



AMIT BACHHAWAT'S TRAINING FORUM

**CA Final (New Syllabus): Corporate and Economic Laws/
CA Final (Old Syllabus): Corporate & Allied Laws/
CMA Final: Capital Market Analysis & Corporate Laws**

Contents

1 Definition

Address & Contact :

Centre 1 : 125, Muktaram Babu Street, 3rd Floor, Near Ram Mandir, Kolkata - 700 007

Centre 2 : Bachhawat House, 1st Floor, 20, Balmukund Macker Road,
Near Mahatama Gandhi Road, Metro Station, Kolkata - 700 007

Contact No: (033) 40647207, 9836110338, 9038008364, 9830259002



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Chapter 2



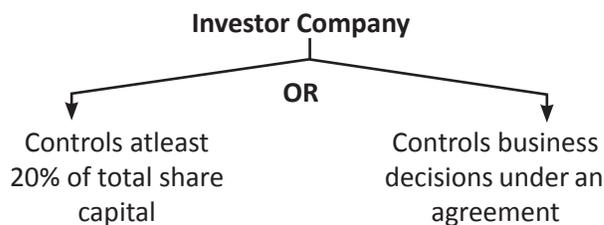
- (1) **“abridged prospectus”** means a **memorandum containing such salient features of a prospectus** as may be specified by the Securities and Exchange Board by making regulations in this behalf;
- (2) **“accounting standards”** means the **standards of accounting** or any addendum thereto for companies or class of companies referred to in section 133;
- (3) **“alter”** or **“alteration”** includes the making of **additions, omissions and substitutions**;
- (4) **“Appellate Tribunal”** means the **National Company Law Appellate Tribunal** constituted under section 410;
- (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;
- (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 purpose of this clause —

(a) the expression **“significant influence”** means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement;

(b) the expression **“joint venture”** means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

Suppose a company X limited holds 53% shares of Y limited.

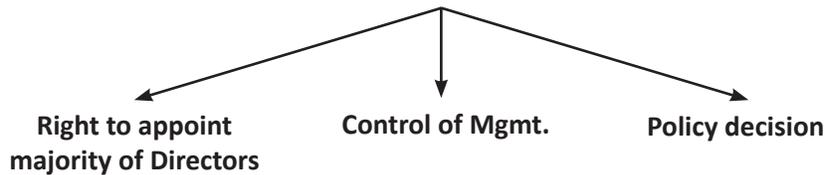


Then Y limited is a subsidiary Company and not Associate Company.

- (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;
- (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;
- (9) **“banking company”** means a banking company as defined in clause (c) of section 5 of 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**;
- (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;
- (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**;

- (13) **“books of account” includes records** maintained in respect of—
- (i) **all sums of money received and expended by a company** and matters in relation to which the receipts and expenditure take place;
 - (ii) **all sales and purchases of goods and services** by the company;
 - (iii) **the assets and liabilities of the company;** and
 - (iv) **the items of cost** as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;
- (14) **“branch office”,** in relation to a company, means **any establishment described as such by the company;**
- (15) **“called-up capital”** means such part of the **capital, which has been called for payment;**
- (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;**
- (17) **“chartered accountant”** means a **chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949** who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;
- (18) **“Chief Executive Officer”** means an **officer of a company,** who has been **designated as such** by it;
- (19) **“Chief Financial Officer”** means a person appointed as the **Chief Financial Officer of a company;**
- (20) **“Company”** means a **company incorporated under this Act or under any previous company law;**
- (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;
- (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;
- (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;
- (24) **“company secretary” or “secretary”** means a **company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980** who is appointed by a company to perform the functions of a company secretary under this Act;
- (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;**
- (26) **“contributory”** means a **person liable to contribute towards the assets of the company in the event of its being wound up.**
- Explanation.*—For the purposes of this clause, it is hereby clarified that **a person holding fully paid-up shares in a company shall be considered as a contributory** but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory;
- (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;

Shareholding | Shareholders Agreements | Voting Agreements



- (28) “cost accountant” means a **cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959** and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act, :
- (29) “court” means –
- (i) the **High Court having jurisdiction** in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii);
 - (ii) **the district court**, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district;
 - (iii) **the Court of Session** having jurisdiction to try any offence under this Act or under any previous company law;
 - (iv) **the Special Court** established under section 435;
 - (v) **any Metropolitan Magistrate** or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law;
- (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;

Provided that –

(a)	the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and
(b)	such other instrument, as may be prescribed by the Central Government in consultation with Reserve Bank of India, issued by a company, shall not be treated as debenture;

- (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**;
- (32) “depository” means a **depository** as defined in clause (e) of sub-section (1) of section 2 of the **Depositories Act, 1996**;
- (33) “derivative” means the **derivative as defined** in clause (ac) of section 2 of the **Securities Contracts (Regulation) Act, 1956**;
- (34) “director” means a **director appointed to the Board** of a company;
- (35) “dividend” **includes any interim dividend**;
- (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;
- (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;

- (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;
- (39) “**financial institution**” includes a **scheduled bank**, and **any other financial institution defined or notified** under the Reserve Bank of India Act, 1934;
- (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) such other officer, not more than one level below the directors who is in whole-time employment, designed as key managerial personnel by the Board; and
 - (vi) 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**;

- (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 OR **associate company** 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;

- (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.
- (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**;

- (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;
- (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**;
- (46) **“holding company”**, in relation to one or more other companies, means a company of which such companies are subsidiary companies;

Explanation :- For the purposes of this clause, the expression “Company” includes any body corporate.

- (47) **“independent director”** means an independent director referred to in sub-section (5) of section 149;
- (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;
- (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;
- (50) **“issued capital”** means such capital as the company issues from time to time for subscription;
- (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, not more than one level below the Directors who is in whole-time employment, designated as key managerial personal by the Board, and
 - (vi) such other officer as may be prescribed;
- (52) **“listed company”** means a company which has any of its securities listed on any recognised stock exchange;
- (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;
- (54) **“managing director”** means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Explanation.—For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management;

- (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;
- (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;
- (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**, and Debit or Credit Balance of Profit and Loss 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;
- (58) “**notification**” means a **notification published in the Official Gazette** and the expression “notify” shall be construed accordingly;
- (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**;
- (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;

- (61) “**Official Liquidator**” means an **Official Liquidator** appointed under sub-section (1) of section 359;
- (62) “**One Person Company**” means a **company which has only one person** as a member;
- (63) “**ordinary or special resolution**” means an ordinary resolution, or as the case may be, special resolution referred to in section 114;
- (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;
- (65) “**postal ballot**” means **voting by post or through any electronic mode**;
- (66) “**prescribed**” means **prescribed by rules** made under this Act;
- (67) “**previous company law**” means any of the laws specified below:—
- (i) Acts relating to companies in force before the Indian Companies Act, 1866;
 - (ii) the Indian Companies Act, 1866;
 - (iii) the Indian Companies Act, 1882;
 - (iv) the Indian Companies Act, 1913;
 - (v) the Registration of Transferred Companies Ordinance, 1942;
 - (vi) the Companies Act, 1956; and
 - (vii) any law corresponding to any of the aforesaid Acts or the Ordinances and in force—
 - (A) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913; or
 - (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;
- (68) “**private company**” means a **company having a 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;

(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;

[D] 2014- A, B, C and D developed a business plan to implement the plan, it was decided that A and B will incorporate a company and C, a Chartered Accountant will provide them his professional services for the same. It was also decided that D will provide loan to the company. The loan to be provided by D was essential to start the business of the company. Advice, out of C and D, who shall be regarded as promoter of the company

Ans . Section 2(69) of the Companies Act, 2013 defines the term ‘promoter’ as a person -

- a. Who has been named as such in a prospectus or is identified by the company in the annual return; or
- b. Who has control over the affairs of the company, directly or indirectly whether as a shareholder, direct or otherwise; or
- c. In accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

However, sub-clause (c) shall not apply to a person who is acting merely in a professional capacity. In the given case, C providing professional service as a CA will not be treated as promoter.

D will provide Loan to the company essential to start the business is deemed to be promoter of the Company.

(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;

(71) “**public company**” means a company which—

- (a) is **not a private company**; and
- (b) has a **paid-up share 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 ;

(72) “**public financial institution**” means—

- (i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956;
- (ii) the Infrastructure Development Finance Company Limited, referred to in clause (vi) of sub-section (1) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act;
- (iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;

- (iv) institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act;
- (v) such **other institution as may be notified** by the Central Government in consultation with the Reserve Bank of India:

Provided that **no institution shall be so notified** unless—

- (A) it has been established or constituted by or under any Central or State Act; or
 - (B) not less than fifty-one per cent. of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments;
- (73) “**recognised stock exchange**” means a recognised stock exchange as defined in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;
- (74) “**register of companies**” means the **register of companies maintained by the Registrar** on paper or in any electronic mode under this 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;
- (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 or his relative is a member or director**;
 - (v) a **public company** in which a **director or manager is a director and 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 body corporate which is—
(A)	a holding, subsidiary or an associate company of such company;
(B)	a subsidiary of a holding company to which it is also a subsidiary; or
(C)	an investing company or the venturer of a company;

- (ix) such other person as may be prescribed;
- (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;

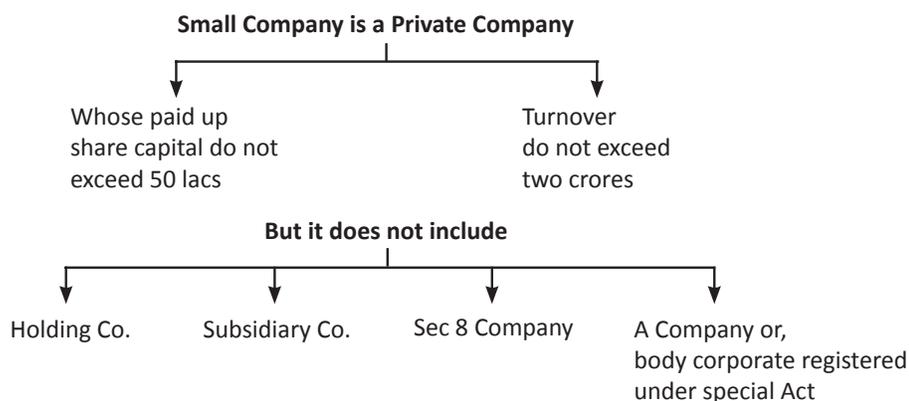
The Rules prescribed as under:

A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-

- (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.
- (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;
- (79) “**Schedule**” means a Schedule annexed to this Act;
- (80) “**scheduled bank**” means the **scheduled bank** as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934;
- (81) “**securities**” means the securities as **defined** in clause (h) of section 2 of **the Securities Contracts (Regulation) Act, 1956**;
- (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;
- (83) “**Serious Fraud Investigation Office**” means the office referred to in section 211;
- (84) “**share**” means a **share in the share capital of a company and includes stock**;
- (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 ten crore rupees; AND
 - (ii) **turnover of which as per its last profit and loss account for the immediately preceding financial year does not exceed two crore rupees** and such higher amount as may be prescribed which shall not be more than one hundred 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;



(86) **“subscribed capital”** means such part of the **capital** which is for the time being **subscribed by the members** of a company;

(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 voting power either at its own or together with one or more of its subsidiary companies:
Explanation.—For the purposes of this clause,—	
(a)	a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
(b)	the composition of a company’s Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
(c)	the expression “company” includes any body corporate;

(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;

(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;

(90) **“Tribunal”** means the **National Company Law Tribunal** constituted under section 408;

(91)	“turnover” means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution off goods or on account of services rendered, or both, by a company during a financial year.;
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(92) **“unlimited company”** means a **company not having any limit on the liability** of its members;

(93) **“voting right”** means the **right of a member of a company to vote in any meeting** of the company or by means of postal ballot;

(94) **“whole-time director”** **includes a director in the whole-time employment** of the company;

(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.

SOME DEFINITIONS INCLUDED BY RULES:

“**Certifying Authority**” for the purpose of Digital Signature Certificate means a **person who has been granted a licence to issue a Digital Signature Certificate** under section 24 of the Information Technology Act, 2000 (21 of 2000) and the Certified Filing Center (CFC) under the Act;

“**digital signature**” means the **digital signature as defined** under clause (p) of sub-section (1) of section 2 of the **Information Technology Act, 2000 (21 of 2000)**;

“**Digital Signature Certificate**” means a **Digital Signature Certificate** as defined under clause (q) of sub-section (1) of section 2 of the **Information Technology Act, 2000 (21 of 2000)**;

“**Director Identification Number**” (DIN) means an **identification number allotted by the Central Government to any individual, intending to be appointed as director** or to any existing director of a company, for the purpose of his identification as a director of a company;

Provided that the Director Identification Number (DIN) obtained by the individuals prior to the notification of these rules shall be the DIN for the purpose of the Companies Act, 2013:

Provided further that “**Director Identification Number**” (DIN) includes the **Designated Partnership Identification Number (DPIN)** issued under section 7 of the Limited Liability Partnership Act, 2008 (6 of 2009) and the rules made thereunder;

“**e-Form**” means a **form in the electronic form as prescribed under the Act** or the rules made thereunder and notified by the Central Government under the Act;

“**electronic Mail**” means the **message sent, received or forwarded in digital form** using any **electronic communication** mechanism that the message so sent, received or forwarded is storable and retrievable;

“**electronic mode**”, for the purposes of clause (42) of section 2 of the Act, means **carrying out electronically based, whether main server is installed in India or not, including**, 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 inviting deposits** or accepting deposits or subscriptions in securities, 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;

“**electronic record**” means the **electronic record** as defined under clause (t) of sub-section (1) of section 2 of the **Information Technology Act, 2000**;

“**electronic Registry**” means an electronic repository or **storage system of the Central Government in which the information or documents are received, stored**, protected and preserved in electronic form;

“**Executive Director**” means a **whole time director as defined** in clause (94) of section 2 of the Act;

“**Fees**” means the fees as specified in the Companies (Registration Offices and Fees) Rules, 2014;

“**Form**” means a form set forth in the Act or the rules made thereunder which shall be used for the matter to which it relates;

“**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;**

For the purposes of clause (d) of sub-section (1) of Section 164 and clause (f) of sub-section (1) of section 167 of the Act, “or otherwise” means any offence in respect of which he has been convicted by a Court under this Act or the Companies Act, 1956;

	<p>The paid-up share capital of Advanced Castings Private Ltd. is ` One crore consisting of 8,00,000 equity shares of ` 10 each fully paid-up. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd. are holding 3,00,000 equity shares and 1,50,000 equity shares respectively in Advanced Castings Private Ltd. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd. are the subsidiaries of Unique Machineries Pvt. Ltd. Examine with reference to the provisions of the Companies Act whether Advanced Castings Private Ltd. is a subsidiary of Unique Machineries Pvt. Ltd. Will your answer be different, if Unique Machineries Pvt. Ltd. controls the composition of board of Directors of Advanced Castings Private Ltd.?</p>	
	Total ESC of Advanced Castings Pvt. Ltd.	- Is ₹ 80,00,000
	ESC held by Quality Forgings Pvt. Ltd. In Advance Castings Pvt. Ltd.	- Is ₹ 30,00,000
	ESC held by Supreme Engineering Pvt. Ltd. In Advanced Castings Pvt. Ltd.	- Is ₹ 15,00,000
	ESC held by Unique Machineries Pvt. Ltd in Advanced Castings Pvt. Ltd.	- Is ₹ 45,00,000 since for the purpose of determining holding subsidiary relationship, ESC held in Advanced Castings (Private) Ltd. By its Subsidiaries Quality Forgings Pvt. Ltd. (viz. ` 30,00,000) and Supreme Engineering Pvt. Ltd. (viz. ` 15,00,000) shall be considered.
	Advanced Castings Pvt. Ltd. Is a subsidiary of Unique Machineries Pvt. Ltd.	- Since Unique Machineries Pvt. Ltd. Holds more than one-half of ESC of Advanced Castings Pvt. Ltd.
	Answer would remain same	- Even if Unique Machineries Pvt. Ltd. Controls the composition of Board of Directors of Advanced Castings Pvt. Ltd.

	Definition of Dormant Company.						
	<p>(1) Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.</p> <p>Explanation. -- For the purposes of this section,--</p> <p>(i) “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;</p>						
	<p>(ii) “significant accounting transaction” means any transaction other than--</p> <p>(a) payment of fees by a company to the Registrar;</p> <p>(b) payments made by it to fulfil the requirements of this Act or any other law;</p> <p>(c) allotment of shares to fulfil the requirements of this Act; and</p> <p>(d) payments for maintenance of its office and records.</p>						
<p>Application to ROC for obtaining the status of dormant company</p>	<p>Case A:</p>	<table border="1"> <tr> <td data-bbox="586 999 781 1167"> Formed under the Companies Act, 2013 </td> <td data-bbox="781 1062 837 1094" style="text-align: center;">and</td> <td data-bbox="846 999 1105 1167"> Purpose <ul style="list-style-type: none"> • Future project; or • Hold an asset or intellectual property </td> <td data-bbox="1105 1062 1162 1094" style="text-align: center;">and</td> <td data-bbox="1179 999 1390 1167"> No significant accounting transaction for last few years </td> </tr> </table> <p>Case B: Company is an ‘inactive company’</p>	Formed under the Companies Act, 2013	and	Purpose <ul style="list-style-type: none"> • Future project; or • Hold an asset or intellectual property 	and	No significant accounting transaction for last few years
Formed under the Companies Act, 2013	and	Purpose <ul style="list-style-type: none"> • Future project; or • Hold an asset or intellectual property 	and	No significant accounting transaction for last few years			
<p>Conditions for making application</p>	<p>SR passed in GM</p>	<p>or</p> <ul style="list-style-type: none"> • Notice is issued to all the shareholders; and • Consent of at least 3/4th shareholders (in value) is obtained 					
<p>Meaning of ‘Inactive Company’</p>	<p>Not been carrying on business</p>	<p>or</p> <p>Not made any significant accounting transaction during last 2 FYs</p> <p>or</p> <p>Not filed financial statement and annual returns during last 2 FYs</p>					
<p>Meaning of significant accounting transaction</p>	<p>Any transaction other than -</p> <table border="1"> <tr> <td data-bbox="456 1593 586 1730"> Payment of fees to ROC </td> <td data-bbox="586 1593 837 1730"> Payments made to fulfil requirements of any law </td> <td data-bbox="837 1593 1130 1730"> Allotment of shares to fulfil the requirements of the Act </td> <td data-bbox="1130 1593 1373 1730"> Payments for maintenance of its office and records </td> </tr> </table>		Payment of fees to ROC	Payments made to fulfil requirements of any law	Allotment of shares to fulfil the requirements of the Act	Payments for maintenance of its office and records	
Payment of fees to ROC	Payments made to fulfil requirements of any law	Allotment of shares to fulfil the requirements of the Act	Payments for maintenance of its office and records				
<p>Action by ROC</p>	<p>Allow the status of dormant company</p>	<p>Entries made in the Register of dormant companies</p>					

ILLEGAL ASSOCIATION

Section 464 - PROHIBITION OF ASSOCIATION OR PARTNERSHIP OF PERSONS EXCEEDING CERTAIN NUMBER

No association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force:

Provided that the number of persons which may be prescribed under this sub-section shall not exceed one hundred.

Nothing in sub-section (1) shall apply to--

a Hindu undivided family carrying on any business; or

an association or partnership, if it is formed by professionals who are governed by special Acts.

Every member of an association or partnership carrying on business in contravention of sub-section (1) shall be punishable with fine which may extend to one lakh rupees and shall also be personally liable for all liabilities incurred in such business.

	<p>The United Traders Association was constituted by two Joint Hindu Families consisting of 51 major and 5 minor members. The Association was carrying the business of trading as retailers with the object for acquisitions of gain. The Association was not registered as a company under the Companies Act or other law.</p> <p>State whether United Traders Association is having any legal status? Will there be any change in the status of the Association if the members of the United Traders Association is subsequently reduced to 45.</p>					
	<table border="1"> <tr> <td>United Traders Association is an illegal association</td> <td>- Since the number of adult members exceeds 50</td> </tr> <tr> <td>Effect of subsequent reduction in number of members</td> <td>- Would not make any change in then status of United Traders Association, since an illegal association continues to be an illegal association even though, subsequently, the number of members is reduced below 50</td> </tr> </table>	United Traders Association is an illegal association	- Since the number of adult members exceeds 50	Effect of subsequent reduction in number of members	- Would not make any change in then status of United Traders Association, since an illegal association continues to be an illegal association even though, subsequently, the number of members is reduced below 50	
United Traders Association is an illegal association	- Since the number of adult members exceeds 50					
Effect of subsequent reduction in number of members	- Would not make any change in then status of United Traders Association, since an illegal association continues to be an illegal association even though, subsequently, the number of members is reduced below 50					
	<p>A promoter is neither an agent nor a trustee of the company, but he occupies a fiduciary position in relation to the company. Discuss.</p>					
	<p>The concept of promoter plays the role before incorporation of the Company. Therefore, he is not an agent of the company as there is no existence of the company.</p> <p>The concept of promoter plays the role before incorporation of the Company. Therefore, he is not a trustee of it as there is no existence of the company. A promoter occupies a fiduciary position in relation to the company he promotes. He is required to disclose fully on his part as soon as the company comes into existence. In <i>Lagunas Nitrate Co. V. Lagunas Syndicate</i>(1899) 2ch 392 it was observed that ‘promoters’ stand in a fiduciary relation to the company they promote and to those persons whom they include to become shareholders in it.</p>					