Chapter 1 - Preliminary

Section 1

- (1) Short title → The Companies Act, 2013
- (2) Extent → To the whole of India.
- (3) Commencement
  - Enactment Date 29/08/2013
  - Commencement Date → Different dates are appointed by C.G.
- (4) Applicability → Company defined sec 2(20)

Section 2

Section 1 (4) Applicability

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Applicable to companies as defined under sec 2(20)

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Company means company

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Incorporated under

- this Act [2013]
- or
- any other previous law (sec 2(67)

Simple words → Company means Company incorporated under Indian companies Act.

Foreign Company [Sec 2(42)]

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Means

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Company

↓

① Incorporated outside India.

② Having place of Business in India. — And — ③ Conduct any business activity.

Having place of Business in India:

- By itself
- through an Agent
- physically
- Electronic.

Ching pung Pvt. Ltd.

company → India Company Act, 2013. → Co.

foreign company. → Incorporated outside India + Business in India. → Foreign Company

Body Corporate [Sec 2 (11)]

↓

Includes

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a company incorporated o/s India.

In simple words → Body corporate me wo company BHI aaegi jo India ke bahar incorporated hai.

$\boxed{\text{BHI}}$

- Already + company + F.C.
- Bhi ↓ Co. Inc o/s India but not having place of business in india.

Terminology

Means

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- Restrictive defination
- Narrow defination.
- Exclusive defination.
- Specific term.

Includes

↓

- Inclusive defination
- Broader defination.
- General term.

Body Corporate.

- Company [Sec 2(20)]
- Foreign company [Sec 2[42]]
- Company + Inc o/s India + ~~Business~~

Body Corporate / statutory Body.

- Special Act
- Perpectual succession.
- Capacity to sue or being sued.
- Seperate entity.

Whether Co. Act, 2013 applicable to body Corporate as well ?

ANS - IF C.G by notification specifies.
Specified Body corporate = NHAI / FCI.

Applicability Sec 1(4)

Companies - Sec 2(20)

- Defination
- Banking company
- Insurance company
- Electricity
- Co governed by special act.
- Notified BC.

Where the provision of the Co. Act 2013 are contradictory with provision of Insurance Act 1938, Banking regulation Act 1949, Electricity Act 2003. The provision of such Acts will previal.

Specific over General.

Holding & subsidiary company.

Holding company [Sec 2(46)]

Holding company means a Company having one or more subsidiary.

Subsidiary company [Sec 2(87)]

In relation to any other company [Holding co]

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Means a company [Sec 2(20)]

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In which a holding company

(i) Controls the composition of board of Directors.

or

(ii) Exercises or controls more than one-half of the total ~~share capital~~ voting power either at its own or together with one or more of its subsidiary.

2(87) ii

[Holding] ACT Ltd —.0001%→ XYZ Pvt Ltd. [subsidiary]

ACT Ltd —60%→ SCT Ltd [subsidiary]

SCT Ltd —50%→ XYZ Pvt Ltd

Section 2 (87) (ii) + Explanation (a).

(H) ACT Ltd → XYZ pvt Ltd.

(H) ACT Ltd —60%→ (S) SCT Ltd

(S) SCT Ltd —50.0001%→ XYZ pvt Ltd.

XYZ pvt Ltd → Deemed subsidiary company.

Explanation - For the purpose of this clause.

a] A Company shall be deemed to be subsidiary company of the holding company even if the control reffered in sub clause (i) or (ii) is of another subsidiary company of the holding company.

b] If one company by exercise of some power at its discreation (अपनी मर्जी से) can appoint or remove all or majority of directors of another company, former company shall be considered as holding company.

c] The expression "company" includes body corporate.

Public Company [sec 2 (71)]

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Means a company

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which

- is not a Private Company
- Has minimum P.U.S.C as may be Prescribed.

Provided that - A company which is subsidiary company of a company, not being a private co. (Public co) shall be deemed to be a public company for the purpose of this act even where such subsidiary co. continues to be a private co. in its Articles.

In simple words, subsidiary of public company is always a public company.

Government Company [Sec 2 (45)]

Means any company
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in which
↓
Not less than 51% of p.u.s.c is held by
→ CG or SG or SG's or partly by CG or SG or SG's.

Includes.
↓
company which is subsidiary of such Govt. company.

In simple words - subsidiary of Govt. co is also Govt. co.

Ex -

Narendra Motors (Govt. co)
↓ 505000 [50.5%]
Shah motors [subsidiary co] [Govt. Also] — as per inclusive defination.

Explanation - for the purpose of this clause, The p.u.s.c shall be construed as "total voting power" where shares with differential voting rights have been issued.

Small Company Sec 2(85)

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Means a Company [Sec 2(20)]

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other than public company
(Means private co.)

And

P.U.S.C does not exceed 50 lakh
OR
such higher amount as may be prescribed.
↓
Which shall be not more than 10 Cr ₹.

Turnover
↓
as per P/L A/c of immediately preceeding financial year doesn't exceed 2 Cr ₹
OR
such higher amt as may be prescribed.
↓
which shall not more than 100 crores.

Limits	Till 31st March 2021	1 April 2021 till 10th sept 2022	15 sep 2022 onwards
P.U.S.C	Max - 50 lakh	Max - 2 crore	Max - 4 Cr
T.O	max - 2 Cr	max - 20 Cr	max 40 Cr

Small co. [2(85)]

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Pvt. Co

P.U.S.C
↓
Max - 4 Cr
↓
Such higher amt as may be prescribed which shall not be more than 10 Cr.

T.O
I.P.F.Y
↓
max ₹ 40 Cr.
↓
₹ 100 Cr

→ Provided that nothing in this clause shall apply to,-

a] Holding - subsidiary
b] Section 8 Co.
c] Co. governed by special act.

→ **Benifits of small company** -

1] No need to prepare cash flow statement as a part of financial statements
2] Holding of only two board meeting in a year.
3] Advantage of preparing & filing and abridged (छोटा) annual return.
4] Annual return of the company can be signed by the company secretary or where there is no CS, by a director of company.
5] Lesser penalty for small company.
6] Low legal compliance cost.

Associate Company [Sec 2(6)]

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In relation to another company

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Means a company [sec 2(20)]

- In which another company has significant influence
  ↓
  - Control atleast 20% of T.V.P
  - or
  - control or participate in business decision.
- Includes ↓ Joint venture
- Excludes ↓ subsidiary.

0% — 19.999% : No Relation

20% — 50% : Associate company

50.0001% — 99.999% : Holding & subsidiary

100% : Wholly owned subsidiary

Companies on the basis of Liability -

Company [Sec 2(20)]

Limited by Guarantee (21)

Liability of members is limited upto the amount he undertake to contribute to the assets of the Company in the event of winding up.

Limited by shares (22)

Liability of member is limited upto the amount unpaid on shares.

Unlimited ~~shares~~ company. (92)

Not having any limit on the liability of its member.
Ex- Amway India enterprise Pvt Ltd.

Similarity

- In the both, members liability is limited.

Difference.

In gurantee LD. member can be called to contribute only in event of winding up.

In shares members can be called at any time to pay unpaid amt.

Winding up	Dissolution
① Asset - Sell, liability - pay off	① company is not in existance after dissolution
② company still remain existance	② Dissolution is end process
③ Winding up is initial stage process of dissolution	