

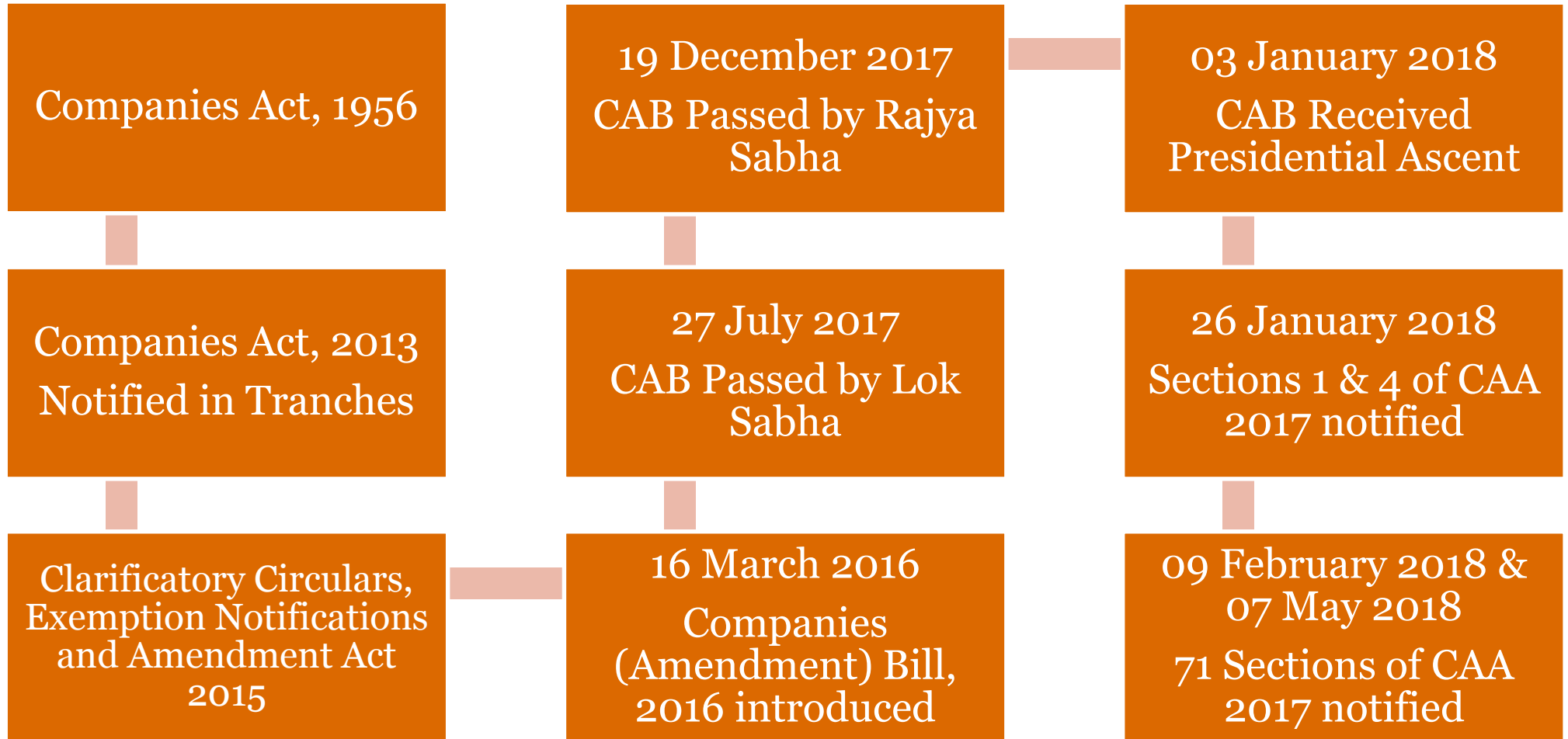
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*Company Law Refresher Course  
Pune Branch of WIRC of ICAI*

*19 May 2018*

*Amendments in Companies Act  
Key Changes*

## *The Story so far*



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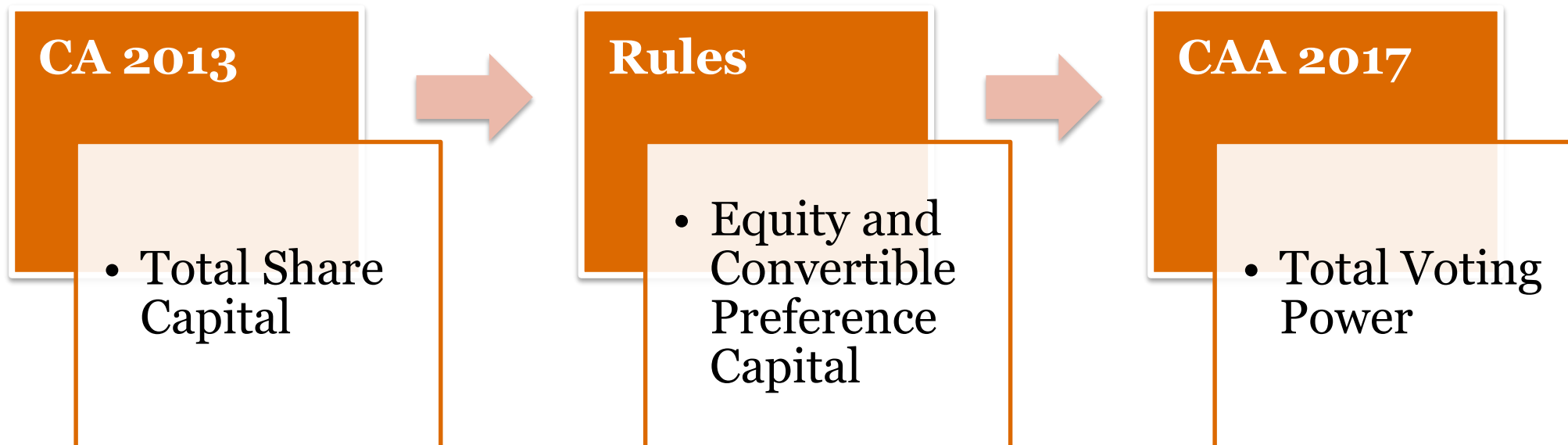
***Something important to note***

**“2A. The exceptions, modifications and adaptations provided in column (3) of the aforesaid Table shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 of the said Act or annual return under section 92 of the said Act with the Registrar”.**

## ***Definition of Associate Company and Subsidiary Company***

*Effective from 07 May 2018*

- Significant Influence
  - Total voting power
  - Participation in business decisions
- 'Joint Venture' defined



## ***Definition of Associate Company [Section 2(6)]***

***Effective from 07 May 2018***

### **CAA 2017**

- ‘Significant influence’ means control of at least 20% of the **Total Voting Power** or control of **or participation** in business decisions under an agreement
- The term Joint Venture is now defined

### **CA 2013**

- ‘Significant influence’ is determined on the basis of **Total Share Capital**
- The term Total Share Capital was further clarified to be **Equity Capital and Convertible Preference Capital** in the relevant rules

## ***Definition of Subsidiary Company [Section 2(87)]***

***Effective from 07 May 2018***

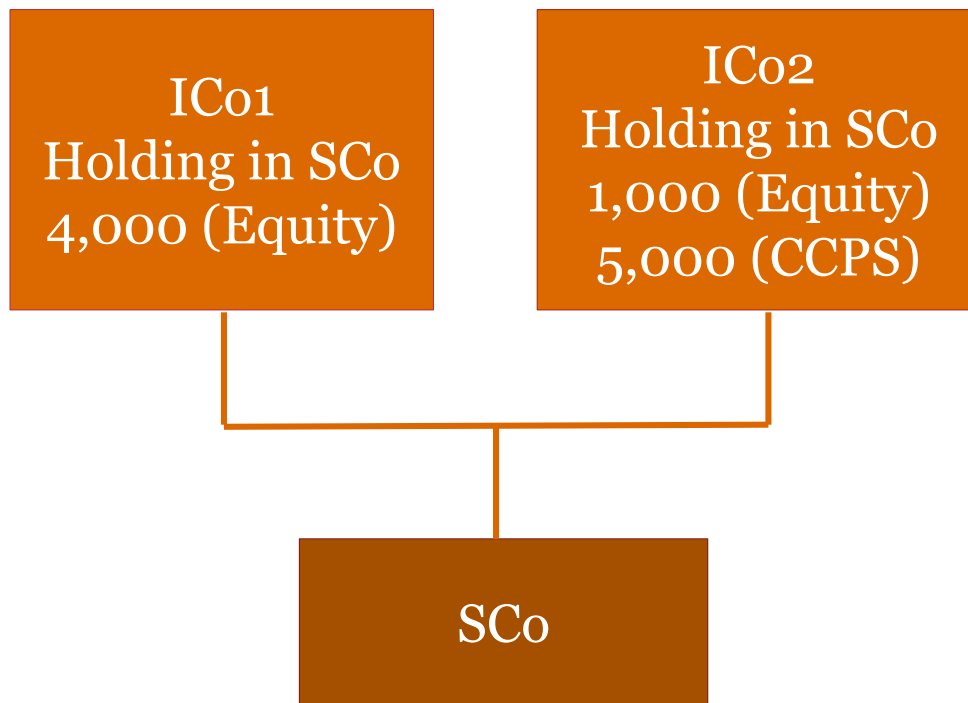
### **CAA 2017**

- Control of more than one half of the **Total Voting Power**

### **CA 2013**

- Control of more than one half of **Total Share Capital**
- The term Total Share Capital was further clarified to be **Equity Capital and Convertible Preference Capital** in the relevant rules

## Definitions of Associate Company and Subsidiary



Type of Capital	No. of Shares
Equity	5,000
CCPS	5,000
Total	10,000

### CA 2013

- SCo becomes a subsidiary company of ICo2 as ICo2 is holding more than 50% of the equity and convertible preference capital
- SCo becomes an associate company of ICo1 as ICo1 is holding more than 20% of the equity and convertible preference capital

### CAA 2017

- SCo becomes a subsidiary company of ICo1 as ICo1 is holding more than 50% of the total voting power
- SCo becomes an associate company of ICo2 as ICo2 is holding more than 20% of the total voting power.
- However, where dividend is not paid to ICo2 on the CCPS for consecutive two years, then ICo2 will get voting powers as equity shares, thereby making ICo2 the Holding Company of SCo

## ***Definition of Associate Company and Subsidiary Company***

***Effective from 07 May 2018***

### **Meaning of “Participation in Business Decisions”**

- The term “Associate Company also refers to “control of or participation in business decisions under an agreement”
- The term “business decisions” is not defined and therefore, has vast coverage. It can inter alia include a Company having right to nominate persons to be appointed as Directors on the Board etc.
- ‘Participation’ can’t be only said to be to vote on a decision, mere participation in the debate and abstinence from voting may also be covered.



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## ***Definition of Associate Company and Subsidiary***

*Key provisions dealing with these Definitions*



## ***Definition of Holding Company [Section 2(46)]***

*Effective from 09 February 2018*

### **Holding Company Sec 2(46) of CA 2013**

In relation to one or more other companies, means a company of which such **companies** are subsidiary companies

**Under CAA 2017**, an explanation is inserted:

**Company includes body corporate**

### **Subsidiary Company Sec 2(87) of CA 2013**

In relation to another **company**, means a company in which the holding company –  
(i) Controls composition of the Board of Directors;  
(ii) Exercises or controls more than one-half of the total share capital

Explanation: **Company includes body corporate**

### **Associate Company Sec 2(6) of CA 2013**

In relation to another company, means a **company** in which that other company has a significant influence, but which is not a subsidiary company, and includes joint venture

**No inclusion of the term body corporate in this definition under CAA 2017**

## ***Definition of Related Party [Section 2(76)]***

*Effective from 09 February 2018*

### **Existing clause under CA 2013**

Any **company** 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

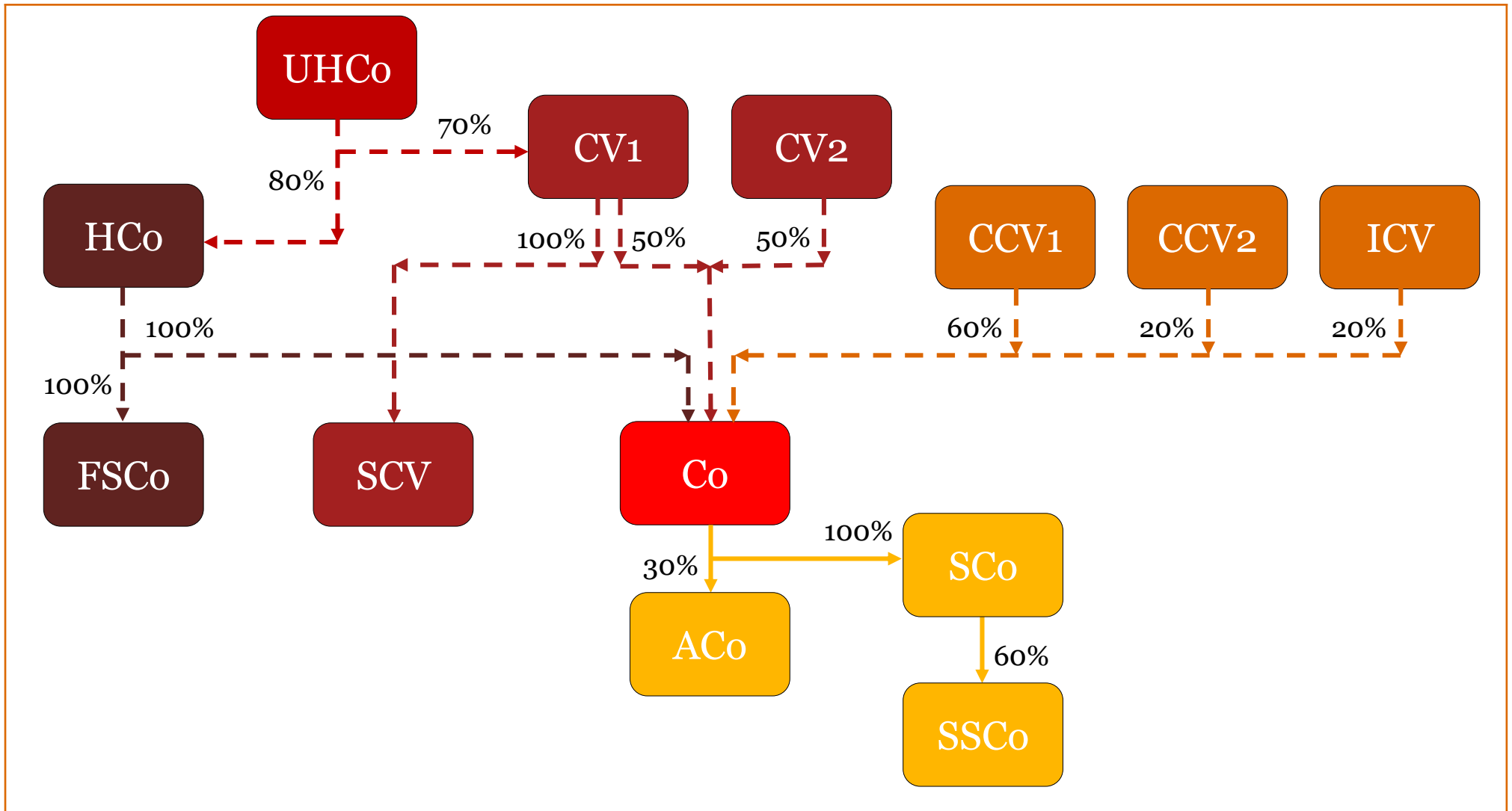
### **New clause under CAA 2017**

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
- (c) An investing company or the venture of the company.**

**Explanation:** For the purpose of this clause, “investing company or the venture of the company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate

## Definition of Related Party [Section 2(76)] - Example



## ***Related Party Transaction [Section 188]***

*Effective from 09 February 2018*

Public Companies in which 90% or more members in number, are relatives of the promoters or are related parties are brought in line with Private Companies

### **CA 2013**

- Second Proviso is applicable to all the Companies



### **Exemption Notification**

- Second Proviso exempted for Private Companies



### **CAA 2017**

- Second Proviso exempted also for closely held Public Companies

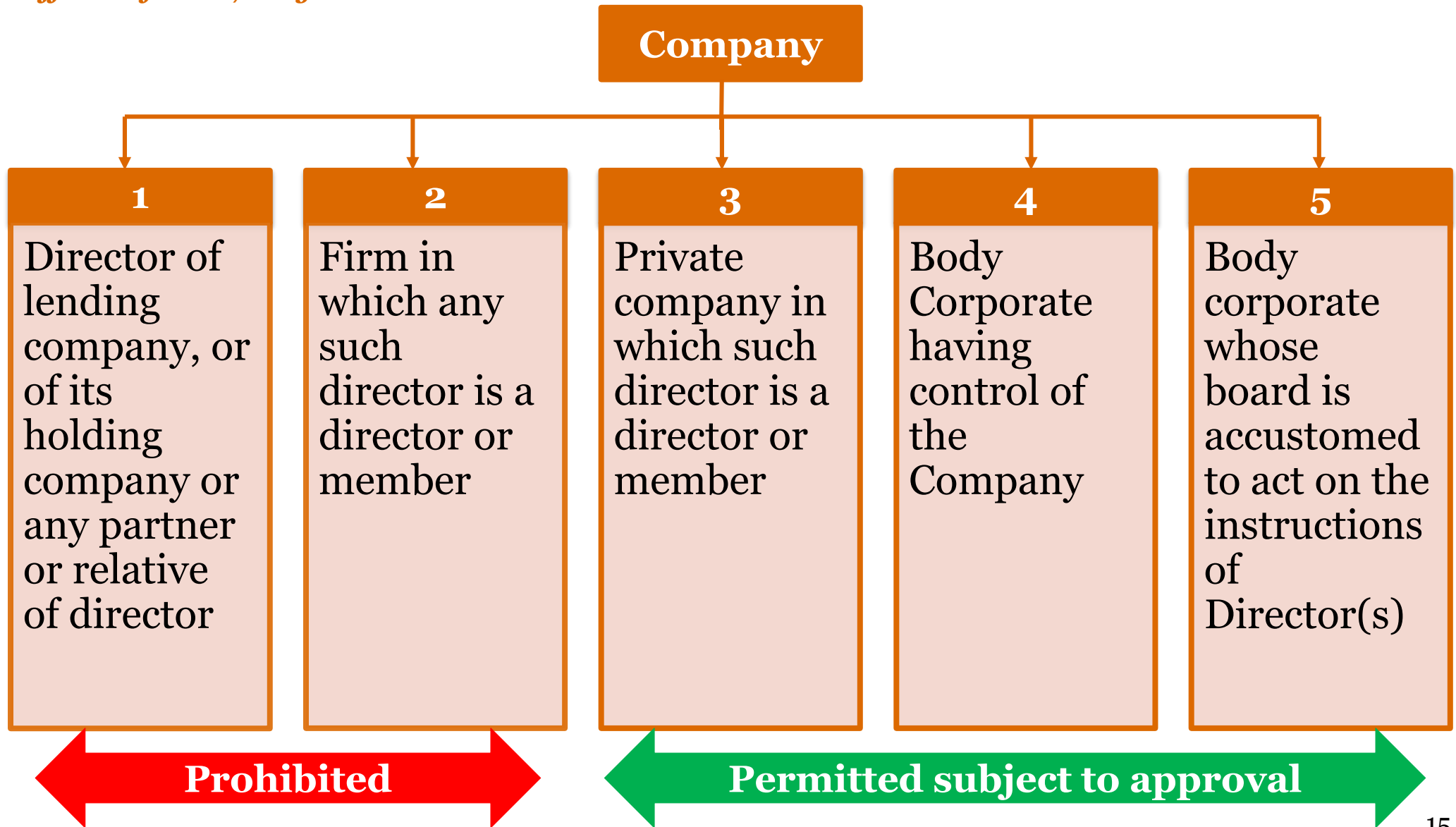
## ***Loans to Directors, etc. [Section 185]***

*Effective from 07 May 2018*

<b>CA 2013</b>	<b>Relevant Rules</b>	<b>CAA 2015</b>	<b>Exemption to Private Co</b>	<b>CAA 2017</b>
<ul style="list-style-type: none"><li>• Prohibition of loans to directors and persons interested</li><li>• Loans to MD or WTD allowed with conditions</li><li>• Loans allowed by companies which grant loans in ordinary course and charge interest thereon</li></ul>	<ul style="list-style-type: none"><li>• Exemption for loans, guarantee, security granted to WoS</li><li>• Exemption for guarantee given or security provided by holding company to its subsidiary</li></ul>	<ul style="list-style-type: none"><li>• Amendment made to Section 185 by inserting the exemptions granted in rules</li></ul>	<p>Section 185 exempted to private companies fulfilling certain criteria vide notification dated 5 June 2015</p>	<ul style="list-style-type: none"><li>• Section redrafted</li><li>• Welcome change from prohibition to permission of loans after shareholders approval in case of loans to certain persons in whom directors are interested</li></ul>

## ***Persons in whom director is interested [Section 185]***

*Effective from 07 May 2018*



## ***Declaration of Beneficial Interest [Section 89]***

### **Key Changes:**

- The term “Beneficial Interest’ is defined as follows,  
*"(10) For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—*
  - (i) exercise or cause to be exercised any or all of the rights attached to such share;*
  - or*
  - (ii) receive or participate in any dividend or other distribution in respect of such share."*

### **Examples of Beneficial Interest**

- transfer of voting rights
- transfer of dividend rights
- Instruction to pay dividend to order
- May have impact on groups having investments through non-operating subsidiaries in tax havens
- pledge of shares



## ***Register of Significant Beneficial Owners [Section 90]***

### **Key Changes:**

- Earlier provision providing power to the central government to investigate beneficial ownership of shares in certain cases has been replaced with the new provisions where the onus of disclosure is put on the shareholders / beneficial owners and companies.
- Concept of Significant Beneficial Owner introduced
- Maintenance of Register of Significant Beneficial Owners is required in certain cases.
- Draft rules issued by the MCA on this subject seeking comments from the public

## ***Private Placement [Section 42]***

### **Introduction**

- The Section has been completely revamped
- The Company Law Committee had suggested a number of changes in the existing provisions of private placement addressing certain practical issues as well as increasing certain disclosure requirements and compliance burden

### **Key Changes**

- Private placement offer and application shall not carry right of renunciation
- Companies cannot use funds till return of allotment has been filed with the RoC within 15 days from the date of allotment
- Separate penalty provided for default in filing return of allotment

## ***Corporate Social Responsibility [Section 135 and Section 384]***

### **Sec 135 of CA 2013**

- CSR provisions applicable to companies meeting the prescribed criteria during **any financial year**
- For determining applicability – Net Profit to be considered
- For determining CSR spend – Net Profit to be calculated on the basis of Section 198 i.e. typically PBT

### **Relevant Rules**

- Company which ceases to be covered under Section 135 for three consecutive years, shall not be required to comply with CSR provisions till such time it meets the criteria
- CSR provisions made applicable to Foreign Company

### **Circular 21 dated 18 June 2014**

Any financial year, referred to in 135(1) implies **any of the three preceding financial years**

### **Amendment in CAA 2017**

- For determining applicability - net profit/net worth/turnover shall be considered for **immediately preceding financial year**
- Net profit for all purpose to be as per Sections 198
- Section 384 amended to provide applicability of CSR provisions to Foreign Companies

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# *Amendments in Accounts and Audit*

## **Consolidation of Accounts**

Section 129(3)

The term “Associate Company” is mentioned in the section instead as an explanation

## **Reopening of Accounts on Court’s or Tribunal’s orders**

Section 130(1)

- Term “Any other person” included in the proviso bringing it in line with the section
- The period within which accounts can be reopened is prescribed to be limited to 8 years or any other time prescribed by the CG.

## **Signing of Financial Statement**

Section 134(1)

The Financial statement shall be signed by the Chairperson of the Company where he is authorised, or by two directors out of which one shall be an MD, if any and CEO (Being a Director or not), CFO and CS wherever they are appointed.

## **Copies of Audited Financial Statement**

Section 136(1)

- The term “Without prejudice” removed
- Copies of audited financial statement can be circulated within a shorter period if it is agreed by majority in number of shareholders entitled to vote and more than 95% of the voting power.

## **Filing of Annual Accounts**

Section 137

Reference of Section 403 omitted.

## **Appointment of Auditors**

Section 139

Ratification of appointment of auditors appointed at an AGM for a term of 5 years is done away with

## **Penalty for failure to file ADT-3**

Section 140

Reference to “Remuneration to the auditors” is made considering possibility of lesser audit fees in smaller companies

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# *Other Amendments*

## Key Managerial Personnel

Section 2(51)

The definition now includes such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board

## Turnover

Section 2(91)

Mean the gross amount of **revenue recognized** in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year



## **Authentication of Documents**

Section 21

Documents can now be authenticated by an employee of the Company, in addition to directors, KMP or officer of the Company, if authorized by the Board

## **Issue of shares at discount**

Section 53

Company may issue shares at a discount to its creditors when its debt is converted into shares pursuant to statutory resolution plan or debt restructuring scheme

## **Issue of Sweat Equity Shares**

Section 54

Removal of the restriction to issue sweat equity shares before the expiry of one year from the date of commencement of business

## **Annual Return**

### **Section 92**

- Removal of requirement to include company's indebtedness in the Annual Return
- Extract of Annual Return not required to form part of Board's Report and only web address, if any, where the Annual Return is placed is required to be mentioned

## **General Meetings**

### **Section 96**

- Unlisted Companies AGM can be held at any place in India (100% consent in advance)
- In case a company is a WoS of a company incorporated outside India then, EGM can be held at any place even outside India

## **Requirement of Resident Director**

Section 149

- Director who has stayed in India for a total period of not less than 182 days during the financial year
- In case of incorporation, the requirement of 182 days shall apply proportionately at the end of the financial year in which it is incorporated

## **Disqualification of Director**

Section 164

A person appointed as Director in a defaulting company (which has not filed Financial Statements or Annual Return for consecutive 3 years or failed to repay deposits, etc.) shall not incur disqualification for a period of 6 months from the date of his appointment

## **Vacation of office of Director**

Section 167

Where a Director incurs disqualification under Section 164(2), the office of the Director shall become vacant in all companies, other than the company which is in default

## **Filing of Form DIR-11**

Section 168

Director resigning the company is not mandatorily required to file a copy of resignation in Form DIR-11 with the RoC

## **Audit Committee and N&R Committee**

Section 177 and 178

- Constitution of Audit Committee and Nomination and Remuneration Committee applicable to every listed public company
- Therefore, private companies whose debt securities are listed, not required to comply

## **Managerial Remuneration**

Section 197

- Payment of remuneration by public companies to its directors in excess of the limits prescribed under Section 198 of CA 2013, shall require approval of the Shareholders by Special Resolution only
- Therefore, approval of the Central Government is done away with

**Declaration of  
Dividend**

Section 123

Provision has been made for declaration of interim dividend for any financial year or at any time during the period from closure of financial year till holding of the AGM

**Additional Fee for  
delayed filings**

Section 403

In case of delay in filing FS or annual return after expiry of the prescribed period, additional fee of INR 100 per day is required to be paid

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***Thank You***

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