



# BHAVESH DESAI

B.COM. LLB. ACS

PRACTISING COMPANY SECRETARY

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## SMALL COMPANY

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## COMPLIANCE UNDER COMPANIES ACT 2013

**Small Is Beautiful:** in contrast with phrases such as "bigger is better" We need to appropriate set up which empower people more.

Wisdom demands a new orientation of science and technology toward the organic, the gentle, the elegant and beautiful." (E.F. Schumacher,) As addition to this our law makers has brought the concept of Small Company in Companies Act, 2013

The concept of "Small Company" has been introduced for the first time by the Companies Act, 2013. The Act identifies some companies as small companies based on their capital and turnover position for the purpose of providing certain relief/exemptions to these companies. Most of the exemptions provided to a small company are same as that provided to a one person company.

**Section 2(85)** defines a Small Company as –

"small company" means a company, other than a public company,—

- 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
- 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:



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Provided that nothing in this Section shall apply to—

- a) holding company or a subsidiary company;
- b) company registered under Section 8; or
- c) company or body corporate governed by any special Act

## **Analysis of Definition of Small Company**

For qualifying as a small company, **it is enough if either the capital is less than rupees fifty lakhs or turnover is less than rupees twenty crores. It is sufficient if either one of the requirement is met without meeting the other requirement.**

However, these limits may be raised but not exceeding rupees five crores in case of capital and rupees twenty crores in case of turnover

Further, as per the definition of a small company, holding and subsidiary companies are specifically excluded from the concept of small company. Thus even though both the holding company and subsidiary company may fulfill the capital or turnover requirement of a small company, they will still fall outside the purview of small company and accordingly the benefits which are available to a small company cannot be applied to a company which is holding or subsidiary company.

**In other words, a holding or a subsidiary company can never enjoy the privileges of a small company even though they may fulfill the capital or turnover requirement of a small company.**

**Similarly, a company may classify as a small company in a particular year but may become ineligible in the next year and may become eligible again in the subsequent year.**



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- ❖ Only a private company can be classified as a small company.
- ❖ Holding company, subsidiary company, charitable company and company governed by any Special Act cannot be classified as a small company.
- ❖ For a small company, either the paid up capital should not exceed Rupees fifty lakhs or the turnover as per last statement of profit & loss should not exceed rupees two crores.
- ❖ The status of a company as “Small Company” may change from year to year. Thus the benefits which are available during a particular year may stand withdrawn in the next year and become available again in the subsequent year.

## BENEFITS AS PER COMPANIES ACT 2013

### **Special Provisions and Exemptions available to a Small Company**

- ❖ A small company need not include Cash Flow Statement as part of its financial statement. **Section 2(40)**
- ❖ The annual return of a Small Company can be signed by the company secretary alone, or where there is no company secretary, by a single director of the company. **Section 92. (1)**
- ❖ A small company may hold only two board meetings in a year, i.e. one Board Meeting in each half of the calendar year with a minimum gap of ninety days between the two meetings. **Section 173(5)**
- ❖ Provision regarding mandatory rotation of auditor/maximum term of auditor being 5 years in case of an individual and 10 years in case of a firm of auditors is not applicable to an OPC. **Section 139**
- ❖ **Section 129(3)** mandates that a company which has one or more subsidiary companies must prepare consolidated financial statements in addition to standalone statement. However, companies which have subsidiary companies, i.e. holding companies are outside the purview of small companies. It appears from the above that the requirement of consolidation of financial statements will not arise for small companies. But, explanation provided under sub-Section 3 of Section 129 contains that for the purpose of consolidation, the word “subsidiary” shall include associate company and joint venture. **Thus, a small company which has any associate company or joint venture will still be required to prepare consolidated financial statements. This meaning of “subsidiary” is only for the limited purpose of Section 129(3) and not for the purpose of determining whether a company is a small company or not.**



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