AMENDMENT ACCORDING TO COMPANIES ACT 2013 FOR IPC STUDENTS

COMPANY LAW : FOR NOV 2014

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LIST OF CHAPTERS UNDER COMPANIES ACT 2013

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SOME DEFINATIONS MUST TO KNOW

(Section 2)

Clause 6 – Associate company – It means a company in which any other company has a significant influence excluding subsidiary company but including a JV company.
Note : Significant influence means control of atleast 20 % of total share capital or of business decisions under an agreement

Clause 38 – Expert – It includes an engineer, a valuer, a CA, a CS, 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.

Clause 39 – Financial Institution – It includes a scheduled bank and any other financial institution defined or notified under the RBI Act, 1934.

Clause 40 – Financial statement – it includes

(i) **Balance sheet as at the end of the FY**
(ii) **Profilt & loss account or in case of a company carrying on any activity not for profit, an income and expenditure account for the FY**

(iii) **Cash flow statement for the FY [not compulsory for OPC, small company and dormant company]**

(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 (iv)

Clause 41 - Financial Year - in relation to any company or body corporate, means the period ending on the 31st day of March every year in order to align with the provisions of the income tax act.

Clause 51 - Key Managerial Personnel – it means

- **CEO or MD or Manager**
- **CS**
- **Whole time director**
- **CFO and**
- **such other officer as may be prescribed Clause 62 – One Person Company [OPC]**

1. **It is a hybrid of Sole-Proprietor and Company form of business.**
2. **It enables Entrepreneur(s) carrying on the business in the Sole-Proprietor form of business to enter into a Corporate Framework.**
3. **Only a natural person who is an Indian citizen and resident in India shall be eligible to incorporate it.**
4. **It will be formed as a private limited company.**
5. **One person Company can be: - Limited by shares**

- **Limited by guarantee**
- **Unlimited company**

6. **Capital:**
    - **Minimum – Rs. 100,000**
    - **Maximum – No limit**
7. **The MOA of the One person company to include:**
    - **Name of Nominee**
    - **Consent of Nominee**
8. **It is required to specifically mention the word "one person company" below the name wherever it is used.**
9. **Other Provisions:**

- Cash flow statement is not required.
- Annual Return can be signed by CS or one director if there is no CS.
- Provisions of board meeting, quorum and interested director shall not apply to OPC.
- OPC should have minimum 1 director.
- OPC need not hold an AGM.
- Financial Statements can be signed by only one director.

Clause 69 – Promoter - It means a person

(a)who has been named in prospectus or identified by the company in the annual return or;

(b)who has control over the affairs of the company either directly or indirectly.

(c) whose advice, directions or instructions the BOD is accustomed to act.

Clause 85 - Small company - It means a company having

(i) **Paid-up share capital of which does not exceed 50 lakh INR or such higher amount as may be prescribed which shall not be more than 5 crore INR.**

(ii) **Turnover of which as per its last profit & loss account does not exceed 2 crore INR or such higher amount as may be prescribed which shall not be more than 20 crore INR:**

Section 455 - Dormant Company - Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar for obtaining the status of a dormant company.

NATURE AND KINDS OF COMPANIES

Basis	Companies act 1956	Companies act 2013
Types of Companies	Public company Private company	Public company Private company One Person company
Maximum no of members for private companies	50 members	200 members
One person company	No provision for OPC	New Concept Introduced
Subsidiary company	A company is deemed to be a subsidiary of another company (a) Where the composition of BOD is controlled by the other company. i.e. appointment, removal or nomination. (b)Where the other company holds majority of the voting power or the capital of the company. i.e. 51% (c)Where any company is a subsidiary company of the subsidiary of the company.	It means a company in which the holding company - Controls the composition of the Board of Directors; or - Exercises or controls more than one half of the total share capital either at its own or together with one or more of its subsidiary companies. [Clause 87]

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Note: The definition of Public Company provides that a private subsidiary of a public company shall be deemed to be a public company even though the subsidiary may continue to retain the status of a private company in the Articles.

INCORPORATION OF COMPANIES

Basis	*Companies act 1956*	*Companies act 2013*
Certificate of Incorporation	Conclusive Evidence	Not treated as Conclusive Evidence.
Commencement of Business	Provision is applicable only to Public limited companies	Now applicable to all companies (Public and Private) having share capital.
Certificate of COB	Issued to the public company.	No certificate will be issued.

Note: Documents to be submitted under new act:

1. Declaration by Directors of payment of money by subscribers of MOA.
2. Verification of Registered office filed with ROC.

MOA & AOA OF THE COMPANY

Basis	Companies act 1956	Companies act 2013
Object clause of MOA	Divided into - Main objects - Incidental or ancillary objects - Other objects	Divided into - Objects to be pursued by Company on incorporation -Incidental Objects.
Alteration of AOA	To be filed with ROC within 30 days	To be filed with ROC within 15 days
Registered Office	Company shall have RO within 30 days of incorporation.	Company shall have RO within 15 days of incorporation.
Alterations	It includes additions and Deletion.	It includes additions, omissions and substitutions. [Clause 3]

Note: Articles may Contain Provisions for Entrenchment.

It states that

The Articles may contain provision for entrenchment to the effect that specified provisions of the articles may be altered only upon the satisfaction of conditions or procedures that are more restrictive than those applicable in the case of a special resolution.

PROSPECTUS

Basis	Companies act 1956	Companies act 2013
Shelf Prospectus	It was available to any public financial institution, public sector bank or scheduled bank whose main objects were financing.	Now it is available to any class or classes of companies as prescribed by SEBI.
Public offer of Securities to be in Dematerialized Form Only.	Mandatory Sec 68B For every listed company making IPO of any security for a sum of Rs 10 crore or more.	Mandatory Clause 29 for: -Every companies making public offer. -Any other class or classes of public companies as may be prescribed.

ALLOTMENT OF SECURITIES

Basis	Companies act 1956	Companies act 2013
Return of Allotment	Earlier return of **allotment of share** is required to be filled only.	Now , return of allotment for all types of securities is required to be filled.

Note: Clause 2(81) – Securities means the securities as defined in Clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956.

Securities broadly includes shares, debentures, bonds, scripts or any other marketable securities including derivatives.

SHARES AND SHARE CAPITAL

Basis	Companies act 1956	Companies act 2013
Issue of Shares at Discount	Under Section 79 Shares can be issued at discount with subject to certain conditions.	Under Clause 53 - Issue of shares at discount prohibited. -Sweat Equity shares can be issued at Discount.
Issue of preference shares for more than 20 years.	Section 80 It prohibits the issue of Irredeemable preference shares and preference shares redeemable after 20 years.	Clause 55(2) Redeemable preference shares with a term of more than 20 years can be issued by a company limited by shares for **Infrastructural Projects.**
Right issue of shares	Section 81 Applicable to public company only.	Clause 62 Applicable to both public and private company.
Notice of redemption of Preference share.	No such notice is required to be filled with ROC.	Notice is required to be filled within 30 days.

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Consolidation and division of Shares	Company is permitted to consolidated or sub divide its shares by passing resolution in general meeting.	Consolidation and division which results in changes in the voting % of shareholders shall require approval of the Tribunal to be effective.
Restrictions on further offer of Buy-back	Where buy back is by BOD (10 % of the total paid up equity share capital and free reserves), no further offer of buy back is permissible within 1 year from the date of last offer of buy back. Section 77A	No offer of buy back shall be made within a period of 1 year reckoned from the date of the closure of the preceding offer of buy back whether approved by BOD or Shareholders. Clause 68

CHARGES

Basis	Companies act 1956	Companies act 2013
Charge	It includes a mortgage. Section 124	It means an interest or lien created on the property or assets of a company or any of its undertaking or both as security and includes a mortgage. [Clause 16]
Registration of charges	Only 9 types of charges is required to be registered.	Company are required to register all types of charges within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India with ROC within 30 days.
Time limit for registration	From the creation of charge -30 days. Additional time – 30 days On the payment of additional fee to Registrar along with the sufficient reason of the delay.	Registrar may on application and payment of additional fees create the registration of charge within 300 days.

DEBENTURE

Basis	Companies act 1956	Companies act 2013
Debenture	It creates a debt or acknowledges a debt.	It 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.
	Section 2 (12)	Note : it clarifies that only those instruments which evidence a debt will be treated as debenture. [Clause 30]

PUBLIC DEPOSITS

Basis	Companies act 1956	Companies act 2013
Eligibility	Public companies are permitted to accept deposits from public and shareholders in accordance with Companies (Acceptance of Deposits) Rules 1975. (Section 58A)	Banking company, NBFC and such other company as the CG may specify are permitted to accept deposits from public.

Rules	Applicability of Companies (acceptance of deposits) Rules, 1975.	To be framed by RBI
Applicability	To all public companies.	To public companies having such net worth or turnover as may be prescribed by CG.
Credit Rating	Not required	-Mandatory -From Recognized rating agency -To be obtained every year during the tenure of deposits.
Conditions	-issue of advertisement for inviting deposits in newspaper or statement in lieu of advertisement to be filled with ROC. -deposits are unsecured. -no default in repayment of any	-passing of resolution in a general meeting -issue of circular to members -filing a copy of the circular along with the registrar -Providing deposit insurance -Certification by the Company that it hasn't defaulted in the
	deposit -deposit receipts to be issued by the company. - filling of return of deposits	repayment of Deposits -Provision of security in respect of deposit and interest and creation of charge

STATUTORY MEETINGS

Basis	Companies act 1956	Companies act 2013
Applicability	Every public company having share capital is required to conduct Statutory Meeting.	No company is required to conduct Statutory Meeting.

BOARD MEETING

Basis	Companies act 1956	Companies act 2013
Length of Notice	No specific length.	Not less than 7 days.
Time gap between two meetings	At least one meeting to be Held in every	Not more than 120 days between two consecutive meetings.

ANNUAL GENERAL MEETING

Basis	Companies act 1956	Companies act 2013
Time period for holding 1st AGM	Within 18 months of incorporation Or 9 months from the closure of FY Whichever is earlier.	9 Months from closure of accounts
Time of AGM	During business hours	During business hours i.e. 9 AM to 6 PM.
Day of AGM	Any day that is not a Public holiday.	Any day that is not a National Holiday.
Mode of notice	In writing	In writing or in electronic form.
Consent for shorter notice	Consent to be given by all members entitled to vote at the meeting.	Consent to be given by not less than 95% of the members entitled to vote at the meeting
Quorum	Private co – 2 members Public co – 5 members	Private co – 2 members Public co – - 5 members where no. of members is < 1000 - 15 members where no. of members is >1000 but ≤ 5000 - 30 members where no. of members is > 5000

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