

## **B. OBJECTIVES OF THE ACT**

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To promote the development of the economy by encouraging entrepreneurship and enterprise efficiency and creating flexibility and simplicity in the formation and maintenance of companies;

To encourage transparency, accountability and high standards of corporate governance;

To recognize various new concepts and procedures facilitating ease of doing business while protecting interests of all the stakeholders;

To enforce strict action against the fraud & gross non compliance with the company law provisions

To set up institutional structure in the form of various authorities, bodies and panels as well as by including recognition of various roles for professionals and other experts; and

To cater to the need for more effective and time bound approvals and compliance requirements

**1. "Accounting standards" 2(2) :** "means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133."

**Section 133 :** The Central Government may prescribe the standard of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountant of India, constituted under Section 3 of the Chartered Accountant Act, 1949, in consultation with & after examination of the recommendations made by the National Financial Reporting Authority.

**Explanation :** These definitions were incorporated with the view that in globalised era there must be a standard format & thus enabling uniformity in the accounting standard. The accounting standard is set by the International Accounting Standard Board. Thus Indian Accounting Standards will be made mandatory since 2016. Prior to Accounting standard they were known as "Generally Accepted Accounting Principle" which is known as GAAP. The basic object of the Accounting standard is to bring uniformity. The standard is framed by the Central Government on the recommendation of Institute of Chartered Accountant of India & in consultation & examination by the National Financial Reporting Authority.

**2. Auditing standards 2(7) :** "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 means an inspection of books of accounts. The auditing standards represent the honest & best practice of the profession & adopted by the professionals. Uniformity in maintaining the books of accounts can be practiced. Central Government in consultation with the National Financial Authority has framed the accounting standard. It is the duties & responsibility of the auditors to ensure the maintenance of accounting standard.

**3. Books of account Section 2(13):** "Includes records maintained in respect of:

- all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
- all sales and purchases of goods and services by the company;
- the assets and liabilities of the company; and
- 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".

Every company must maintain books of accounts. Books of accounts must reflect fair & true state of affairs of the company including its branch or branches as the case may be. Generally the top level management is responsible for maintaining books of accounts. Top management refers to Managing Director, Whole Time Director, Chief Financial Officer, etc. Top level management is responsible to take all major decision & secure the compliance of the company as per company law regarding the maintenance of the books.

**4. Deposit Section 2(31):** "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."

This section must be referred along with sections 73 to 76 of the companies Act, 2013 & section 2(c) of the Companies (Acceptance of Deposits) Rules, 2014. Deposits are received from the public in different methods namely :

➤ Loan from individuals, Financial Institutions

- Amount guaranteed by central, State Government
- Amount received from public sector, private sector & foreign banks.
- Any amount received by way of interest from trust, financial institution, etc.
- Advances received or amount received from the public, promoters, directors, shareholders & employees.
- Company receiving deposits are required to maintain necessary register with complete details at the corporate office. In case of violation of any rules, the company & the officer in-charge shall be punishable to the extent of ₹ 5000/- & for continuing offence further fine of ₹ 500/- per day during the continuance of the contravention period.

**5. Financial year, Section 2(41) :** "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".

**Explanation:** The Companies Act, 2013 came into effect from 1st April, 2014, the format of reporting financial statements has also been revised. Every Company shall follow a uniform financial year, from 1st April to 31st March. Companies that are still following a different financial year need to align with the new requirement of law within two years of implementation of Act, i.e by 31st March 2016. A Company or a Body Corporate, which is holding or subsidiary of a Company incorporated outside India, may follow a different financial year only with permission of Tribunal.

**6. Foreign company 2(42) :** 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"

**Explanation:** Foreign Company means any company or body corporate incorporated outside India which:

- Has a place of business (includes a share transfer or registration office) in India whether by itself or through an agent, physically or by electronic mode; and
- Conducts any business activity in India in any other manner.
- As per FEMA, no person resident outside India shall, without prior approval of RBI establish in India a branch or liaison office or any other place of business by whatever name called.
- A foreign company is required to register with ROC within 30 days from the date of its establishing a place of business in India.
- Not less than 50% of the paid up share capital whether equity or preference or partly equity & partly preference of a foreign company shall

be held by one or more citizens of India or by one or more companies or body corporate in India.

**7. Independent director Section 2(47) :** "means an independent director referred to in sub-section (5) of section 149".

**Explanation :** One of the significant aspects of the 2013 Act is the effort made towards incorporating some of the salient requirements mandated by the SEBI in clause 49 of the listing agreement in the 2013 Act itself. To this effect, the 2013 Act requires every listed public company to have at least one-third of the total number of directors as independent directors. Further, the central government in the draft rules has prescribed the minimum number of independent directors in case of the following classes of public companies [section 149(4) of 2013 Act].

- i) Public companies having paid up share capital of 100 crore INR or more; or
- ii) Public companies having turnover of 300 crore INR or more
- iii) Public companies which have, in aggregate, outstanding loans or borrowings or debentures or deposits, exceeding 200 crore INR

"Independent director" means a person other than an executive officer or employee of the company or any other individual having a relationship which, in the opinion of the issuer's board of directors would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The need for the independent directors aroused due to the need of a strong framework of corporate governance in the functioning of the company. There is a "growing importance" of their role and responsibility. The Act, 2013 makes the role of ID's very different from that of executive directors. An independent director is vested with a variety of roles, duties and liabilities for good corporate governance. He helps a company to protect the interest of minority shareholders and ensure that the board does not favour any particular set of shareholders or stakeholders. Introducing the concept of independent director is to take unbiased decisions and to check various decisions taken by the management and majority stakeholders. An independent director brings the accountability and credibility to the board process. These ID's are the trustees of good corporate governance.

**The Act, 1956 :** The Act, 1956 do not specifically give the definition of the independent director. However one can find parameters mentioned in the Clause 49 of the listing agreement which is applicable to all listed companies in order to recognize a director as an independent director. Moreover he is not related to promoters or persons occupying management positions at the board level or at one level below the board and has not been an executive of the company in the immediately preceding three financial years...

Section 149(6) of the Act, ID means a director other than a managing director or whole-time director or a nominee director,

- a) Who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- b) Who is or was not a promoter of the company & Who is not related to promoters or directors in the company
- c) Who has or had no pecuniary relationship with the company
- d) None of whose relative has or had pecuniary relationship or transaction with the company.
- e) Who, neither himself nor any relative---
  - Holds or has held the position of a key managerial personnel

- Is or has been an employee or proprietor or a partner, in any of the three financial years preceeding.
  - Holds together with his relative two per cent or more of the total voting power of the company; or
  - Is a Chief Executive or director, of any nonprofit organization, or who possesses such other qualifications as may be prescribed.
- f) The following public companies must appoint independent director.
- Listed company
  - Company having ₹ 10 Crore or more paid up share capital
  - Company with a turnover of 100 Crore rupees or more; or
  - Company having in aggregate outstanding loans, debentures & deposits more than ₹ 50 Crore.

**8. Indian Depository Receipt Section 2(48) :** "means any instrument in the form of a depository receipt created by a domestic depository in India and authorized by a company incorporated outside India making an issue of such depository receipts."

**Explanation :** Indian Depository Receipt" (IDR) means any instrument in the form of a depository receipt created by a Domestic Depository in India and authorized by a company incorporated outside India making an issue of such depository receipts. No company incorporated or to be incorporated outside India, whether the company has or has not established, or may or may not establish, any place of business in India shall make an issue of Indian Depository Receipts (IDRs) unless such company complies with the conditions mentioned under this rule, in addition to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and any directions issued by the Reserve Bank of India. [Rule 13(1) of the Companies (Registration of foreign Companies) Rules, 2014]

For issue of IDR, an issuing company shall comply—

- Rule 13 of the Companies (Registration of foreign Companies) Rule 2014,
- the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009,
- Directions issued by Reserve Bank of India, which includes FEMA compliances.

An IDR is an instrument denominated in Indian Rupees in the form of a depository receipt created by a Domestic Depository (custodian of securities registered with the Securities and Exchange Board of India) against the underlying equity of issuing company to enable foreign companies to raise funds from the Indian securities Markets.

Overseas Custodian Bank is a banking company which is established in a country outside India and has a place of business in India and acts as custodian for the equity shares of issuing company against which IDRs are proposed to be issued in the underlying equity shares of the issuer is deposited. Domestic Depository who is a custodian of securities registered with the as SEBI and authorized by the issuing company to issue Indian Depository Receipts. Merchant Banker registered with SEBI who is responsible for due diligence and through whom the draft prospectus for issuance of the IDR is filed with SEBI by the issuer company

IDRs can be converted into the underlying equity shares only after the expiry of one year from the date of the issue of the IDR, subject to the compliance of the

related provisions of Foreign Exchange Management Act and Regulations issued thereunder by RBI in this regard.

On the receipt of dividend or other corporate action on the IDRs, the Domestic Depository shall distribute them to the IDR holders in proportion to their holdings of IDRs. According to SEBI rules, the base offer sum in an IDR issue is ₹ 20,000 for every applicant. Like in any open issue in India, inhabitant Indian retail (singular) speculators can apply up to a measure of INR 2, 00,000 and non-institutional financial specialists can apply above INR 1, 00,000. SEBI has as of late enabled shareholders to change over their depository receipts into equity shares of the issuer company and the other way around.

**9. One Person Company Section 2(62) :** "means a company which has only one person as a member".

**Explanation :** The concept of One Person Company (OPC) is first time introduced in Companies Act, 2013. According to Section 2(62), one person company means a private company which has only one person as a member.

It should be noted that OPC is also a private company. It should be noted that in company form of business members may be natural persons (human beings) or artificial persons (not human beings but having legal existence in the eyes of law like company, body corporate etc.). But in case of OPC, member shall be natural person only. Such person shall be Indian citizen and resident in India (means who stayed in India for a period of 182 days or more during the immediately preceding one year). It means only a natural person who is Indian Citizen and Resident in India can incorporate an OPC and can become member of OPC. A minor cannot be a member of OPC; nor can he/she be beneficial owner of shares in OPC.

As OPC can be incorporated only by one individual, such individual shall nominate a natural person (Indian citizen and resident in India) who shall become the member of the company in case of death or incapability of the member (who nominated him/her). It should be noted that a person can become nominee only in one OPC. Minor cannot be the nominee in case of OPC. Voluntary Conversion of OPC can opt to be converted into normal private company or public company only after 2 years of its incorporation. Mandatory Conversion of OPC shall be converted into private company or public company (even before completion of 2 years of incorporation) if the Paid up capital of such company exceeds ₹ 50 lakh or its average turnover of immediately preceding three consecutive financial year exceeds 2 crore rupees. OPC cannot be incorporated/converted as/to Section 8 Company or OPC cannot carry out Non-Banking Financial activities or OPC cannot invest in securities of other companies or body corporate. OPC enjoys the benefits of a private company. No Board meeting is necessary. No requirements of appointment of statutory auditor. Encourages entrepreneurship.

**10. Small company Section 2(85)** "means a company, other than a public company, where the maximum paid-up share capital amount which can be prescribed for the purpose of determining a company as a small company has been increased from fifty lakh rupees to ten Crore rupees and prescribed turnover amount from two Crore rupees to one hundred Crore rupees. Further turnover should be as per profit and loss account for the immediately preceding financial year and not as per its last financial year.

**Explanation :**

- Only a private company can be classified as a small company.
- Holding company, subsidiary company, charitable company and company governed by any Special Act cannot be classified as a small company.

- For a small company, either the paid up capital should not exceed ₹10 Crore or the turnover as per latest statement of profit & loss should not exceed ₹ 100 crores.
- The status of a company as "Small Company" may change from year to year. Thus the benefits which are available during a particular year may stand withdrawn in the next year and become available again in the subsequent year.

For qualifying as a small company, it is enough if either the capital is less than ₹ 10crore or turnover is less than ₹100 crore. It is sufficient if either one of the requirement is met without meeting the other requirement. However, these limits may be raised but not exceeding ₹ 20 crore in case of capital and ₹ 100 crore in case of turnover.

A company falling under the limits of capital or turnover as prescribed will automatically be covered under the category of "small company" and can avail the exemptions and privileges it is entitled to. However, the status of a company as "Small Company" may change from year to year. Thus the benefits which are available during a particular year may stand withdrawn in the next year and become available again in the subsequent year.