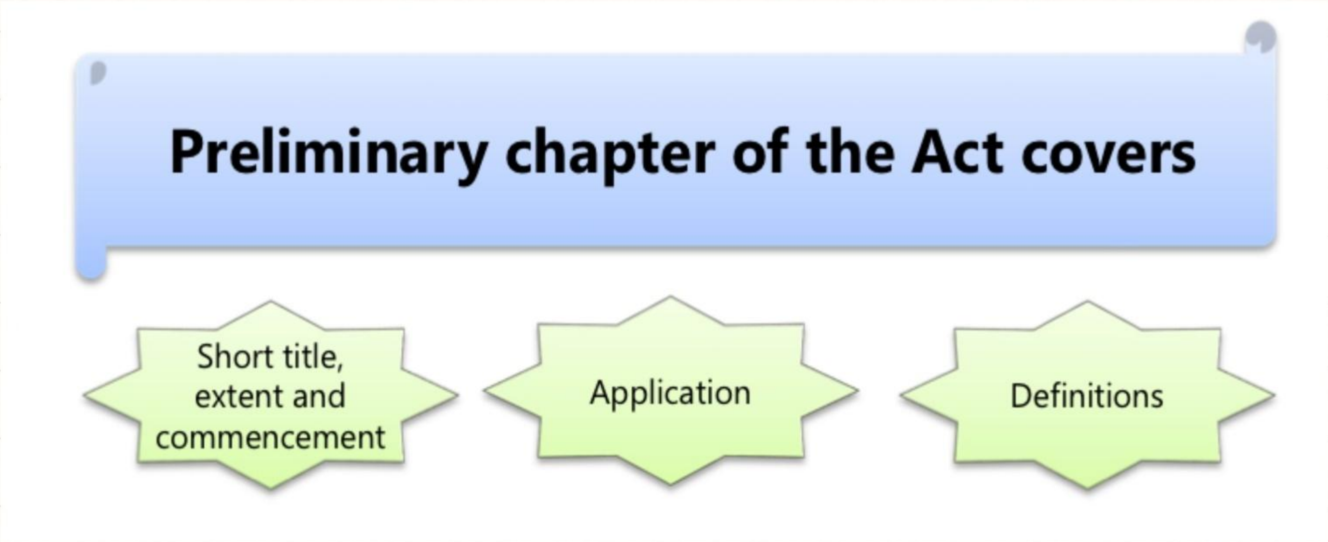
Ch 1:- Preliminary



Basic about companies Act, 2013.

> Aim :- to consolidate & amend the law relating to companies.

Kuch important dates (तिथियाँ)

> Received the assent of Hon'ble President of India → 29^{th} August, 2013.

> Notified in the Official Gazette → 30^{th} August, 2013.

> Section 1 was enforced on 30^{th} August, 2013.

> 98 Sections enforced on 12^{th} September, 2013.

> 143 Sections enforced on 1^{st} April, 2014 and so on.

> It has 470 sections, VII schedules & 29 chapters.

> Aims to improve corporate governance, simplify regulations & strengthen the interests of investors.

Short title, extent, commencement & application

> Section 1 of the act $\xrightarrow{\text{short title}}$ Companies Act, 2013.

> Applicable to whole of India.

> Section 1 specifies the date of commencement of the act

This Section came into force at once, and the remaining provisions shall come into force on the date(s) notified by CG in official Gazette.

** > Applicability of Companies Act, 2013 :-

(a) companies incorporated under this Act or under any previous company law;

(b) Insurance companies, except where the said provisions are inconsistent with the provisions of Insurance Act, 1938 or the Insurance Regulatory & Development Authority Act;

(c) Banking companies, except where the said provisions are inconsistent with the provisions of Banking Regulation Act, 1949;

(d) Electricity companies, except where the said provisions are inconsistent with the provisions of Electricity Act, 2013;

(e) Any other company governed by any Special Act for the time being in force;

(f) such body corporate, notified by CG (subject to such modifications, exceptions or adaptation as specified in the notification).

Summary of Applicability?

Electricity Cos.?
↓
Companies engaged in the generation or supply of electricity.

Definitions

1. **Abridged Prospectus**

A memorandum containing such salient features of a prospectus as may be specified by SEBI Regulations.

2. **Accounting Standards**

Means the standards of accounting or any addendum thereto for Companies or class of Companies referred to in section 133.

prescribed by CG in consultation with ICAI (or NFRA)

3. **Alter / Alteration** → any additions, omissions and substitutions

4. **Articles** → The Articles of Association :
   - as originally framed; or
   - as altered from time - to - time ; or
   - applied in pursuance of any previous company law ; or
   - applied in pursuance of this Act.

6. **Auditing Standards** → Means the Standards of Auditing or any addendum thereto for Companies / Class of Companies specified u/s 143(10).

5. Associate Company
{Sec. 2(6)}

in relation to another Company, means a Co. in which that other Co. has a significant influence, but which is not a subsidiary Co. of the Co. having such influence and includes a joint venture Co.

• Significant Influence
at least 20% of total voting power / control / participation in business decisions.

• Joint Venture Co.
a Joint arrangement whereby the parties have joint control over the net assets arrangement

7. Authorised capital or Nominal capital → Such capital as authorised by the memorandum of the Co. to be the Maximum amount of share Capital of the Co.

8. Board of Directors or Board → In relation to a Co., means the collective body of directors of the Co.

9. Body corporate or corporation → Includes a Co. 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) which the CG may specify in the notification.

(10) **Book & Paper and Book or Paper** {Sec. 2(12)} (MR . VD BDW) → includes books of accounts, deeds, vouchers, writings, documents, minutes & Registers maintained on paper or in electronic form.

(11) **Books of Accounts** {Sec. 2(13)}

→ Records maintained in respect of :-

(i) all sums of money recd. & expended by a co. & matters in relation to which it took place;

(ii) all sales and purchases of goods & services by the co.

(iii) assets & liab.

(iv) items of cost as prescribed u/s 148.

(12) **Branch Office** → in relation to a co., means any establishment described as such by the company.

(13) **Called-up Capital** → Part of the capital, which has been called up for payment.

(14) **Charge** → An interest or lien created on the property or assets of a co. or any of its undertakings or both as a security and includes a mortgage

(15) **Chartered Accountants** → Means a CA defined under Chartered Accountants Act, 1949 who holds a valid COP.

(16) Chief Executive Officer (CEO) → An officer of a Co., who has been designated as such.

(17) Chief Financial Officer (CFO) → An officer of a Co., who has been designated as such.

(18) Company → Co. incorporated under this act or any previous company law.

(19) * Company limited by guarantee {Sec. 2 (21)} → Co. having the liab. of its members limited by memorandum to such amount as the members may agree to contribute to the net assets of the Co. (winding up)

(20) * Company limited by shares {Sec. 2 (22)} → Co. having liab. of its members limited by memorandum upto the unpaid amt. of shares

(21) Contributory → Person liable to contribute towards the assets of the Co. in the event of its being wound up.

22 **Control** → Includes the right to appoint majority of the directors or to control the management or policy decisions. {directly or indirectly}

by virtue of shareholding or mgt. rights, etc.

23 **Debenture** → Includes debenture stock, bonds or any other instruments evidencing a debt, whether constituting a charge on assets or not.

× debenture

- Instruments referred to in Chapter-III of RBI Act, 1934
- Such other instrument as prescribed by CG in consultation with RBI

{Sec. 2(34)}

24 **Director** → A director appointed to the Board of the Co.

25 **Dividend** → Includes an interim dividend

26 **Documents** → Includes summons, notice, requisition, order, declaration, form & register; required under this Act or any other law, in paper or electronic form.

(27) Employees' Stock option → option given to the directors, officers or employees of the Co. or its Co.+

D.E.O.

where such D.E.O. has the benefit or right to purchase, or subscribe the shares of the Co. at a future date at a pre-determined price.

(28) Expert → Includes an engineer, valuer, CA, CS, CMA and any other person who has the power or authority to issue a certificate in pursuance of any law.

(29) → → → → Financial Statements ← ← ← ←

in relation to a Co., includes :- {Sec. 2(40)}

(a) a BS as at the end of the F.Yr.;

(b) a P&L A/c, or in case of NPO an Income & Expenditure A/c for the F.Yr.;

(c) a Cash Flow Statement for the F.Yr.;

(d) Statement of Changes in Equity, if applicable; and

(e) any explanatory note relating to (a) to (d) [Notes to A/cs]

Provided that, OPCs, small companies, Dormant cos. may NOT include cash Flow Statement in their Financial Statements.

(30) Financial Year {Sec. 2(41)}

- In relation to a Co. or Body Corporate (BC), it means the period ending on 31^{st} day of March every year.
- If the Co. or BC. is incorporated on or after 1^{st} day of January, then the F.Yr. of such Co. shall end on 31^{st} March of next year.
- Holding, Subsidiary, Associate Co. of Foreign Co. → may follow a different period as its F.Yr. for the purpose of consolidation on taking permission from the CG.

(31) Free Reserves

Free Reserves → Such reserves which, as per the latest audited B/S of a Co., are available for distribution as dividend

these shall not include

- Any amt. representing unrealised, notional gains or revaluation of assets
- Any change in the carrying amt. of the asset or liab. recognized in equity.

(32) Global Depository Receipt

Global Depository Receipt → an instrument created by a foreign depository outside India & authorised by a Co. making such issue of Depository Receipts.

33 Government Company {Sec. 2(45)}

- any Co. in which not less than 51% of the paid-up share capital (PUSC) is held by the CG., S.G. (or S.G.s);
- Includes a Co. which is a Subsidiary of a Govt. Co.
- Note :- If the Co. issues shares with differential voting rights, then in such case;

PUSC = Total Voting Power

34 Holding Co.

In relation to one or more other Cos., means a Co. of which such Cos. are subsidiary Cos. → Sec. 2(87)

35 Issued Capital

→ Such capital as the company issues from time to time for subscription.

36. Key Managerial Personnel (KMP)

KMP
- CEO/ MD/ Manager
- CS — Co. Secretary
- WTD — Whole Time Director
- Such other officer- not one below directors+ in whole time employment+ designated as KMP
- Other prescribed officer → no other officer has been prescribed till now.

38 Manager

→ An individual who has Mgt. of the whole, or substantially the whole of the affairs of the Co. & includes a director / any other person occupying the position of Manager.

39 Managing Director

→ {Refer Module, Pg. 1.15}

37 **Listed company** { Sec. 2(52) }

> Means a Co. which has any of its securities listed on any recognised stock exchange;

Companies which have listed or intend to list such class of securities, as may be prescribed in consultation with SEBI, shall not be considered as listed cos.

> Following Cos. shall not be considered as listed cos. :-

(a) Public Cos. which have not listed their equity shares on a RSE, but have listed their :-
- non-convertible securities
- non-convertible Redeemable Pref. Shares

(b) Pvt. Cos. which have listed their non-convertible debt securities on PP basis.

(c) Public Cos. → equity shares listed on RSEX / Foreign SE.

} → on private placement basis (PP) as per terms in SEBI Regulations

40 **Member** →
- Subscriber to memorandum of a co.;
- every person who agrees to be a member of the co. in writing;
- every person holding shares of the Co. & whose name is entered as a beneficial owner in the depository's records.

(+) Name entered in the Register of members

41 **Memorandum** → The Memorandum of Association
- as originally framed; or
- as altered from time-to-time; or
- applied in pursuance of any previous company law; or
- applied in pursuance of this Act.

AOA jaisi definition

(42) **Net Worth** → PUSC + FR → created out of profits, SPR, and debit or credit bal. of P & L A/c.

after deducting accumulated losses, deferred expenditure, and Misc. Exp. not written-off.

does not include Revaluation Reserve.

(43) **Notification** → Published in the official Gazette

(44) **Officer** → Includes any Director, Manager or KMP or any person in accordance with whose directions / instructions the BOD. or one or more directors are accustomed to act.

(45) **Officer who is in default** → {Refer module ; Pg. 1.17}

(46) **One Person Company** → A Co. which has one person as a member.

(47) **Ordinary / special Resolution** → As defined u/s 114 of the Act.

(48) **Paid up Share Capital** → Such aggregate amount of money credited as paid up.

49 **Postal Ballot** → Voting by post / through any electronic mode.

Refer Sec. 110 for more details

50 **Prescribed** → Means prescribed as per the rules of the act

51 **Private Company** {sec. 2(68)}

> Means a co. having its PUSC as may be prescribed.

> Restriction on transfer of shares

> Prohibition on any invitation to the public to subscribe for any securities of the co. {invitation to public X}

> Except in case of OPC, maximum no. of members = 200
↓
Following persons shall <u>not be included</u> in the count of members:

(i) Employees of the co. {Persons in employment of the co.};

(ii) Former Employees of the co. (+) continued to be members of co.

52 Promoter → > Person who has been named as such in the prospectus ;
> who has control over the affairs of the co. , directly / indirectly;
> in accordance with whose directions, advice or instructions, the BOD. is accustomed to act.

It shall not include any person who is acting merely in professional capacity

53 Prospectus → {in detail in Chapter 3}

54 → → → Public Company ← ← ← {Sec. 2 (71)}

Means a Co. :-
> which is not a private Company;
> has a minimum PUSC as may be prescribed.

Subsidiary Co. of a Public Co., shall be deemed to be a Public Co.

even if such Co. continues to be a Private company as per its articles.

55 Register of companies → Register maintained by the Registrar on paper or in any electronic mode

56 Registrar → Means a Registrar, Additional Registrar, Joint Registrar, Deputy Registrar or Assistant Registrar having duty of registering companies.

57) {Sec. 2(76)}

Related Party

(i) a director or his relative; (ii) a KMP or his relative;

(iii) a firm,
(iv) a Private Company } in which a director, manager or his relative is partner

(v) a Public co. in which director or manager, is a director & holds more than 2% of its PUSC, along with his relatives;

(vi) any body corporate, whose BOD, Managing director or manager is accustomed to act in accordance with advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions the directors / managers are accustomed to act;

→ not in professional capacity

(viii) any body corporate which is :-

(a) Holding, Subsidiary or Associate of the Co. | (b) Fellow Subsidiary | (c) an investing co. or the venturer of Co.

(ix) any other person as may be prescribed

→ a director (other than independent director) or KMP of the holding co. or his relative shall be deemed to be related party

58 { Sec. 2 (77) } **Relative**

Anyone who is related to another, if :-

(i) they are members of HUF; (ii) they are husband & wife;

(iii) in such other manner as may be prescribed]

- Father → includes step-Father;
- Mother → includes Step-Mother;
- Son → includes Step-Son;
- son's wife
- Daughter
- Daughter's husband
- Brother → Includes Step-Brother;
- Sister → Includes Step-Sister.

59 **Remuneration** → Any money / its equivalent given or passed to any person for services rendered by him & includes perquisites.

60 **Share** → Means a Share in Share Capital of a Co. and includes Stock

61 { Sec. 2(85) } **Small Company**

Means a Co., other than Public Co.;

(i) PUSC of which does not exceed ₹ 4 crores or such higher amt. as may be prescribed, upto ₹ 10 crores.

AND

(ii) Turnover as per P&L A/c for immediately preceding F.Yr. does not exceed ₹ 40 crores or such higher amt. as may be prescribed, upto ₹ 100 crores.

Not applicable on these companies:
- (a) Holding or Subsidiary co.
- (b) Co. registered under Section 8 of the Act
- (c) a Co. or Body Corporate governed by a Special Act

(62) **Subscribed Capital** → such part of the capital which is for the time being subscribed by the members of a Co.

(63) **Subsidiary Company** {sec. 2(87)}

In relation to any other co. (that is to say the holding co.), means a co. in which the holding company :-

(i) controls the composition of the BOD.; or
→ power to appoint or remove all / majority of directors

(ii) exercises or controls more than one-half of the total voting power either on its own / together with one or more of its subsidiary companies

→ Provided that such class or classes of holding cos. shall not have layers of subsidiaries beyond such nos. as may be prescribed.

(64) **Sweat Equity Shares** → Equity shares issued by a Co. to its directors or employees at a discount or for consideration other than cash.

(65) **Total Voting Power** → {Refer Module Pg. 1.26}

66 Tribunal → National Company Law Tribunal constituted under Sec. 408

67 Turnover → Gross Amt. of Revenue recognised in profit & loss A/c

*68 Unlimited company {Sec. 2(92)} → a company not having any limit on the liability of its members.

69 Voting Right → Right of a member of a Co. to vote in any meeting of the co. or by means of postal ballot.

Important definitions of the Chapter ←←←←