

The Institute of Cost Accountants of India

(Statutory Body under an Act of Parliament)

Supplementary Reading Material
on
Notified Sections of Companies Act, 2013 - for December
2014 CMA Examinations

CMA Intermediate Course_Syllabus 2008

For
Papers 5 - Financial Accounting
Paper 6 - Commercial and Industrial Laws & Auditing



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Disclaimer:

- (1) To be read with the Study Material provided in the specified subject and consider the corresponding changes as placed herein.
- (2) For any clarification, provisions of Companies Act, 2013 may be referred.

Paper 5(Financial Accounting)

Syllabus 2008

Supplementary Reading Material

on

Notified Sections of Companies Act,2013

- for December 2014 CMA Examination



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Supplementary on Notified Sections of Companies Act,2013 - for December 2014 CMA Examination

Definitions given under the Companies Act, 2013 [Section 2]

- Refer supplementary material of Paper 6

Study Material – 7

1. Public offer of Securities to be in Dematerialised Form [Section 29]

- (1) Notwithstanding anything contained in any other provisions of this Act,—
- (a) every company making public offer; and
 - (b) such other class or classes of public companies as may be prescribed,
- shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.
- (2) Any company, other than a company mentioned in sub-section (1), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

Notes: -

This clause corresponds to section 68B of the Companies Act, 1956 and seeks to provide that public company making public offer and such other class or classes of companies as may be prescribed, shall issue the securities only through dematerialized form. Other companies may issue securities in physical or in dematerialised form.

New

- Every Company making public offer and such other class or classes of Public Companies as may be prescribed shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the Regulations made thereunder.

Dropped

- The requirement that only a Company making initial public offer of any security for a sum of ten crore rupees or more, shall require to issue securities in dematerialised form, has been dispensed with.

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2. Issue of application forms for Securities [Section 33, except sub-section (3)]

- (1) No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus:

Provided that nothing in this sub-section shall apply if it is shown that the form of application was issued—

- (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or
- (b) in relation to securities which were not offered to the public.
- (2) A copy of the prospectus shall, on a request being made by any person before the closing of the subscription list and the offer, be furnished to him.
- (3) If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

Notes: -

This clause corresponds to sub-section (3) of section 56 of the Companies Act, 1956 and seeks to provide that every form of application issued for purchase of any securities of a company shall be accompanied by an abridged prospectus. If a company makes any default the company shall be punishable with fine.

Modified

- The scope of the section has been widened, requiring for form of application for all type of securities along with shares or debentures.
- In case of default, penalty has been increased and now if a Company makes default under this provision, it shall be liable to a penalty of fifty thousand rupees for each default.
- Under the Act, instead of Information Memorandum, each application for securities shall be accompanied by abridged Prospectus.

3. Allotment of Securities by Company [Section 39, except sub-section (4)]

- (1) No allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.
- (2) The amount payable on application on every security shall not be less than five per cent of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.
- (3) If the stated minimum amount has not been subscribed and the sum payable on

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application is not received within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall be returned within such time and manner as may be prescribed.

- (4) Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment in such manner as may be prescribed.
- (5) In case of any default under sub-section (3) or sub-section (4), the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

Notes: -

This clause corresponds to section 69 of the Companies Act, 1956 prohibiting allotment of securities where the minimum amount has not been subscribed, the amount is to be refunded to all the applicants within a given time frame. This clause further provides that whenever a company having a share capital makes any allotment of securities, it shall file return of allotment with the registrar. In case of any default under sub-clause (3) and (4) the company and its officers who are in default shall be liable to fine.

Modified

- The scope of section has been widened from shares to all types of securities.
- Now apart from shares, Return of allotment is required to be filed for all types of securities.
- The amount payable on application on every security has been modified. Now the amount payable shall not be less than 5% of the nominal amount of the security or such other per cent or amount as may be specified by the Securities and Exchange Board of India by making regulations in this behalf.
- Further as against the period of 120 days as provided under Companies Act, 1956, the amount of minimum subscription shall be received within 30 days or such other period as may be prescribed by SEBI. Under the Companies Act, 1956, there was no reference to SEBI.
- In case of non receipt of minimum subscription, the earlier stipulated period of 120/ 130 days under the Companies Act, 1956 has now been deleted. Instead, under the Act Rules will be prescribed with regard to this period during which money should be received or during which refunds have to be made, in case of non- receipt.
- In case of default in intimating the allotment of shares to Registrar of Companies, the punishment has been increased and in case of default, the officer in default shall now be liable to penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.

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4. Nature of Shares or Debentures [Section 44]

The shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

Notes: -

This clause corresponds to section 82 of the Companies Act, 1956 and seeks to provide that the shares and debentures are movable property transferable in a manner provided in the articles of a company.

No Change

5. Calls on shares of same class to be made on uniform basis [Section 49]

Where any calls for further share capital are made on the shares of a class, such calls shall be made on a uniform basis on all shares falling under that class.

Explanation.— For the purposes of this section, shares of the same nominal value on which different amounts have been paid-up shall not be deemed to fall under the same class.

Notes: -

This clause corresponds to section 91 of the Companies Act, 1956 and seeks to provide that where any calls for further share capital are made on the shares of a class, such call shall be made on uniform basis on all shares falling under that class.

No Change

6. Company to accept unpaid share capital, although not called up [Section 50]

- (1) A company may, if so authorised by its articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up.
- (2) A member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him under sub-section (1) until that amount has been called up.

Notes: -

This clause corresponds to section 92 of the Companies Act, 1956 and seeks to provide that a company can accept from any member the whole or a part of the amount remaining unpaid on any shares without being called up and he will not be entitled to any voting rights on the amount paid by him unless amount has been called up.

No Change

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7. Payment of dividend in proportion to amount paid-up [Section 51]

A company may, if so authorised by its articles, pay dividends in proportion to the amount paid-up on each share.

Notes on Clauses

This clause corresponds to section 93 of the Companies Act, 1956 and seeks to provide that a company, if authorised by its articles, pay dividends in proportion to the amount paid up on each share.

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| No change |
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8. Publication of Authorised, Subscribed and Paid-up Capital [Section 60]

- (1) Where any notice, advertisement or other official publication, or any business letter, billhead or letter paper of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication, or such letter, billhead or letter paper shall also contain a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid-up.
- (2) If any default is made in complying with the requirements of sub-section (1), the company shall be liable to pay a penalty of ten thousand rupees and every officer of the company who is in default shall be liable to pay a penalty of five thousand rupees, for each default.

Notes: -

This clause corresponds to section 148 of the Companies Act, 1956 and seeks to provide that where any notice, advertisement or other official publication, or any business letter, etc., of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication, or such letters billhead or letter paper shall also state the subscribed and paid up capital and the clause further provides penalty for the company and every officer of company in default in case of any contravention.

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| <u>Modified</u> |
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| In case of default, the punishment provided for officer in default has been reduced and every officer of the Company who is in default shall be liable to a penalty of five thousand rupees, for each default. |
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9. Transfer of certain sums to Capital Redemption Reserve Account [Section 69]

- (1) Where a company purchases its own shares out of free reserves or securities premium account, a sum equal to the nominal value of the shares so purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet.
- (2) The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Notes: -

This clause corresponds to section 77AA of the Companies Act, 1956 and seeks to provide that in case of buy-back of shares out of free reserves, a sum equal to the nominal value of the shares so purchased shall be transferred, to capital redemption reserve account. The said account may be applied in paying up unissued shares of the company to be issued to the company as fully paid bonus shares.

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| No Change |
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10. Prohibition for buy-back in certain circumstances [Section 70, except sub-section (2)]

- (1) No company shall directly or indirectly purchase its own shares or other specified securities—
 - (a) through any subsidiary company including its own subsidiary companies;
 - (b) through any investment company or group of investment companies; or
 - (c) if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company:

Provided that the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

- (2) No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 92, 123, 127 and section 129.

Notes: -

This clause corresponds to section 77B of the Companies Act, 1956 and seeks to prohibit buy-back through any subsidiary company, through any investment company or through such company which has defaulted in making repayment of deposits, interest thereon, redemption of debentures, payment of dividend, etc.

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Modified

- Now a Company can make buyback even if it had at any time defaulted in repayment of deposit or interest payable thereon, redemption of debentures or Preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon to any financial institution or bank, provided that the default must have been remedied and a period of 3 years must have lapsed after such default ceased to subsist.
- In addition to the default related to filing of Annual Return (Section 159), Failure to distribute dividend within 30 days (Section 207), Form and Content of Balance Sheet and Profit and Loss (Section 211) as provided under the Companies Act, 1956, under the Act, a Company will not be able to directly or indirectly, purchase its own shares or other specified securities, in case it has defaulted the provisions related to Declaration of Dividend.

11. Punishment for failure to distribute dividends [Section 127]

Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent. per annum during the period for which such default continues:

Provided that no offence under this section shall be deemed to have been committed:—

- (a) where the dividend could not be paid by reason of the operation of any law;
- (b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;
- (c) where there is a dispute regarding the right to receive the dividend;
- (d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
- (e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

Notes: -

This clause corresponds to section 207 of the Companies Act, 1956 and seeks to provide that where the dividend has been declared but has not been paid or the warrants have not been posted within thirty days of declaration, every director who is knowingly party to the default shall

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be punishable with imprisonment up to two years and with fine and the company shall be liable to pay interest of eighteen per cent. per annum thereon.

New

- Now no offence shall be deemed to be made under section requiring payment of dividend within 30 days, where a shareholder has given the directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him.

Modified

- In case of provisions of punishment for failure to distribute dividends within thirty days, the imprisonment has been reduced. Now in case of default, any Director, knowingly party, to the said default, shall be liable to imprisonment, which may extend to 2 years instead of 3 years as provided under Companies Act, 1956.

12. Central Government to prescribe Accounting Standards [Section 133]

The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

Notes: -

This clause corresponds to section 211(3C) of the Companies Act, 1956 and it seeks to provide that the Central Government may, after consultation with the National Financial Reporting Authority, prescribe the accounting standards as recommended by the Institute of Chartered Accountants of India for adoption by companies.

New

- Now the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.
- In respect of accounting standards the role of National Financial Reporting Authority is limited to advise the Central Government or examine the accounting standards prescribed by Institute of Chartered Accountants of India.

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Study Note - 8

1. Restrictions on powers of Board [Section 180]

(1) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:—

(a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

Explanation.—For the purposes of this clause,—

(i) "undertaking" shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year;

(ii) the expression "substantially the whole of the undertaking" in any financial year shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;

(b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

(c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business:

Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause.

Explanation.— For the purposes of this clause, the expression "temporary loans" means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;

(d) to remit, or give time for the repayment of, any debt due from a director.

(2) Every special resolution passed by the company in general meeting in relation to the exercise of the powers referred to in clause (c) of sub-section (1) shall specify the total

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amount up to which monies may be borrowed by the Board of Directors.

- (3) Nothing contained in clause (a) of sub-section (1) shall affect—
- (a) the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or
 - (b) the sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.
- (4) Any special resolution passed by the company consenting to the transaction as is referred to in clause (a) of sub-section (1) may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transactions:

Provided that this sub-section shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in this Act.

- (5) No debt incurred by the company in excess of the limit imposed by clause (c) of sub-section (1) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

Notes: -

This clause corresponds to section 293 of the Companies Act, 1956 and seeks to provide for the powers of the Board of Directors of a company to be exercised only with the consent of the company by a special resolution.

Modified

- The certain powers which under section 293 of the Companies Act, 1956 can be exercised by Board with the approval of general meeting only, are now applicable to all the Companies instead of only Public Company & its Subsidiary.
- The section now specifically provides the definition of word 'undertaking' and 'substantially the whole undertaking'.
- The certain powers which under Section 293 of the Companies Act, 1956 can be exercised by Board with the approval of general meeting only are now to be approved by passing a special resolution instead of ordinary resolution as provided in the aforesaid Act.
- Now the approval of general meeting is only required when the Board wants to invest otherwise in trust securities, the compensation received by it as a result of Merger and Amalgamations only and not on compulsory acquisition of any undertaking or property or premises, as provided under the Companies Act, 1956.
- The power to contribute to charitable and other funds as donation in any financial year for an amount in excess of five per cent of its average net profits for the three immediately preceding financial years is now outside the preview of this section, and is included separately in the next section.

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2. Company to contribute to bona fide and charitable funds, etc. [Section 181]

The Board of Directors of a company may contribute to bona fide charitable and other funds:

Provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent. of its average net profits for the three immediately preceding financial years.

Notes: -

This clause corresponds to section 293(1)(e) of the Companies Act, 1956. It seeks to provide that the Board of Directors of the company may contribute to bona fide charitable and other funds. It requires prior permission of company in general meeting if such contribution exceeds certain limits specified in the clause.

Modified

A separate section has been provided to deal with the powers of the Board to contribute to charitable and other funds.

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& Auditing)

Syllabus 2008

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Introduction

The Companies Act, 2013 has been enacted to consolidate and amend the law relating to the companies. The changes in the existing company law (i.e., the Companies Act, 1956) was indispensable due to change in the national and international economic environment and for expansion and growth of our economy, the Parliament decided to replace the Companies Act, 1956 with a new legislation to meet the changed national and international economic environment and to further accelerate the expansion and growth of our economy. The new law (i.e., the Companies Act, 2013) is rule based legislation with 470 sections and seven schedules. The entire Act has been divided into 29 chapters. The Companies Act, 2013 aims to improve corporate governance, simplify regulations, strengthens the interests of minority investors and for the first time legislates the role of whistle-blowers. Thus, the enactment has made our corporate regulations more contemporary.

1. Short title, extent, commencement and application [Section 1]

- (1) This Act may be called the Companies Act, 2013.
- (2) It extends to the whole of India.
- (3) This section shall come into force at once and the remaining provisions of this 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 construed as a reference to the coming into force of that provision.
- (4) The provisions of this Act shall apply to—
 - (a) companies incorporated under this Act or under any previous company law;
 - (b) insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;
 - (c) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;
 - (d) companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;
 - (e) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act; andsuch body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.

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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.

2. Definitions given under the Companies Act, 2013 [Section 2]

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.

(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.

(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.

(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.

(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.

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(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.

(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.

(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.

(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.

(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

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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.

(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.

(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.

(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.

(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.

(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.

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

(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.

(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.

(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.

(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.

(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.

(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.

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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.

(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.

(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.

(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.

(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

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- (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.

(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.

(32) Depository- means a depository as defined in section 2(1)(e) of the Depositories Act, 1996.

There is no change in the definition.

(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.

(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.

(35) Dividend- includes any interim dividend.

Definition is same as that contained in the 1956 Act.

(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.

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(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.

- The law given under 2013 Act, covers the definition wider in scope. It covers option with respect to purchase or subscribe for the shares of the company, given to the directors (whole time as well as part-time), officers or employees of holding company or subsidiary company/companies.

(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.

(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.

(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.

- This definition is newly introduced by the 2013 Act. The cash flow statement has been made a compulsory part of the financial statement except in the case of the OPCs, dormant companies and small companies. The importance of the cash flow statement is emphasized in the context of entities which prepare accounts on accrual basis.

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(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 recognised 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.

Point of Comparison in respect to new law

- As per the 1956 Act, the term 'free reserves' was interpreted differently for different purposes [Explanation to section 2(29A) and 372A]. Thus the 2013 Act replaces the multiple interpretations of free reserves by laying down one definition for all purposes.
- Definition has been modified and now those reserves out of which dividend can be distributed are treated as free reserves and not include share premium. And also the definitions say that the specific classes of reserves shall not be treated as free reserves.

(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.

(45) Government company- means any company in which not less than fifty one 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.

There is no change in the definition.

(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.

(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

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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.

(50) Issued capital- means such capital as the company issues from time to time for subscription.

The 2013 Act specifically defines the term.

(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.

(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'.

(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.

(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.

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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.

(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.

(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.

(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.

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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.

(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.

(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.

(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;

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(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.

(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.

(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.

(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

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any amount credited as paid-up in respect of shares of the company, shall not be included in the amount credited as paid-up."

(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.

(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.

(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

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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.

(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.

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(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.

(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.

(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.

(72) Public financial institution-means—

- (i) the Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;

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- (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.

(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.

(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.

(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.

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(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.

(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.

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(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.

(79) Schedule- means a Schedule annexed to this Act.

No difference in the definition. However, in the 2013 Act there are 7 schedules.

(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.

(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.

(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.

(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.

(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.

(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;

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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 holding company even if the control referred to in point (i) &(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 at its discretion can appoint or remove all or a majority of the directors;
- (c) the expression "company" includes any body corporate;
- (d) "layer" in relation to a holding company means its subsidiary or subsidiaries;
 - The Ministry vide General Circular No. 20 /2013 issued a clarification with regard to holding of shares or exercising power in a fiduciary capacity for determining the Holding and Subsidiary relationship under Section 2(87) of the Companies Act, 2013. The Ministry clarified that the shares held by a company or power exercisable by it in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the holding-sub subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.

Point of Comparison in respect to new law

- Earlier this definition was not part of definition clause and were provided under the separate sections. The Act of 2013, restricts end number of subsidiaries which a holding company can have. It provides that such class or classes of the holding companies as may be prescribed shall not have the layers of subsidiaries beyond the prescribed numbers. The meaning of layer has also been provided in the definition.

(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.

No change in the definition.

(89) Total voting power - in relation to any matter, means the total number of votes 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.

No change in the definition.

(90) Tribunal -means the National Company Law Tribunal constituted under section 408.

The definition is same as that provided in the Companies Act, 1956.

(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.

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The definition is newly inserted under the Companies Act,2013.

(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.

(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.

(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.

(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.

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Study Note - 6

1. Central Government to prescribe Accounting Standards [Section 133]

The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

Notes: -

This clause corresponds to section 211(3C) of the Companies Act, 1956 and it seeks to provide that the Central Government may, after consultation with the National Financial Reporting Authority, prescribe the accounting standards as recommended by the Institute of Chartered Accountants of India for adoption by companies.

New

- Now the Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.
- In respect of accounting standards the role of National Financial Reporting Authority is limited to advise the Central Government or examine the accounting standards prescribed by Institute of Chartered Accountants of India.

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Study Note – 7

1. Issue of application forms for Securities [Section 33, except sub-section (3)]

- (1) No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus:

Provided that nothing in this sub-section shall apply if it is shown that the form of application was issued—

- (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or
- (b) in relation to securities which were not offered to the public.
- (2) A copy of the prospectus shall, on a request being made by any person before the closing of the subscription list and the offer, be furnished to him.
- (3) If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

Notes: -

This clause corresponds to sub-section (3) of section 56 of the Companies Act, 1956 and seeks to provide that every form of application issued for purchase of any securities of a company shall be accompanied by an abridged prospectus. If a company makes any default the company shall be punishable with fine.

Modified

- The scope of the section has been widened, requiring for form of application for all type of securities along with shares or debentures.
- In case of default, penalty has been increased and now if a Company makes default under this provision, it shall be liable to a penalty of fifty thousand rupees for each default.
- Under the Act, instead of Information Memorandum, each application for securities shall be accompanied by abridged Prospectus.

2. Civil liability for Mis-statements in Prospectus [Section 35, except clause (e) of sub-section (1)]

- (1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

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- (a) is a director of the company at the time of the issue of the prospectus;
- (b) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;
- (c) is a promoter of the company;
- (d) has authorized the issue of the prospectus; and
- (e) is an expert referred to in sub-section (5) of section 26,

shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

- (2) No person shall be liable under sub-section (1), if he proves—
 - (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
 - (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.
- (3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in sub-section (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Notes: -

This clause corresponds to section 62 of the Companies Act, 1956 and seeks to provide that in case any person subscribes for securities on the basis of misleading statements or inclusion or omission of any matter in the prospectus resulting in any loss or damage, the person who has authorised the issue of such prospectus or a director, promoter, whosoever is liable, shall have to compensate every person who has sustained such loss or damage.

New

- Under the Act, in addition to criminal liability, now civil liability will arise in cases of Prospectus issued for all types of securities and not only shares and debentures.
- Now apart from untrue statement, civil liability will also arise in case inclusion or omission of any matter which is misleading.
- Civil liability is also been extended to experts.

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- Where the Prospectus has been issued with an intention to defraud or for fraudulent purpose, every person who is liable under this section, shall be personally responsible without any limitation for the losses or damages incurred by any person who has subscribed to the securities on the basis of such Prospectus.

Dropped

- The exception that a person will not be liable for any civil liability in case, after the issue of the Prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein withdraw his consent to the Prospectus and gave reasonable public notice of the withdrawal and of the reason therefore, has been dispensed with.
- The general exception given to experts under the Companies Act, 1956 from civil liability has also been withdrawn.
- The definition of the term "promoters" is also excluded from this section.

4. Punishment for false statement [Section 448]

Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,—

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material,

he shall be liable under section 447.

Notes: -

This clause corresponds to section 628 of the Companies Act, 1956 and seeks to deal with penalty for false statement. It provides that if in any return, report, etc., required by, or for, the purpose of the provisions of this Act, any person who makes a false statement or omits material facts, shall be liable for action under section 447.

Modified

In case of making any false statement or omitting any material fact in any Return, Report, certificate, financial Statement, Prospectus, statement or other document required by or for the purposes of any of the provisions of this Act, the person in default shall be liable under section 447.

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5. Power of court to grant relief in certain cases [Section 463]

- (1) If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the court hearing the case that he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the court may relieve him, either wholly or partly, from his liability on such term, as it may think fit:

Provided that in a criminal proceeding under this sub-section, the court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

- (2) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a court before which a proceedings against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (1).
- (3) No court shall grant any relief to any officer under sub-section (1) or sub-section (2) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted.

Notes: -

This clause corresponds to section 633 of the Companies Act, 1956 and seeks to provide about the power of Court to grant relief to an officer of a company in respect of negligence, default, breach of duty, misfeasance or breach of trust provided that he has acted honestly and reasonably and having regard to all the circumstances of the case.

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| No Change |
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