steal**,

The **King** cannot **Acquire**,

The **Brothers** cannot **Share**,

**Does not Weigh** on You,

**Grows Forever** as you share ,

Truly, **Knowledge** is the **Greatest Wealth**.

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