

PRELIMINARY

Applicability of Companies Act, 2013

- Co. incorporated under this Act
- Co. incorporated under previous Co. law.
- Insurance Co. except provisions are inconsistent with Insurance Act, 1938 Or IRDA Act, 1999
- Banking Co., except provisions are inconsistent with Banking Regulation Act, 1949
- Co. engaged in supply or generation of electricity, except provisions are inconsistent with Electricity Act, 2003
- Other Co. governed by special act except provisions are inconsistent with Special Act
- Body Corporate as may be notified by CG

Important definitions

Section 2(20) – Company (Co.)-

- means a Co. incorporated under this Act or under any previous Co. law.

Section 2(11) – Body Corporate or Corporation -

- includes a Co. incorporated Outside(O/S) India but does not include
 - (a) Co-operative society registered under any law relating to co-operative societies
 - (b) any other body corp. notified by CG

Section 2(87) Subsidiary Co. :-

- In relation to any other Co.
- means a Co. in which the holding Co.
 - (a) Controls the composition of Board of Directors or
 - (b) Exercise/controls more than one-half of total voting power either at its own or together with its subsidiary companies

Explanation: The composition of Co. 's BOD shall be deemed to be controlled by another Co. if that other Co. by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of directors.

Section 2(46) – Holding Co. :-

- In relation to one or more other companies,
- means a Co.
- of which such companies are subsidiaries companies.

Section 2(6)- Associate Co. :-

- In relation to another Co.
- means a Co. in which other Co.
- **has significant influence**, but which is **not a subsidiary Co.**
- **includes a Joint Venture Co.**

Significant Influence means

- control of **at least 20% of Total Voting power** or
- control of or **participation in business decision** under agreement

*Note :- It has been clarified that the shares held by a Co. in another Co. in a **fiduciary capacity shall not be counted** for the purpose of determining the relationship of associate Co. or subsidiary Co.*

Section 2(68) – Private Co. :-

- means a co. having minimum paid-up share capital as may be prescribed
- And which by its articles
 - (a) **restricts** the right to **transfer its share**
 - (b) excepts OPC, **limit** the number of **members to 200**
 - (c) **prohibits any invitation to public** to subscribe for any securities of the Co.

Note: Counting of members in Private Co

- In case of **Joint holding treat them as single member**
- following persons **shall not be included in number of members**
 - Persons who are in the employment of Co. (**i.e Current Employees**)
 - **former employees of Co.** who were members. of Co. while in that employment & have continued to be members after the employment ceased

Section 2(71) – Public Co. –

- Means a Co. which
- Is not a private Co. &
- Has minimum paid up share capital as may be prescribed
- However **subsidiary of Public Co. shall be deemed to be public Co.** for the purpose of this Act even where such subsidiary Co. continuous to be private Co. in its articles

Section 2(62) - One Person Co. :-

- Means a Co. which has only one person as a member

Section 2(21) – Co. Limited by guarantee :-

- means a Co. 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 Co.
- In the event of its being wound up

Section 2(22) – Co. Limited by shares :-

- means a Co. having the liability of its members
- limited by the memorandum
- to such amount, if any, unpaid on the shares respectively held by them

Section 2(92) - Unlimited Co. :-

- means a Co. not having any limit on the liability of its members

Section 2(52) – Listed Co. :-

- means a Co.
- which has any of its securities
- listed on any recognised stock exchange
- Provided that such class of Co. which have listed or intend to list such class of securities as may prescribed in consultation with SEBI, shall not be considered as listed Co.

According to Rules, the following classes of companies shall not be considered as listed companies, namely:-

- (a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –
 - (i) non-convertible debt securities issued on private placement basis or
 - (ii) non-convertible redeemable preference shares issued on private placement or
 - (iii) Both
- (b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange
- (c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub-section (3) of section 23 of the Act.

Unlisted Co. means a Co. which is not a listed Co.

Section 2(40) – Financial Statement in relation to Co. includes :-

- Balance sheet as at the end of financial Year
- Profit & Loss A/C for the financial year
- In case of Co. carrying not for profit activity Income & Expenditure A/C for the

Financial Year

- Cash flow statement for the financial year*
- Statement of changes in equity, if applicable
- an explanatory note annexed to, or forming part of any doc. referred above

**Note:- OPC, Small Co., Dormant Co. & Private Start-up Co. may not include Cash Flow Statement.*

Section 2(41) – Financial Year in relation to Co. or Body Corp.

- means period ending on 31st day of march every year &
- where it has incorporated on or after the 1st day of January of a year, the period ending on 31st day March of the following year in respect where of FS of the Co. or Body Corp is made-up.

Provided that

- Where a Co. or Body Corp., which is holding Co. or Subsidiary Co. or Associate Co. of a Co. incorporate outside India and
- Is required to follow a different FY for consolidation of it's A\Cs outside India
- On an application made by the Co. or Body Corp. to CG in such form & manner as may be prescribed.
- The CG may allow any period as its FY whether or not that period is a year.

Section 2(45) – Government Co. –

- Means any Co. in which not less than 51% of paid-up share capital is held
 - By CG or
 - By any SG or SG(s) or
 - Partly by CG & partly by one or more SGs

And

- Includes a Co. which is a subsidiary Co. of such Govt. Co.

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

Section 2(85) Small Co. –

- Means a Co. other than public Co. whose
- Paid-up share Capital (PUSC) does not exceed Rs.4 crores AND
- Turnover for preceding FY does not exceed Rs.40 Crores
- Nothing in this clause shall apply to
 - Holding Co.
 - Subsidiary Co.
 - Section 8 Co.
 - Co. or Body Corp. governed by any special Act