BRIGHT VISION ACADEMY

CMA FINAL GR-III

FOR PAPER-13
CORPORATE LAWS & COMPLIANCE

DEFINITIONS

SECTION 1 TO 2

COMPANIES ACT, 2013

For **JUNE 2015** ***onwards***

RAGHAV GOEL

BRIGHT VISION ACADEMY

1/48, LALITA PARK, VIKAS MARG, NEAR GURUDWARA, LAXMI NAGAR, DELHI-92

CONTACT

8512006220, 9650827269, 9899660949, 011-22528559, 60

The key highlights of 2013 Act are summarized below.

Limit on number of members
• Maximum number of members in a private company increased from 50 to 200
• Limit of number of members in an association or partnership (without incorporation) to be prescribed (not to exceed 100). In the 1956 Act, this limit was 10 for banking companies and 20 for other than banking companies.
• One Person Company (OPC) - a new vehicle for individuals for carrying on business with limited liability

Share capital
• For defined infrastructural projects, preference shares can be issued for a period exceeding 20 years
• Provisions relating to further issue of capital made applicable to all companies
• The terms for offer of securities, form and manner of 'private placement' to be as prescribed
• Shares cannot be issued at a discount except sweat equity shares
• Time gap between 2 buy-backs shall be minimum 1 year

Deposits
• Stringent norms provided for acceptance of fresh deposits from members and public
• Any deposit accepted before the commencement of 2013 Act or any interest due thereon to be repaid within 1 year from the commencement of 2013 Act or from the date on which such payments are due, whichever is earlier
• Credit rating made mandatory for acceptance of public deposits
• Limits to be prescribed for accepting ICDs

Corporate Social Responsibility (CSR)
• 2% of average net profits of last 3 years to be mandatorily spent on CSR by companies having
– net worth of ` 5 billion or more; or
– turnover of ` 10 billion or more; or
– net profit of ` 50 million or more

Audit and Accounting
• Companies to have a uniform financial year – ending on 31 March each year
• Consolidation of financials for a company having a subsidiary, associate or a joint venture made mandatory
• National Financial Reporting Authority (NFRA) to be constituted by Central Government to provide for dealing with matters relating to accounting and auditing policies and standards to be followed by companies and their auditors
• Mandatory audit rotation for listed and prescribed classes of companies
• Restriction placed on provision of specified non-audit services by an auditor to ensure independence and accountability of the auditor
• Mandatory internal audit for prescribed classes of companies

Management, administration and corporate governance
• At least 1 director of a company shall be a person who has stayed in India for 182 days or more in the previous calendar year. Existing companies to comply with this provision within 1 year from the date of commencement of 2013 Act.
• Listed and prescribed class of companies to have at least 1 woman director. Existing companies to comply with this provision within 1 year from the date of commencement of 2013 Act.
• Prescribed class of companies to have whole-time Key
Managerial Personnel (KMP)
– Chief Finance Officer to be a whole time KMP for prescribed classes of companies
– Whole time Director included in definition of KMP

• Electronic voting for Board and shareholders meetings introduced
• Following committees of the Board made mandatory for listed and prescribed classes of companies:
– Audit committee
– Stakeholder relationship committee
– Nomination and Remuneration committee
– Corporate Social Responsibility committee
• Director to vacate office on remaining absent from all the meetings of the Board of Directors held during 12 months with or without obtaining leave of absence
• Contents of Directors' Report elaborated. Directors of listed companies to annually report on the existence and effective operations of systems on internal financial controls. Directors of all companies to annually report on the compliance with all applicable laws.
• Secretarial audit mandatory for listed and prescribed classes of companies
• Approval of Central Government required for certain managerial remuneration

Related Party transactions
• Requirement of obtaining Central Government approval for related party transactions not required
• Approval of related party transactions by Audit Committee / Board of Directors at Board meeting made mandatory
• Related party transactions to also require prior shareholder's approval by special resolution for companies having prescribed paid up capital or transactions exceeding prescribed amounts
• Related party transactions to be disclosed in the Director's Report along with justification thereof

Inter corporate loans / investments
• Loans, guarantee and security made to any person (the 1956 Act dealt only with body corporate) will attract compliance requirements
• Rate of interest on loan granted cannot be lower than the prevailing yield of 1 year, 3 year, 5 year or 10 year Government Security closest to the tenure of the loan
• The list of exemptions has been curtailed

Loan to Directors
• No company shall directly or indirectly advance any loan (including loan represented by a book debt) or give guarantee or provide security in connection with such loan to any director / related persons
– An exception to the above rule is made for MD or a whole time director (WTD) if such loan is in accordance with the terms of services extended to all employees or is approved by shareholders by special resolution
• Provisions for loan to directors applicable to private companies

Mergers & Acquisitions
• Restriction placed on multi-layer investment subsidiaries
• Merger of Indian company with a foreign company allowed
• Fast track merger for small companies and between holding company and its wholly owned subsidiary introduced
• Person / group of persons holding 90% or more equity shares by virtue of amalgamation etc. can purchase the remaining equity shares of the company from minority shareholders
• Any valuation of shares / assets etc. required under 2013 Act to be performed by a Registered Valuer

Measures for investor protection
• Provisions relating to class action suits introduced
• Exit options for minority holders on reorganization National Company Law Tribunal (NCLT)
• 2013 Act replaces the High Court with a Tribunal to be known as NCLT, which will consists of Judicial and Technical members, as Central Government may deem necessary, to exercise and discharge the powers and functions conferred including approval of merger, corporate reorganization, capital reduction, extension of financial year etc.

Miscellaneous
• Mandatory transfer of profits to reserves for dividend declaration dispensed with

• Inability to pay debts will be considered as criteria for determining a sick company
• Provisions of revival and rehabilitation of sick companies to apply to all companies and not only to an "industrial company"
• Central Government to establish Serious Fraud Investigation Office for investigation of frauds relating to a company
• Any person representing the company is made liable for punishment for fraudulently obtaining credit facilities from any bank or financial institutions for making any false, deceptive or misleading statement, promise or forecast

The 2013 Act has introduced several new concepts and has also tried to streamline many of the requirements by introducing new definitions.

1. Companies

1.1 One-person company: The 2013 Act introduces a new type of entity to the existing list i.e. apart from forming a public or private limited company, the 2013 Act enables the formation of a new entity a 'one-person company' (OPC). An OPC means a company with only one person as its member [section 3(1) of 2013 Act].

1.2. Private company: The 2013 Act introduces a change in the definition for a private company, inter-alia, the new requirement increases the limit of the number of members from 50 to 200. [section 2(68) of 2013 Act].

1.3. Small company: A small company has been defined as a company, other than a public company.
(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 five crore INR
(ii) Turnover of which as per its last profit-and-loss account does not exceed two crore INR or such higher amount as may be prescribed which shall not be more than 20 crore INR:
As set out in the 2013 Act, this section will not be applicable to the following:
• A holding company or a subsidiary company
• A company registered under section 8
• A company or body corporate governed by any special Act [section 2(85) of 2013 Act]

1.4. Dormant company: The 2013 Act states that a company can be classified as dormant when it is formed and registered under this 2013 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 one may apply to the ROC in such manner as may be prescribed for obtaining the status of a dormant company.[Section 455 of 2013 Act]

2. Roles and responsibilities

2.1 Officer: The definition of officer has been extended to include promoters and key managerial personnel [section 2(59) of 2013 Act].

2.2 Key managerial personnel: The term 'key managerial personnel' has been defined in the 2013 Act and has been used in several sections, thus expanding the scope of persons covered by such sections [section 2(51) of 2013 Act].

2.3. Promoter: The term 'promoter' has been defined in the following ways:• A person who has been named as such in a prospectus or is identified by the company in the annual return referred to in Section 92 of 2013 Act that deals with annual return; or
• who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
• in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.
The proviso to this section states that sub-section (c) would not apply to a person who is acting merely in a professional capacity. [section 2(69) of 2013 Act]

2.4: Independent Director: The term' Independent Director' has now been defined in the 2013 Act, along with several new requirements relating to their appointment, role and responsibilities. Further some of these requirements are not in line with the corresponding requirements under the equity listing agreement [section 2(47), 149(5) of 2013 Act].

3. Investments
3.1 Subsidiary: The definition of subsidiary as included in the 2013 Act states that certain class or classes of holding company (as may be prescribed) shall not have layers of subsidiaries beyond such numbers as may

be prescribed. With such a restrictive section, it appears that a holding company will no longer be able to hold subsidiaries beyond a specified number[section 2(87) of 2013 Act].

4. Financial statements

4.1. Financial year: It has been defined as 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 , 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. [section 2(41) of 2013 Act]. While there are certain exceptions included, this section mandates a uniform accounting year for all companies and may create significant implementation issues.

4.2. Consolidated financial statements: The 2013 Act now mandates consolidated financial statements (CFS) for any company having a subsidiary or an associate or a joint venture, to prepare and present consolidated financial statements in addition to standalone financial statements.

4.3. Conflicting definitions: There are several definitions in the 2013 Act divergent from those used in the notified accounting standards, such as a joint venture or an associate,, etc., which may lead to hardships in compliance.

5. Audit and auditors

5.1 Mandatory auditor rotation and joint auditors: The 2013 Act now mandates the rotation of auditors after the specified time period. The 2013 Act also includes an enabling provision for joint audits.

5.2 Non-audit services: The 2013 Act now states that any services to be rendered by the auditor should be approved by the board of directors or the audit committee. Additionally, the auditor is also restricted from providing certain specific services.

5.3. Auditing standards: The Standards on Auditing have been accorded legal sanctity in the 2013 Act and would be subject to notification by the NFRA. Auditors are now mandatorily bound by the 2013 Act to ensure compliance with Standards on Auditing.

5.4 Cognisance to Indian Accounting Standards (Ind AS): The 2013 Act, in several sections, has given cognisance to the Indian Accounting Standards, which are standards converged with International Financial Reporting Standards, in view of their becoming applicable in future. For example, the definition of a financial statement includes a 'statement of changes in equity' which would be required under Ind AS. [Section 2(40) of 2013 Act]

5.5. Secretarial audit for bigger companies: In respect of listed companies and other class of companies as may be prescribed, the 2013 Act provides for a mandatory requirement to have secretarial audit. The draft rules make it applicable to every public company with paid-up share capital > Rs. 100 crores*. As specified in the 2013 Act, such companies would be required to annex a secretarial audit report given by a Company Secretary in practice with its Board's report. [Section 204 of 2013 Act]

5.6. Secretarial Standards: The 2013 Act requires every company to observe secretarial standards specified by the Institute of Company Secretaries of India with respect to general and board meetings [Section 118 (10) of 2013 Act], which were hitherto not given cognizance under the 1956 Act.

5.7. Internal Audit: The importance of internal audit has been well acknowledged in Companies (Auditor Report) Order, 2003 (the 'Order'), pursuant to which auditor of a company is required to comment on the fact that the internal audit system of the company is commensurate with the nature and size of the company's operations. However, the Order did not mandate that an internal audit should be conducted by the internal auditor of the company. The Order acknowledged that an internal audit can be conducted by an individual who is not in appointment by the company.

The 2013 Act now moves a step forward and mandates the appointment of an internal auditor who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.
The class or classes of companies which shall be required to mandatorily appoint an internal auditor as per the draft rules are as follows: *
• Every listed company
• Every public company having paid-up share capital of more than 10 crore INR
• Every other public company which has any outstanding loans or borrowings from banks or public financial institutions more than 25 crore INR or which has accepted deposits of more than 25 crore INR at any point of time during the last financial year

5.8. Audit of items of cost: The central government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that class of companies. By virtue of this section of the 2013 Act, the cost audit would be mandated for certain companies. [section 148 of 2013 Act]. It is pertinent to note that similar requirements have recently been notified by the central government.

6. Regulators

6.1. National Company Law Tribunal (Tribunal or NCLT): In accordance with the Supreme Court's (SC) judgement, on 11 May 2010, on the composition and constitution of the Tribunal, modifications relating to qualification and experience, etc. of the members of the Tribunal has been made. Appeals from the Tribunal shall lie with the NCLT. Chapter XXVII of the 2013 Act consisting of section 407 to 434 deals with NCLT and appellate Tribunal.

6.2. National Financial Reporting Authority (NFRA): The 2013 Act requires the constitution of NFRA, which has been bestowed with significant powers not only in issuing the authoritative pronouncements, but also in regulating the audit profession.

6.3. Serious Fraud Investigation Office (SFIO): The 2013 Act has bestowed legal status to SFIO.

7. Mergers and acquisitions
The 2013 Act has streamlined as well as introduced concepts such as reverse mergers (merger of foreign companies with Indian companies) and squeeze-out provisions, which are significant. The 2013 Act has also introduced the requirement for valuations in several cases, including mergers and acquisitions, by registered valuers.

8. Corporate social responsibility
The 2013 Act makes an effort to introduce the culture of corporate social responsibility (CSR) in Indian corporates by requiring companies to formulate a corporate social responsibility policy and at least incur a given minimum expenditure on social activities.

9. Class action suits
The 2013 Act introduces a new concept of class action suits which can be initiated by shareholders against the company and auditors.

10. Prohibition of association or partnership of persons exceeding certain number
The 2013 Act puts a restriction on the number of partners that can be admitted to a partnership at 100. To be specific, the 2013 Act states that no association or partnership consisting of more than the given number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this 1956 Act or is formed under any other law for the time being in force:
As an exception, the aforesaid restriction would not apply to the following:

A Hindu undivided family carrying on any business

An association or partnership, if it is formed by professionals who are governed by special acts like the Chartered Accountants Act, etc.[section 464 of 2013 Act]

11. Power to remove difficulties

The central government will have the power to exempt or modify provisions of the 2013 Act for a class or classes of companies in public interest. Relevant notification shall be required to be laid in draft form in Parliament for a period of 30 days. The 2013 Act further states no such order shall be made after the expiry of a period of five years from the date of commencement of section 1 of the 2013 Act [section 470 of 2013 Act].

12. Insider trading and prohibition on forward dealings

The 2013 Act for the first time defines ‘insider trading and price-sensitive information and prohibits any person including the director or key managerial person from entering into insider trading [section 195 of 2013 Act]. Further, the Act also prohibits directors and key managerial personnel from forward dealings in the company or its holding, subsidiary or associate company [section 194 of 2013 Act].

Chapter-1 PRELIMINARY

Section 1: Short title, extent, commencement and application.

An Act made to consolidate and amend the law relating to the companies may be called as the Companies Act, 2013. It extends to the whole of India and came into existence at once from the date of notification in the Official Gazette i.e., from 30th August, 2013, however, the provisions of the Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be taken as a reference to the coming into force of that provision.

The provisions of the Act shall apply to-

• Companies incorporated under this Act or under any previous company law
• Insurance companies(except where the provisions of the said Act are inconsistent with the provisions of the Insurance Act ,1938 or the IRDA Act,1949)
• Banking companies(except where the provisions of the said Act are inconsistent with the provisions of the Banking Regulation Act,1949)
• Companies engaged in the generation or supply of electricity(except where the provisions of the above Act are inconsistent with the provisions of the Electricity Act,2003)
• Any other company governed by any special Act for the time being in force.
• Such body corporate which are incorporated by any Act for time being in force, as the Central Government may by notification specify in this behalf.

Point of Comparison in respect to new law

• This section 1 of the 2013 Act replaces sections 1, 616, 561 and 563 of the Companies Act, 1956.
• the Government has been vested with powers to enforce the different provisions of the Act at different points of time, which is unlike the 1956 Act.
• The proviso given in the 1956 Act, empowering the Central Government to apply the provisions of the Act to the State of Nagaland subject to the modifications, has been curtailed by the new law(2013 Act)
• New law under 2013 Act also prescribes the applicability of the Act to various companies/ Body corporate such as companies incorporated under this Act/previous company law, Insurance, Banking company etc.

Section 2: Definitions given under the Companies Act, 2013

The Companies Act, 2013 introduces around 33 new definitions. This section of the Companies Act, 2013 corresponds to section 2 of the Companies Act, 1956 and defines the various terms used in the Act.

Clause 1- Abridged Prospectus - 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.

Point of Comparison in respect to new law

• Under the 1956 Act the salient features of a prospectus were to be prescribed by the rules made by the Central Government. Whereas in the new Act of 2013, salient features of a prospectus are specified by the Securities and Exchange Board by making regulations.

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 (3) - Alter or Alteration - includes the making of additions, omissions and substitutions.

Point of Comparison in respect to new law

• The new Act, 2013 specifically includes the word 'substitution' in the definition which was lacking in the definition given under 1956 Act.

Clause (4)- Appellate Tribunal - means the National Company Law Appellate Tribunal constituted under section 410.

The Definition is same as that contained in the 1956 Act.
Clause (5) – Articles - 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 of this Act.
The Definition is same as that contained in the 1956 Act.

Clause (6) - Associate Company- 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(JVC). Whereas the term "Significant influence" used in the definition means control of at least 20% of total share capital, or of business decisions under an agreement.

This is a new definition inserted in the 2013 Act.

• The 1956 Act does not prescribe for any definition of the 'Associate', the relationship between the entities may be established either by way of establishment of holding- subsidiary relationship or by defining companies under same management. So this definition is added in the new law to limit all the shortcomings and provide a more rational and objective framework of associate relationship. Thus, specific definition of associate company is given in the 2013 Act to provide more governance in corporate transaction. The concept of associate has been inserted in the definition of related party for determining the related party transactions, Disclosure with its respect in the financial statements, Ascertaining independence of independent director and auditor during the appointment.

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 (8) - Authorised capital or Nominal capital - means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company. The 2013 Act, specifically defines the terminology. In 1956 Act, no particular definition was there.

Clause (9) - Banking company - means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949. The Definition is modified. Instead of Banking Company Act, 1949 now the definition will be referred from the Banking Regulation Act, 1949.

Clause (10) - Board of Directors or Board - in relation to a company, means the collective body of the directors of the company.
The Definition is modified. It clarifies that Board constitutes a collective body of Director.

Clause (11) - Body Corporate or Corporation - 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

Point of Comparison in respect to new law
• New Act, 2013 not expressly exclude the corporation sole from the definition of body corporate whereas the law contained in the Act of 1956, clearly keep out the 'corporation sole' from the scope of the definition of body corporate.

Clause (12)- Book and paper and book or paper- "Book and paper" and "book or paper" include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form.

Point of Comparison in respect to new law
• As per law given in the 2013 Act, minutes and registers are also included in the definition. And also electronic form is allowed for maintaining Book and paper and book or paper.

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 (14) - Branch Office - in relation to a company, means any establishment described as such by the company.
The definition given in the 2013 Act, has been simplified by saying that only establishment that has been described as such by the company shall be treated as a branch office. So it has been left on the company to designate any establishment of the company as branch office.

Clause (15)- Called up capital- "Called-up capital" means such part of the capital, which has been called for payment.
The 2013 Act, specifically defines the term which was absent in the 1956 Act.

Clause (16) - Charge- 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.

Point of Comparison in respect to new law
• The definition of charge in the new Act, 2013, has been elaborated and clearly explained. Whereas 1956 Act did not explain the meaning of charge but merely says that it includes a mortgage.

Clause (17)- Chartered Accountant - means a chartered accountant as defined in section 2(1)(b) of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under section 6(1) of that Act.

Point of Comparison in respect to new law
• The law of 1956 Act defines chartered accountant in whole time practice in India and not in full-time employment whereas new law defines chartered accountant as who holds a valid certificate of practice under the Chartered Accountants Act, 1949.

Clause (18) – Chief Executive Officer (CEO)- means an officer of a company, who has been designated as such by it.

Clause (19)- Chief Financial Officer (CFO)- means a person appointed as the Chief Financial Officer of a company.
New Act of 2013 defines and provides statutory recognition to CEO and CFO as Key Managerial Personnel.

Clause (20) - Company- means a company incorporated under this Act or under any previous company law.
The new Act, 2013 also permits for the incorporation of one person companies (OPCs) which the earlier Companies Acts (i.e., all the previous company law and the 1956 Act) did not.

Clause (21)- 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.

Point of Comparison in respect to new law
• New Act, 2013 provides a separate definition of 'company limited by guarantee'. However the interpretation is same as that given in the sections 2(23) and 12(2)(b) of the 1956 Act.

• And also that 2013 Act is not restricted to only public/private company limited by guarantee but there can also be one person company (OPC) limited by guarantee.

Clause (22)- 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.

Point of Comparison in respect to new law

• New Act, 2013 provides a separate definition of 'company limited by shares'. However the interpretation is same as that given in the sections 2(23) and 12(2)(a) of the 1956 Act.

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 (24) - Company secretary or secretary - means a company secretary as defined in section 2(1)(c) of the Company Secretaries Act, 1980 who appointed by a company to perform the functions of a company secretary under this Act.

Point of Comparison in respect to new law
• The new Act, 2013 covers only a company secretary under the scope of the definition and omits 'any other individual' as prescribed in the 1956 Act, who are appointed to perform the duties which may be performed by a secretary and the other ministerial or administrative duties.

Clause (25)- 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.

Point of Comparison in respect to new law
• The law of 1956 does not contain 'Company secretary in practice' rather it defines 'secretary in whole-time practice' and excludes full time employee.

Clause (26)- Contributory - means a person liable to contribute towards the assets of the company in the event of its being wound up.
A person who is 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.

Point of Comparison in respect to new law
• The law contained in 2013 Act contains an explanation clarifying that 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 even then they are retaining rights of such a contributory.

Clause (27) - 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.
The 2013 Act introduces this definition based on the same lines as defined under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011.

Clause (28) - Cost Accountant- means a cost accountant as defined in section 2(1)(b) of the Cost and Works Accountants Act, 1959.
This is a new definition introduced by the 2013 Act.

Clause (29) - Court- which 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 law
(iv) the Special Court established under section 435

(v) any 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

Point of Comparison in respect to new law
• In the 2013 Act, the jurisdiction of the court have been more defined. Among with the other courts, law prescribes for special courts to deal with the offences and no concept of this special court was there in the 1956 Act.

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.
Definition is modified. It clarifies that only those instruments which evidence a debt will be treated as debenture.

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 (32)-Depository- means a depository as defined in section 2(1)(e) of the Depositories Act, 1996.
There is no change in the definition.

Clause (33) - Derivative- means the derivative as defined in section 2(ac) of the Securities Contracts (Regulation) Act, 1956.
There is no change in the definition.

Clause (34)- Director - means a director appointed to the Board of a company.

Point of Comparison in respect to new law
• Previously the director means a person occupying the position of director but now the definition has been changed to director means a director appointed to the board of a company. Thereby the new law contained in the 2013 Act restrict the definition of director and does not include any person unlike the 1956 Act.

Clause (35)-Dividend- includes any interim dividend.
Definition is same as that contained in the 1956 Act.

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.

Point of Comparison in respect to new law
• As per the law given in the 2013 Act, the scope of the definition has been enlarged. The declaration and form are also included in the definition and other legal process has been deleted. Also electronic form allowed as Documents.

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 (iv) the Special Court established under section 435 (v) any 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

Point of Comparison in respect to new law

• In the 2013 Act, the jurisdiction of the court have been more defined. Among with the other courts, law prescribes for special courts to deal with the offences and no concept of this special court was there in the 1956 Act.

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.

Point of Comparison in respect to new law
• The definition of expert is not provided under the Companies Act, 1956
• The 2013 Act specifically covers company secretary and cost accountant within the purview of the definition of expert.

Clause (39)-Financial institution- includes a scheduled bank, and any other financial institution defined or notified under the Reserve Bank of India Act, 1934.
This is a newly inserted definition by the 2013 Act. This definition is not provided under the Companies Act, 1956.

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.
This is a newly inserted definition under the 2013 Act.

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 documentreferred 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 (*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 (*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 fifty one percent 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.
There is no change in the definition.

Clause (46)- Holding company- in relation to one or more other companies, means a company of which such companies are subsidiary companies.
As per the 2013 Act, only 'company' can be a holding company. A body corporate other than 'company' cannot be regarded as 'holding company'.
The definition is same as that given under the Companies Act, 1956.

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 (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.
Point of Comparison in respect to new law

• Earlier in the 1956 Act, there was no definition of interested director but now in the new Act, a specific definition has been provided. The definition clarifies, when a director can be said to be indirectly interested in a contract/arrangement. Indirect interest means interested through any of its relatives/ firm, body corporate/other association of individuals in which he / any of his relatives is a partner, director or a member. The definition is very specific and exhaustive in nature.

Clause (50)- Issued capital- means such capital as the company issues from time to time for subscription.
The 2013 Act specifically defines the term.

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.
This is a new insertion under the 2013 Act.

Clause (52) - Listed company- means a company which has any of its securities listed on any recognised stock exchange.
This definition is modified. The term 'public company' is replaced by the term 'company'.

Clause (53)- Manager- 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.
No change in the definition.

Clause (54)- Managing Director - 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.

Point of Comparison in respect to new law
• The new law given in the 2013 Act does not require that a managing director of a company shall exercise his powers subject to the superintendence, control and direction of its Board of directors.

Clause (55) - Member - 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. According to the 2013 Act, the inclusion of the term 'shares' in the definition under the point
(iii) includes both i.e. equity as well as preference shares.

Point of Comparison in respect to new law
• The Act of 2013 omits the provision that bearer of a share warrant of the company is not a member as contained in the 1956 Act.

Clause (56) - Memorandum- 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.
No change in the definition.

Clause (57) - Net worth - 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.

Point of Comparison in respect to new law
• New Act, 2013 requires Aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off to be deducted from the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account for calculation of net worth. This was not prescribed in the 1956 Act.

Clause (58) - Notification- means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly.
This is a new definition inserted by the 2013 Act.

Clause (59)- officer- 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.

Point of Comparison in respect to new law
• In place of secretary, the term Key Managerial Personnel (KMP) has been used in the definition of officer given under the Act of 2013.

Clause (60)- Officer who is in default- 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.

Point of Comparison in respect to new law
• The expression 'Officer who is in default' is taken in wider sense in the new Act, 2013. The definition includes Key Managerial personnel as officer in default. Knowledge/consent would also be determining factor while determining whether a person is officer in default or not in the new Act. The share transfer agents, bankers, registrars and merchant bankers to the issue or transfer have also been made liable as officer in default, in respect of the issue or transfer of any shares of a company. Whereas the old law contained in the 1956 Act, did not make these third parties liable as officer in default.

Clause (61) - Official Liquidator- means an Official Liquidator appointed under section 359(1).

Point of Comparison in respect to new law
• This is a modified definition, which prescribes that now only whole time officers of Central Government can be appointed as official liquidators by the Central Government.

Clause (*62*) "One Person Company" means a company which has only one person as a member;

Clause (63) - Ordinary or special resolution- means an ordinary resolution, or as the case may be, special resolution referred to in section 114.
According to section 114, resolution shall be an ordinary resolution if the votes cast (by show of hands, electronically or on a poll or proxy by postal ballots) in favour are of the resolution exceeds the votes, if any, cast against the resolution by the members. A resolution shall be special when it is duly specified in the notice, calling the general meeting and votes cast in favour are three times the votes cast against the resolution.

Point of Comparison in respect to new law
• No difference in the definition, except that the new law of 2013 says that votes casted electronically and by postal ballots shall also be counted for the passing of the resolution.

Clause (64) - Paid up share capital or share capital paid-up- means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid up 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.

Point of Comparison in respect to new law
• The 2013 Act more clarifies the definition. It says that "Any other amount received in respect of shares other than amount received as paid up in respect of shares issued and any amount credited as paid-up in respect of shares of the company, shall not be included in the amount credited as paid-up."

Clause (65) - Postal Ballot - means voting by post or through any electronic mode.

Point of Comparison in respect to new law
• New law also covers voting by post along with the electronic mode as given in the 1956 Act.

Clause (66) - Prescribed- means prescribed by rules made under this Act. The 2013 Act, simplifies the definition and is made in general, rather than providing reference of any section of the Act.

Clause (67) - Previous company law - means any of the laws specified in—
(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

(B) 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

Point of Comparison in respect to new law
• The 2013 Act expands the scope by including the Companies Act, 1956 and the Registration of Companies (Sikkim) Act, 1961, under the definition of the previous company law.

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;
• Vide General Circular No.15/2013, the Ministry of Corporate Affairs clarifies with respect to the implementation of the following provision with a view to facilitate proper administration of the Companies Act, 2013 Act. The Circular states that Registrar of Companies may register those Memorandum and Articles of Association which have been received till 11.9.2013 as per the definition clause of the private company

given under the Companies Act 1956 without referring to the definition of private company given under the Companies Act, 2013.

Point of Comparison in respect to new law

• The law contained in the 2013 Act, differs in the definition given of private company under the 1956 Act. Number of members has been increased from 50 to 200 and restriction to invite public to subscribe for shares or debentures has been extended to include all type of securities.

• Since, now company can only accept deposit from members, therefore restriction as to acceptance of deposit from person other than member, directors and their relatives has been dispensed with.

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.

Point of Comparison in respect to new law

• The definition of promoter has been specifically defined in the 2013 Act. This exhaustive definition is providing that who shall be considered as promoter and omits the persons from being called as promoters where he merely acts in 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.

The definition of prospectus given under the 2013 Act, includes red herring prospectus and shelf prospectus along with the other forms of the prospectus.

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.

Point of Comparison in respect to new law

The definition given under the 2013 Act is modified. It clearly provides that subsidiary of public company shall be deemed to be public company for the purpose of this Act even if 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 the Life Insurance Corporation Act, 1956;

(ii) the Infrastructure Development Finance Company Limited, referred in section 4A(1)(vi) 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 section 4A(2) 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.

Point of Comparison in respect to new law
• As per the definition given in the 2013 Act, IDBI, IFCI & ICICI are no more public financial institution.

• The criteria for notification of any institution as public financial institutions(PFI) has been widened by saying that now Central Government has to consult with RBI for notifying such institution as PFI. It also provides that such an institutions have been established or constituted under Central/ State Act, or minimum of 51% of the paid-up share capital of such institution is held by one or more State Governments as well besides Central Government. Whereas under the 1956 Act, the Central Government notify the institution as PFI only if 51% /more paid up capital of institution is held by the Central Government.

Clause (73)- Recognized stock exchange- means a recognised stock exchange as defined in section 2(f) of the Securities Contracts (Regulation) Act, 1956.

Point of Comparison in respect to new law
• The new law of 2013 Act covers the definition as given under the Securities Contracts (Regulation) Act, 1956. Unlike the 1956 Act, the Central Government has no power under 2013 Act to notify stock exchange outside India as recognized stock exchange.

Clause (74)- Register of companies- means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act.
This is a new definition incorporated under the 2013 Act.

Clause (75)- Registrar- 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.

Point of Comparison in respect to new law
• The function assigned to the Registrar has been widened under the new Act of 2013. It now includes discharging of various functions along with registering companies.

Clause (76) - Related party-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

• It's a new definition given under the 2013 Act. This term has been defined in order to know the manner in which contract or arrangements by a company with related parties shall be made and disclosed.

• Related party is related with the conduct of related party transaction which corresponds with section 294, 294A, 297 and 314 of the 1956 Act.

Clause (77) – Relative - 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

Point of Comparison in respect to new law
• The detailed list of relatives would be provided under the Rules to the Act. Unlike the 1956 Act, the list of relatives in Schedule IA has been omitted from 2013 Act.

Clause (78)-Remuneration - 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.
Point of Comparison in respect to new law
• The 2013 Act provides a specific definition. Instead of detailing all expenses like 1956 Act, it says that, separate from money or its equivalent given or passed to any person for services rendered, along with the other facilities which are treated as perquisites under the Income Tax Act, 1961, will all form the part of remuneration.

Clause (79) - Schedule- means a Schedule annexed to this Act.
No difference in the definition. However, in the 2013 Act there are 7 schedules.

Clause (80)- Scheduled bank- means the scheduled bank as defined in section 2(e) of the Reserve Bank of India Act, 1934.
The definition is same as that given in the 1956 Act.

Clause (81) - Securities- means the securities as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956.

Point of Comparison in respect to new law
• Unlike 1956 Act, the definition of securities given in the 2013 Act, omits hybrid instruments.

Clause (82) - Securities and Exchange Board- means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992.

Clause (*83*) "Serious Fraud Investigation Office" means the office referred to in section 211;
Clause (84) – Share- means a share in the share capital of a company and includes stock.

Point of Comparison in respect to new law
• The new law omits the line 'except where a distinction between stock and shares is expressed or implied'. Thus this makes clear that wherever the term share is used in the 2013 Act, it would include "stock' as well.

Clause (86) - Subscribed capital - means such part of the capital which is for the time being subscribed by the members of a company.
Specifically defined in the 2013 Act.

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) - Subsidiary company or subsidiary - 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:
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.—For the purposes of this clause,—
(a) a company shall be deemed to be a subsidiary company of the holdingcompany even if the control referred to in sub-clause (i) or sub-clause (ii) is ofanother subsidiary company of the holding company;
(b) the composition of a company's Board of Directors shall be deemed tobe controlled by another company if that other company by exercise of somepower exercisable by it at its discretion can appoint or remove all or a majority ofthe directors;
(c) the expression "company" includes any body corporate;
(d) "layer" in relation to a holding company means its subsidiary orsubsidiaries;

Clause-(88) "sweat equity shares" means such equity shares as are issued by a companyto its directors or employees at a discount or for consideration, other than cash, forproviding their know-how or making available rights in the nature of intellectual propertyrights or value additions, by whatever name called;

Clause-(89) "total voting power", in relation to any matter, means the total number ofvotes which may be cast in regard to that matter on a poll at a meeting of a company 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 undersection 408;

Clause-(91) "turnover" means the aggregate value of the realisation of amount madefrom the sale, supply or distribution of goods or on account of services rendered, orboth, by the company during a financial year;

Clause (92) - Unlimited company- means a company not having any limit on the liability of its members.
• The law contained in the 2013 Act provides a separate definition for the unlimited company though the interpretation is same as that contained the 1956 Act.
• The Act of 2013 provides that there can also be an OPC unlimited company along with the public/ private unlimited company.

Clause (93) - Voting rights -means the right of a member of a company to vote in any meeting of the company or by means of postal ballot.
This is a new definition given under the 2013 Act and not provided under the Companies Act, 1956.

Clause (94) - Whole time director - includes a director in the whole-time employment of the company.
Point of Comparison in respect to new law
• Separate definition has been provided under the Act of 2013. In the earlier Act of 1956, it was explained in the explanation to section 269.

Clause (95) - meaning of certain words and expressions not defined in the Act- 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.
Point of Comparison in respect to new law
• The 2013 Act provides Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the Depositories Act, 1996 for understanding the meaning of certain words and expressions not defined in the Act whereas the 1956 Act provides the reference of only Depositories Act, 1996.