Introduction

The Companies Bill as passed by Lok Sabha on 18th December 2012 (called Companies Bill, 2012) and passed by Rajya Sabha on 8th August 2013 (became Companies Bill 2013). Section 1 came into effect from 30th August 2013 i.e. the date of notification in the official Gazette after it received assent of President of India on August 29, 2013 and became the Companies Act, 2013 (Act 18 of 2013).

The Companies Act, 2013 is more of a rule-based legislation. It contains 470 sections and a significant part of the legislation will be in the form of rules.

The Act of 2013 intends to promote self-regulation and is aimed at building a smooth and easy corporate environment along with the new and improved measures of strong investor protection norms.

Sections of the Act and Rules Notified

The Ministry of Corporate Affairs notified 98 sections of the Companies Act, 2013 vide its notification dated 12th September, 2013 the effective date of which is 12th September 2013.

On February 27, 2014, the provisions of Section 135 i.e. Corporate Social Responsibility were notified to come into force w.e.f. April 01, 2014 along with Companies (Corporate Social Responsibility Policy) Rules, 2014 and Schedule VII.

On March 26, 2014, 183 sections of the Companies Act, 2013 and six schedules were notified by the Ministry of Corporate Affairs and came into effect from April 1, 2014.

282 Sections of the Companies Act, 2013 have been notified so far. The gist of sections notified are as under:

Chapter I relating to Preliminary – (Section 1; Section 2 except those provisions relating to Special Courts/ National Company
Law Tribunal and Appellate Tribunal (hereinafter referred to as Tribunal)/layers of subsidiary).

Chapter II relating to Incorporation of company and matters incidental thereto (Section 3 to 22 except provisions relating to ‘Tribunal’).

Chapter III relating to Prospectus and allotment of securities (Section 23 to 42 except provisions relating to ‘Tribunal’ including section 48).

Chapter IV relating to Share capital and debentures (Sections 43 to 72 except provisions relating to ‘Tribunal’ including section 66).

Chapter V relating to Acceptance of deposits by companies (Section 73 to 76 except section 75 as it involves powers to be exercised by ‘Tribunal’).

Chapter VI relating to Registration of charges (Sections 77 to 87).

Chapter VII relating to Management and administration (Sections 88 to 122 expect section 97-99 as it involves powers to be exercised by ‘Tribunal’).

Chapter VIII relating to Declaration and payment of dividend (Sections 123 to 127 except section 124 &125 as it involves powers to be exercised by ‘Tribunal’ and Investor Education Protection Fund).

Chapter IX relating to Accounts of companies (Sections 128 to 138 except section 130 to 132 relating to ‘Tribunal’, National Financial Reporting Authority).

Chapter X relating to Audit and auditors (Sections 139 to 148 except second provision subsection 4 & 5 of section 140).

Chapter XI relating to Appointment and qualifications of directors (Sections 149 to 172 except sub-section 169(4) relating to ‘Tribunal’).

Chapter XII relating to Meetings of board and its powers (Sections 173 to 195).

Chapter XIII relating to Appointment and remuneration of managerial personnel (Sections 196 to 205).

Chapter XIV relating to Inspection, inquiry and investigation (Sections 206 to 229 except sections 212 (8) to (10),213, 216, 220, 221 as these sections involves powers to be exercised by ‘Tribunal’).
Chapter XXI relating to PART I.— Companies Authorised to Register under this Act (Sections 366 to 374 except sections 370, 372 & 373 as these sections involves powers to be exercised by Court).

Chapter XXII relating to Companies incorporated outside India (Sections 379 to 393 except sub-section (2) of 391).

Chapter XXIII relating to Government companies (Sections 394 to 395).

Chapter XXIV relating to Registration offices and fees (Sections 396 to 404 except reference to the word ‘Tribunal’ in sub section (2) of 399).

Chapter XXV relating to Companies to furnish information or statistics (Section 405).

Chapter XXVI relating to Nidhis (Section 406).

Chapter XXVII relating to Constitution of National Company Law Tribunal and Appellate Tribunal— (Section 407 to 414).

Chapter XXVIII relating to Special courts (Section 439, 442 to 446).

Chapter XXIX relating to Miscellaneous (Section 447 to 470 except sections 465 and 466 relating to repeal of certain enactments and dissolution of Company Law Board).

Schedule I relating to Memorandum and Articles of Association of Companies.

Schedule II relating to useful lives to compute depreciation.

Schedule III relating to general instructions for preparation of Balance Sheet and Statement of Profit and Loss of a Company.

Schedule IV relating to Code for Independent Directors.

Schedule V relating to Appointment and Remuneration of A managing or whole time director or a manager.

Schedule VI relating to infrastructural projects and infrastructural facilities.

Schedule VII relating Corporate Social Responsibility activities.
The following Rules under the Companies Act, 2013 have been notified as on March 31, 2014 to take effect from April 1, 2014.

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The nomenclature of the Rules are based on the names of the chapters under the Act.

**Gist of Sections not notified**

Chapter XV relating to Compromises, Arrangements and Amalgamations (Sections 230 to 240).

Chapter XVI relating to Prevention of Oppressions and Mismanagement (Sections 241 to 246).

Chapter XVII relating to Registered Valuers (Section 247).

Chapter XVIII relating to Removal of names of companies from the Register of Companies (Sections 248 to 252).

Chapter XIX relating to Revival and Rehabilitation of sick companies (Sections 253 to 269).

Chapter XX relating to winding up (Sections 270 to 365).

Chapter XXI relating to Part II of Chapter XXI winding up of unregistered companies (Sections 375 to 378).

Chapter XXVII relating National Company Law Tribunal and Appellate Tribunal– (Section 415 to 434).

Chapter XXVIII relating to Special courts (Section 435 to 438, 440 & 441).

**Applicability**

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; and

(f) such 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.

Definitions

Section 2 provides the definitions of the terms used under the Act. Some of the definitions are provided here:

2(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;

The term is defined in harmonization with SEBI regulations.

2(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.

Explanation.—For the purposes of this clause, “significant influence” means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;

The definition of an associate is based on control of minimum 20 percent ownership of total share capital or of business decisions.

The term ‘control’ includes:

- 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.

This control may be by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

It will have the following impact on various provisions of the Act as under:

- A company will now be required to lay, along with the financial statement, the consolidated financial statements of its subsidiaries. The word subsidiary will include associate company and joint venture.

- Annual return of every company shall contain the particulars of associate companies. Register of directors and key managerial personnel kept under section 170 is required to include the details of securities held by each of them in company or its holding, subsidiary, subsidiary of company’s holding company or associate companies.

- The auditor cannot provide certain specified non-audit services to the associate companies.

- Prohibition on forward dealings in securities of company by director or key managerial personnel under section 194 applies to associate company also.

- The associate companies are to be considered as ‘related parties’ under section 188.

These provisions are expected to strengthen the good corporate governance practices.

2(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;

Auditing standards have been given legal recognition under the Act which requires that every auditor shall comply with the auditing standards notified by Central Government.

2(12) “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;

Maintenance of documents in electronic form is recognized.

2(14) “branch office”, in relation to a company, means any establishment described as such by the company;
This definition is simplified. Any establishment which is described as branch office by the company would be termed as branch office.

2(18) "Chief Executive Officer" means an officer of a company, who has been designated as such by it;

This term is newly recognized term. Chief Executive Officer (CEO) is recognized as Key Managerial Personnel of the company. In the prescribed class of companies, either Managing Director or CEO or manager and in their absence a whole time director must be appointed.

2(19) "Chief Financial Officer" means a person appointed as the Chief Financial Officer of a company;

This term is newly recognized term. Chief Financial Officer (CFO) is recognized as Key Managerial Personnel of the company. There must be an CFO in the prescribed class of companies as per the provisions of section 203.

2(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;

Company Liquidator needs to be appointed from panel of professionals maintained by Central Government consisting of the names of Chartered Accountants, advocates, company secretaries, cost accountants and other notified professionals who are having at least ten years’ experience in company matters. (This Clause not notified)

2(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 term control is defined which is intended to bring clarity.

It is the right which may be exercisable by individual or in concert, directly or indirectly.

This control may have been gained by any manner would be covered. Hence the controlling parties are suitably bound by the provisions under this Act to act or to disclose in the specified manner.
2(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;

Stringent norms are prescribed for acceptance of deposits. Companies are allowed to accept deposits only from members after complying with certain conditions. Only the big companies fulfilling certain prescribed criteria can invite deposits from public which are also subject to complying with certain conditions including credit rating.

2(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;

Maintenance of documents in electronic form is recognized.

2(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;

Directors, officers or employees of holding or subsidiary company are also eligible for Employee stock options.

2(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;

‘Expert’ is a newly recognized term. It is an inclusive definition. They are held responsible under various provisions of the Act.

2(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;

Cash flow statement and changes in equity is recognized under the ‘financial statement’ of the company. The Act introduces a new provision on re-opening/restatement of financial statements subject to compliance of provisions. It also recognizes voluntary restatement on application by the Board of Directors if in their opinion the financial statements/Board report do not comply with the requirements of the Act. This is also subject to complying with the provisions of Act.

2(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;

The Act requires all companies to adopt a uniform financial year of 1 April to 31 March.

Only holding or subsidiary companies of a company incorporated outside India would be entitled to the exception of having a different accounting year.

However, these companies have to seek specific approval from the Tribunal to avail the exception.

2(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.
As per the rule 2 (1)(h) of Company (Specification of Definition Details) Rules, 2014 for the purposes of clause (42) of section 2 of the Act, the phrase ‘electronic mode’ means carrying out electronically based, whether the main server is installed in India or not, but not limited to—

(i) business to business and business to consumer transactions, data interchange and other digital supply transactions;

(ii) offering to accept deposits or subscriptions in India or from citizens of India;

(iii) financial settlements, web based marketing, advisory and transactional services database services and products, supply chain management;

(iv) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(v) all related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

With this, the companies doing business through electronic mode are also termed as foreign company and need to comply with the specified provisions.

2(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;

2(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;

2(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;

2(47) “independent director” means an independent director referred to in sub-section (5) of section 149;

Independent Director is recognized in the law. He has an important role under the law. As per the definition, he must be the one who is not having any conflict of interest. He should be independent in letter and spirit.

2(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;

2(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;

2(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;

The new law enshrines a significant duty on the Key Managerial Personnel (KMP) of the company in successful running of the company. It clearly specifies that whole time KMP not to hold office in more than one company except in its subsidiary at same time. The KMP would guide the Boards to achieve their defined objectives, and purposes by adherence to good Corporate Governance practices. KMP would also be looked upon by the Regulators for the non-compliances.

Key Managerial personnel are also included in ‘related parties’ of the company.

2(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;

In section 76 i.e. Acceptance of deposits from public by certain companies. The term is used as a criteria for acceptance of deposits from persons other than its members.

In section 135 i.e. 'Corporate Social Responsibility', the term is used as a criteria for constituting CSR Committee.

In section 148 (2), i.e. Central Government to specify audit of items of cost in respect of certain companies, net worth is one of the criteria for classifying the company by Central Government to specify audit of items of cost in respect of certain companies.

Under draft rules also, the term net worth has been used at many places.

2(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;

A close analysis of the section reveals that liability as officer in default is fastened on all the officers specified in clauses (i) to (vii). All the said seven specified categories of officers would be deemed to be officer who is in default irrespective of whether they were party to the default or not. It would be enough to show that a statutory provision has not been complied with to bring them under this section. However, it applies to those provisions of the Act, which uses the expression ‘officer who is in default’.

The share transfer agents, registrars and merchant bankers to the issue or transfer are also identified as officer in defaults as far as issue of shares or transfer of shares of company is concerned.

2(62) “One Person Company” means a company which has only one person as a member.

As per section 3(1)(c), One person Company is considered as a private company.

In terms of Rule 3 of the Companies (Incorporation) Rules, 2014, only a natural person who is an Indian citizen and resident in India is eligible to incorporate OPC.

Many relaxations have been granted to OPC in compliances and procedural aspects. For example, OPC is not required to hold AGM. Relaxation with regard to holding board meetings, preparation of financial statements (cash flow exempted), signing of annual return etc.

2(65) “postal ballot” means voting by post or through any electronic mode; Electronic mode is recognized.

2(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;

Maximum number of members that a private company can have is 200.

Private companies are treated at par with public companies as far as compliances under the Act are concerned. Number of exemptions are less as compared to those given by 1956 Act.

(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;

The term is defined to bring clarity. Promoters have been held liable at various provisions of the Act for ex. Incorporation by false documents, alteration of objects for which the company has raised funds, misstatements in prospectus etc.

2(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;

It is clarified the status of a private company which is a subsidiary of a public company by providing specifically in the proviso that such company shall be deemed to be public company irrespective of its status as private company in its articles.

2(74) “register of companies” means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;

Maintenance of Register of companies in electronic mode is recognized.

2(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;

2(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;

As per Company (Specification of Definition Details) Rules, 2014, for the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

2(77) “relative”, with reference to any person, means anyone 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;

As per Company (Specification of Definition Details) Rules, 2014 the List of relatives in terms of clause (77) of section 2is as under:

(1) Father:

Provided that the term “Father” includes step-father.

(2) Mother:

Provided that the term “Mother” includes the step-mother.

(3) Son:

Provided that the term “Son” includes the step-son.

(4) Son’s wife.

(5) Daughter.

(6) Daughter’s husband.

(7) Brother:

Provided that the term “Brother” includes the step-brother;

(8) Sister:

Provided that the term “Sister” includes the step-sister.
2(79) “Schedule” means a Schedule annexed to this Act;

There are seven schedules which are annexed to the Act. These are as below:

Schedule I: Memorandum of Association and Articles of Association, pursuant to sections 4 and 5

Schedule II: Useful lives to compute depreciation, pursuant to section 123;

Schedule III: General Instructions for preparation of balance sheet and statement of Profit and loss of a company, pursuant to section 129;

Schedule IV: Code of Independent Directors, pursuant to section 149(7);

Schedule V: Conditions to be fulfilled for the appointment of a managing or whole-time director or a manager without the approval of the Central Government, pursuant to sections 196 and 197;

Schedule VI: Definition of the term “infrastructural projects” of “infrastructural facilities”, pursuant to sections 55 and 186;

Schedule VII: Activities which may be included in Corporate Social Responsibility policies, pursuant to section 135.

2(83) “Serious Fraud Investigation Office” means the office referred to in section 211;

Serious Fraud Investigation Office is functional under the supervision of Ministry of Corporate Affairs. It is now recognized under the Companies Act.

2 (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;

New form of company is recognized which is a private company which is subject to certain relaxations in terms of compliances.

Further, a holding company or a subsidiary company, a company registered under section 8, or a company or body corporate governed by any special Act cannot be a small company even if it fulfills the criteria of paid up capital or turnover.

Merger or amalgamation between two or more small companies has been simplified without the requirement of court process.

2(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. (This proviso not notified)

Explanation.—For the purposes of this clause,—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

(b) the composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

(c) the expression “company” includes anybody corporate;

(d) “layer” in relation to a holding company means its subsidiary or subsidiaries;

The definition of a subsidiary under the 2013 is based on ownership of the total share capital which includes preference share capital. As per the Rule 2(1)(r) of Companies (Specification
of definitions details) Rules, 2014 the term “Total Share Capital”, for the purposes of clause (6) and clause (87) of section 2, means the aggregate of the:

(a) paid-up equity share capital; and
(b) convertible preference share capital;

This will have a significant impact on several companies which have issued preference shares. Because of this provision, holding-subsidiary relationships would come existence between various companies.

Provision restricting number of layers of subsidiaries is incorporated.

MCA clarification no. No.1/1212013-cl-v dated December 27, 2013:

Subject: Clarification with regard to holding of shares or exercising power in a fiduciary capacity - Holding and Subsidiary relationship under Section 2(87) of the Companies Act, 2013.

“This Ministry has received a number of representations consequent upon notifying section 2(87) of the Companies Act, 2013 which defines “subsidiary company” or “subsidiary”. The stakeholders have requested this Ministry to clarify whether shares held or power exercisable by a company in a ‘fiduciary capacity’ will be excluded while determining if a particular company is a subsidiary of another company. The stakeholders have further pointed out that in terms of section 4(3) of the Companies Act, 1956, such shares or powers were excluded from the purview of holding-subsidiary relationship.

The matter has been examined in the Ministry and it is hereby 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-subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.”

2(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;

2(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;
2(90) "Tribunal" means the National Company Law Tribunal constituted under section 408;

National Company Law Tribunal is empowered to entertain all the company matters. It would serve single window settlement of case relating to companies thereby reducing the time for completion of proceedings.

2(95) words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in those Acts.