

**TRANSITIONING FROM
COMPANIES ACT, 1956
TO
COMPANIES ACT 2013
(PARTIAL NOTIFICATION OF CA, 2013)**



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HIGHLIGHTS OF 98 SECTIONS OF CA, 2013 NOTIFIED ON 12.09.2013

An analysis of the important Sections!

The Ministry of Corporate Affairs has notified 98 sections of the new Companies Act, 2013. These sections have come into effect from 12th September 2013. Subsequent to coming into effect of these Sections under the new Act, the corresponding Sections under the Companies Act, 1956 automatically stand repealed. For other Sections, the Companies Act, 1956 still holds good till the relevant sections under the new Act are notified.

In the present write up, we focus light on some of the important provisions which have been notified for attention of our readers. A complete list of all the sections which have been notified is also given at the end of write up for easy and ready reference of our readers.

Many of the sections which have been notified have provisions similar to that of Companies Act, 1956. However, in some of the Sections new provisions have been inculcated which demands our immediate attention. Immediately after notifying these sections, the Ministry has also issued some clarifications regarding their applicability for stakeholder convenience. We will discuss on these clarifications also under the relevant sections.

HIGHLIGHTS OF NEW PROVISIONS NOTIFIED UNDER CA, 2013

Section 2 – Definitions

Section 2 under Companies Act, 2013 contains 94 definitions out of which all definitions except 12 definitions have been notified. In a few definitions, a particular portion has not been notified. A list containing the details of definitions notified and non-notified is given later at the end of the write up.



The definition of Private Company given under CA, 2013 is different from the earlier Act and the new definition has got notified on 12th of September 2013. The Ministry on 13th September 2013 has clarified that all incorporation documents being filed on or after 12.09.2013 must contain the new definition only.

Section 102 – Statement to be annexed to notice

Section 102 of CA, 2013 corresponds to Section 173 of CA, 1956 which specifies the requirement of annexing a statement alongwith the notice of general meeting where any special business has to be transacted. The important changes in this section are:

- Interest of not only directors/manager has to be disclosed (as prescribed in CA, 1956) but also that of every key managerial personnel and relatives of directors, manager and KMP.

EXPLAIN

- Earlier, with regard to any special business concerning another company, disclosure of shareholding interest of director/manager in that other company had to be disclosed if such share holding was more than 20%. Now the percentage has been changed to 2% and also the same has been made applicable to all promoters, directors, manager and KMP.

- CA, 2013 also specifies that if any benefit accrues to any director, manager, promoter or KMP or their relatives because of non-disclosure or insufficient disclosure, then the concerned person will be deemed to be holding the amount of benefit in trust for the company. This is a new specification under CA, 2013.

- CA, 2013 also contains the penalty clause which provides for a penalty of Rs. 50,000/- or 5 times the amount of benefit, whichever is more. Earlier no specific penalty was provided.
- This Section is applicable to all companies except to a One Person Company. Earlier, Section 170 of CA, 1956 provided that the provisions of section 173 will apply to private companies only if the Articles do not provide anything otherwise.

MCA has clarified that the provisions of this section will apply to all notices issued on or after 12th September, 2013.

Section 103 – Quorum for meetings

This section corresponds to section 174 of the CA, 1956 which prescribes the quorum for general meetings.

Section 103 has prescribed new quorum requirement for public companies which is as follows:

No. of members as on date of Meeting	Quorum Requirement
1000 or less	5 members personally present
1000-5000	15 members personally present
More than 5000	30 members personally present

The quorum requirement for private companies remains same at 2 members personally present.

Section 180 – Restrictions on powers of Board

This section corresponds to section 293 of CA, 1956 which contains a list of items which can be transacted by the Board only after obtaining approval of the shareholders. The important points of difference are:

QUORUM

- **CA, 2013 mandates approval by means of special resolution only.**
- **CA, 1956 mandated that approval has to be obtained in a meeting. This requirement seems to have been dispensed with in CA, 2013 as the word “meeting” has been replaced with “special resolution”.**
- **This Section is applicable to all companies as compared to only public companies and subsidiaries of public companies as contained in CA, 1956.**

MCA has clarified that the provisions of this section will apply to all notices issued on or after 12th September, 2013.



Section 185 – Loans to Directors etc.

This section corresponds to Section 295 of Companies Act, 1956 which contains provisions regarding giving loans to directors and other entities in which directors are interested. The main points of difference in the new Act are:

- **This Section is applicable to all companies as compared to only public companies and subsidiaries of public companies as contained in CA, 1956.**
- **In CA, 1956 loans were permitted with approval of Central Government. Now, the transaction is totally prohibited except in following cases:**
 - (a) the giving of any loan to a managing or whole-time director—**
 - (i) as a part of the conditions of service extended by the company to all its employees; or**
 - (ii) pursuant to any scheme approved by the members by a special resolution; or**
 - (b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.**
- **Following transactions are prohibited subject to exception above:**
 - **Giving of loan, including any loan represented by a book debt**
 - **Giving any guarantee or providing any security in connection with any loan taken.**
- **The above transactions by the company to following entities are prohibited subject to exception above:**
 - (a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;**
 - (b) any firm in which any such director or relative is a partner;**
 - (c) any private company of which any such director is a director or member;**
 - (d) any body corporate at a general meeting of which not less than 25% of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or**
 - (e) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the**

directions or instructions of the Board, or of any director or directors, of the lending company.

Section 192 – Restrictions on non-cash transactions involving directors

This is a new section introduced under CA, 2013. This Section contains that a company has to obtain prior approval its members by means of a special resolution for entering into any agreement relating to acquisition/sale of assets for consideration other than cash between the company and its director, or director of holding, subsidiary or associate company or any other person connected with the director.

The Section also contains that the notice calling the general meeting should include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a [registered valuer](#).

Section 447 to 449 – Punishment for fraud, false statement and false evidence

Section 447 is a new Section under CA, 2013 which deals extensively with fraud. Section 447 defines fraud as:

“fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss

Penalty for Fraud

Any person who is found to be guilty of fraud, shall be punishable with [imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.](#)

This section has far reaching consequences as firstly the penalty is very stringent – imprisonment up to ten years, secondly, many sections in the Act are linked to this section by providing in those sections that the penalty is same as that for fraud and thirdly the definition of fraud is very wide in its connotation. It covers all persons including directors, employees, professionals etc.

Section 448 and 449 correspond to Section 628 and 629 of the CA, 1956 respectively. There is no change in the sections except that the penalty has been increased.

Section 450 – Punishment where no specific penalty or punishment is provided

This section corresponds to Section 629A of Companies Act, 1956 and provides penalty for those cases where no specific penalty has been provided in the respective section or any where else in the Act. In CA, 2013 the amount has been raised to Rs. 10,000/-

plus Rs. 1,000/- for every day of default as against Rs. 5,000/- plus Rs. 500/- provided in CA, 1956.

This Section has been notified from 12.09.2013 and it means that now for any contravention under the Sections of Companies Act, 1956 also, for which no penalty is provided in the Act, the penalty as provided in CA, 2013 will be applicable.

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LIST OF SECTIONS NOTIFIED ON 12.09.2013

S.No	Chapter	Section	Description
1	Chapter I -Preliminary	2	Definitions
2	Chapter II - Incorporation of Company and Matters Incidental Thereto	19	Subsidiary company not to hold shares in its holding company.
3		21	Authentication of documents, proceedings and contracts.
4		22	Execution of Acts of exchange, etc.
5		23	Public offer and private placement.
6	Chapter III - Prospectus and Allotment of Securities	24	Power of Securities and Exchange Board to regulate issue and transfer of securities, etc.
7		25	Document containing offer of securities for sale to be deemed prospectus
8		29	Public offer of securities to be in dematerialised form.
9		30	Advertisement of prospectus.
10		30	Shelf prospectus.
11		32	Red herring prospectus.
12		33	Issue of application forms for securities.
13		34	Criminal liability for misstatements in prospectus.
14		35	Civil liability for misstatements in prospectus.
15		36	Punishment for fraudulently inducing persons to invest money.
16		37	Action by affected persons.
17		38	Punishment for personation for acquisition, etc., of securities.
18		39	Allotment of securities by company.
19		40	Securities to be dealt with in stock exchanges.
20	Chapter IV -Share Capital and Debentures	44	Nature of shares or debentures.
21		45	Numbering of shares.
22		49	Calls on shares of same class to be made on uniform basis.
23		50	Company to accept unpaid share capital, although not called up.
24		51	Payment of dividend in proportion to amount paid-up.
25		57	Punishment for personation of shareholder.
26		58	Refusal of registration and appeal against refusal.
27		59	Rectification of register of members.
28		60	Publication of authorised, subscribed and paid-up capital.
29		65	Unlimited company to provide for reserve share capital on re-registration.

30		68	Transfer of certain sums to capital redemption reserve account.
31		70	Prohibition for buy-back in certain circumstances.
32	Chapter VI - Registration of Charges	86	Punishment for contravention.
33	Chapter VII - Management and Administration	100	Section 100- Calling of extraordinary general meeting.
34		102	Statement to be annexed to notice.
35		103	Quorum for meetings.
36		104	Chairman of meetings.
37		105	Proxies.
38		106	Restriction on voting rights.
39		107	Voting by show of hands.
40		111	Circulation of members' resolution.
41		112	Representation of President and Governors in meetings.
42		113	Representation of corporations at meeting of companies and of creditors.
43		114	Ordinary and special resolutions.
44		116	Resolutions passed at adjourned meeting.
45		91	Power to close register of members or debenture holders or other security holders
46	Chapter VIII - Declaration and Payment of Dividend	127	Punishment for failure to distribute dividends.
47	Chapter IX -Accounts of Companies (128 - 138)	133	Central Government to prescribe accounting standards.
48	Chapter XI - Appointment and Qualifications of Directors	161	Appointment of additional director, alternate director and nominee director.
49		162	Appointment of directors to be voted individually.
50		163	Option to adopt principle of proportional representation for appointment of directors.
51	Chapter XII -Meetings of Board and its Powers	176	Defects in appointment of directors not to invalidate actions taken.
52		180	Restrictions on powers of Board.
53		181	Company to contribute to bona fide and charitable funds, etc.
54		182	Prohibitions and restrictions regarding political contributions.
55		183	Power of Board and other persons to make contributions to national defence fund, etc.
56		185	Loan to directors, etc.
57		192	Restriction on non-cash transactions involving directors.
58		194	Prohibition on forward dealings in securities of company by a key managerial personnel.
59		195	Prohibition on insider trading of securities.
60	Chapter XIII - Appointment and Remuneration of Managerial Personnel	202	Compensation for loss of office of managing or whole-time director or manager.

61	Chapter XXII- Companies Incorporated Outside India	379	Application of Act to foreign companies.
62		382	Display of name, etc., of foreign company.
63		383	Service on foreign company.
64		386	Interpretation.
65	Chapter XXIII- Government Companies	394	Section 394- Annual reports on Government companies.
66	Chapter XXV- Companies to Furnish Information or Statistics (405)	405	Power of Central Government to direct companies to furnish information or statistics.
67	Chapter XXVII- National Company Law Tribunal and Appellate Tribunal	407	Definitions
68		408	Constitution of National Company Law Tribunal.
69		409	Qualification of President and Members of Tribunal.
70		410	Constitution of Appellate Tribunal
71		411	Qualification of Chairperson and Members of Appellate Tribunal.
72		412	Selection of Members of Tribunal and Appellate Tribunal.
73		413	Term of office of President, Chairperson and other Members.
74		414	Salary, allowances and other terms and conditions of service of Members.
75	Chapter XXVIII- Special Courts	439	Offences to be non-cognizable.
76		443	Power of Central Government to appoint company prosecutors.
77		444	Appeal against acquittal.
78		445	Compensation for accusation without reasonable cause.
79		446	Application of fines.
80	Chapter XXIX Miscellaneous	447	Punishment for fraud.
81		448	Punishment for false statements.
82		449	Punishment for false evidence.
83		450	Punishment where no specific penalty or punishment is provided.
84		451	Punishment in case of repeated default.
85		452	Punishment for wrongful withholding of property.
86		453	Punishment for improper use of "Limited" or "Private Limited".
87		456	Protection of action taken in good faith.
88		457	Non-disclosure of information in certain cases.
89		458	Delegation by Central Government of its powers and functions.
90		459	Powers of Central Government or Tribunal to accord approval, etc., subject to conditions and to prescribe fees on applications
91		460	Condonation of delay in certain cases.
92		461	Annual report by Central Government.
93		462	Power to exempt a class or classes of companies from provisions of this Act.

94		463	Power of Court to grant relief in certain cases
95		467	Power of Central Government to amend Schedules.
96		468	Power of Central Government to make rules relating to winding up.
97		469	Power of Central Government to make rules.
98		470	Power to remove difficulties.

LIST OF DEFINITIONS NOTIFIED U/S 2 ON 12.09.2013

CLAUSE	DESCRIPTION
clause 1	<u>"abridged prospectus"</u> means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf
clause 3	<u>"alter" or "alteration"</u> includes the making of additions, omissions and substitutions
clause 4	<u>"Appellate Tribunal"</u> means the National Company Law Appellate Tribunal
clause 5	<u>"articles"</u> means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or
clause 6	<u>"associate company"</u> , in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. Explanation.—For the purposes of this clause, "significant influence" means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;
clause 8	<u>"authorised capital" or "nominal capital"</u> means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company
clause 9	<u>"banking company"</u> means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949;
clause 10	<u>"Board of Directors" or "Board"</u> , in relation to a company, means the collective body of the directors of the company;
clause 11	<u>"body corporate" or "corporation"</u> includes a company 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 as defined in this Act), which the Central Government may, by notification, specify in this behalf;
clause 12	<u>"book and paper" and "book or paper"</u> include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;
clause 14	<u>"branch office"</u> , in relation to a company, means any establishment described as such by the company;
clause 15	<u>"called-up capital"</u> means such part of the capital, which has been called for payment;
clause 16	<u>"charge"</u> means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage;
clause 17	<u>"chartered accountant"</u> means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;
clause 18	<u>"Chief Executive Officer"</u> means an officer of a company, who has been designated as such by it
clause 19	<u>"Chief Financial Officer"</u> means a person appointed as the Chief Financial Officer of a company

clause20	"company" means a company incorporated under this Act or under any previous company law;
clause21	"company limited by guarantee" means a company 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 the company in the event of its being wound up;
clause22	"company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them
clause24	"company secretary" or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act;
clause25	"company secretary in practice" means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980;
clause26	"contributory" means a person liable to contribute towards the assets of the company in the event of its being wound up. Explanation.—For the purposes of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory;
clause27	"control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;
clause28	"cost accountant" means a cost accountant as defined in clause (b) of subsection (1) of section 2 of the Cost and Works Accountants Act, 1959
clause 29(except sub clause (IV))	"court" means— (i) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii); (ii) the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district; (iii) the Court of Session having jurisdiction to try any offence under this Act or under any previous company lawany Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law;
clause 30	"debenture" 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;
clause 32	"depository" means a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996
clause 33	"derivative" means the derivative as defined in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956
clause 34	"director" means a director appointed to the Board of a company
clause 35	"dividend" includes any interim dividend;
clause 36	"document" includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;

clause 37	"employees' stock option" means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;
clause 38	"expert" includes an engineer, a valuer, a chartered accountant, a company secretary, 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" includes a scheduled bank, and any other financial institution defined or notified under the Reserve Bank of India Act, 1934;
clause 40	"financial statement" in relation to a company, includes— (i) a balance sheet as at the end of the financial year; (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year; (iii) cash flow statement for the financial year; (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 sub-clause (iv): Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;
clause 43	"free reserves" means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend: Provided that— (i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or (ii) any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves
clause 44	"Global Depository Receipt" means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts
clause 45	"Government company" means any company in which not less than fiftyone per cent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company
clause 46	"holding company" , in relation to one or more other companies, means a company of which such companies are subsidiary companies;
clause 49	"interested director" means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company
clause 50	"issued capital" means such capital as the company issues from time to time for subscription;
clause 51	"key managerial personnel" , in relation to a company, means— (i) the Chief Executive Officer or the managing director or the manager; (ii) the company secretary; (iii) the whole-time director; (iv) the Chief Financial Officer; and (v) such other officer as may be prescribed
clause 52	"listed company" means a company which has any of its securities listed on any recognised stock exchange

clause 53	<u>“manager”</u> means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;
clause 54	<u>“managing director”</u> means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called. Explanation.—For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management
clause 55	<u>“member”</u> , in relation to a company, means— (i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members; (ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company; (iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;
clause 56	<u>“memorandum”</u> means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act
clause 57	<u>“net worth”</u> means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;
clause 58	<u>“notification”</u> means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly
clause 59	<u>“officer”</u> includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;

clause 60	<u>“officer who is in default”</u>, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:— (i) whole-time director; (ii) key managerial personnel; (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified; (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity; (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance; (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;
clause 61	<u>“Official Liquidator”</u> means an Official Liquidator appointed under sub-section (1) of section 359;
clause 63	<u>“ordinary or special resolution”</u> means an ordinary resolution, or as the case may be, special resolution referred to in section 114;
clause 64	<u>“paid-up share capital” or “share capital paid-up”</u> means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paidup in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;
clause 65	<u>“postal ballot”</u> means voting by post or through any electronic mode
clause 66	<u>“prescribed”</u> means prescribed by rules made under this Act
clause 67	<u>“previous company law”</u> means any of the laws specified below:— (i) Acts relating to companies in force before the Indian Companies Act, 1866; (ii) the Indian Companies Act, 1866; (iii) the Indian Companies Act, 1882; (iv) the Indian Companies Act, 1913; (v) the Registration of Transferred Companies Ordinance, 1942; (vi) the Companies Act, 1956; and (vii) any law corresponding to any of the aforesaid Acts or the Ordinances and in force— (A) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913; or in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956, in so far as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968, in so far as other corporations are concerned; (viii) the Portuguese Commercial Code, in so far as it relates to sociedades anonimas; and (ix) the Registration of Companies (Sikkim) Act, 1961;

clause 68	“private company” means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,— (i) restricts the right to transfer its shares; (ii) except in case of One Person Company, limits the number of its members to two hundred: Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member: Provided further that— (A) persons who are in the employment of the company; and (B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and (iii) prohibits any invitation to the public to subscribe for any securities of the company;
clause 69	“promoter” means a person— (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act: Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;
clause 70	“prospectus” means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate;
clause 71	“public company” means a company which— (a) is not a private company; (b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed: Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles
clause 72	“public financial institution” means— (i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956; (ii) the Infrastructure Development Finance Company Limited, referred to in clause (vi) of sub-section (1) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act; (iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002; (iv) institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act; (v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India: Provided that no institution shall be so notified unless— (A) it has been established or constituted by or under any Central or State Act; or (B) not less than fifty-one per cent. of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments
clause 73	“recognised stock exchange” means a recognised stock exchange as defined in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;

clause 74	<u>“register of companies”</u> means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;
clause 75	<u>“Registrar”</u> means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act;
clause 76	<u>“related party”</u>, with reference to a company, means— (i) a director or his relative; (ii) a key managerial personnel or his relative; (iii) a firm, in which a director, manager or his relative is a partner; (iv) a private company in which a director or manager is a member or director; (v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital; (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager; (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act: Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity; (viii) any company which is— (A) a holding, subsidiary or an associate company of such company; or (B) a subsidiary of a holding company to which it is also a subsidiary; (ix) such other person as may be prescribed
clause 77	<u>“relative”</u>, with reference to any person, means any one who is related to another, if— (i) they are members of a Hindu Undivided Family; (ii) they are husband and wife; or (iii) one person is related to the other in such manner as may be prescribed;
clause 78	<u>“remuneration”</u> means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961;
clause 79	<u>“Schedule”</u> means a Schedule annexed to this Act;
clause 80	<u>“scheduled bank”</u> means the scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934;
clause 81	<u>“securities”</u> means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956
clause 82	<u>“Securities and Exchange Board”</u> means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;
clause 84	<u>“share”</u> means a share in the share capital of a company and includes stock
clause 86	<u>“subscribed capital”</u> means such part of the capital which is for the time being subscribed by the members of a company
clause 87 [except the proviso and explanation (d)]	<u>“subsidiary company” or “subsidiary”</u>, in relation to any other company (that is to say the holding company), means a company in which the holding company— (i) controls the composition of the Board of Directors; or (ii) 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 88	"sweat equity shares" means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called; Explanation.—For the purposes of this clause,— (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company; (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors; (c) the expression "company" includes any body corporate;
clause 89	voting right" means the right of a member of a company to vote in any meeting of the company or by means of postal ballot; if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes;
clause 90	"Tribunal" means the National Company Law Tribunal constituted under section 408;
clause 91	"turnover" means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;
clause 92	"unlimited company" means a company not having any limit on the liability of its members;
clause 93	"voting right" means the right of a member of a company to vote in any meeting of the company or by means of postal ballot;
clause 94	"whole-time director" includes a director in the whole-time employment of the company;
clause 95	words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in those Acts.

LIST OF DEFINITIONS TO BE NOTIFIED

CLAUSE	DESCRIPTION
clause 2	"accounting standards" means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133
clause 7	"auditing standards" means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143;
clause 13	"books of account" includes records maintained in respect of— (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place; (ii) all sales and purchases of goods and services by the company; (iii) the assets and liabilities of the company; and (iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section
clause 23	"Company Liquidator", in so far as it relates to the winding up of a company, means a person appointed by— (a) the Tribunal in case of winding up by the Tribunal; or (b) the company or creditors in case of voluntary winding up, as a Company Liquidator from a panel of professionals maintained by the Central Government under sub-section (2) of section 275;
clause 29 sub clause (iv)	(iv) the Special Court established under section 435;

clause 31	"deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;
clause 41	"financial year", in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up: Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year: Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;
clause 42	"foreign company" means any company or body corporate incorporated outside India which— (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (b) conducts any business activity in India in any other manner
clause 47	"Independent director" means an independent director referred to in sub-section (5) of section 149;
clause 48	"Indian Depository Receipt" means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts;
clause 62	"One Person Company" means a company which has only one person as a member
clause 67 sub clause (ix)	(ix) the Registration of Companies (Sikkim) Act, 1961;
clause 83	"Serious Fraud Investigation Office" means the office referred to in section 211
clause 85	"small company" means a company, other than a public company,— (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or (ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees: Provided that nothing in this clause shall apply to— (A) a holding company or a subsidiary company; (B) a company registered under section 8; or (C) a company or body corporate governed by any special Act
clause 87 provisio	Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed
Explanation (d)	"layer" in relation to a holding company means its subsidiary or subsidiaries;