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COMPANY Law & Practice

A Comprehensive Text Book on Companies Act 2013

As amended by
Companies (Amdt.) Act 2020

Dr. G.K. KAPOOR
M.COM. (DELHI), Ph.D. (DELHI), FIAM

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26th Edition
September 2022

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PREFACE TO THE TWENTY SIXTH EDITION

It gives us immense pleasure in presenting Twenty Sixth Edition of the Book. We express our gratitude to the readers for the encouraging response to our writing.

Procedure of incorporation has been further simplified by MCA by introducing web based proforma SPICe+ (Pronounced as 'Spice plus'). The Form can be filled online as well as the requisite documents including Memorandum of Association, Articles of Association, Declaration of compliance, etc. can be filed online. This has been done to further ease of doing business. The book discusses the procedure of incorporation as per SPICe+. Discussion about the maintenance of data base of independent directors and compliances required by a person willing to be appointed as an independent director have been updated and enlarged.

Changes in the Companies Act and the notified new/amended rules up to 31st July, 2022 have been duly incorporated at appropriate places in the text. Case laws reported up to 31st July, 2022 have been duly included at the relevant places in the book. In addition, we have taken care to add as well as change discussion in certain areas on the basis of feedback received from the readers and colleagues in various colleges.

We are sure that the readers will appreciate this edition like the earlier ones and continue to give us an opportunity to serve them. We request you to continue to send your feedback/suggestions. These certainly help improve the text.

With Best Wishes,

DR. G.K. KAPOOR

DR. SANJAY DHAMIJA

PREFACE TO THE FIRST EDITION

Legal framework is an important constituent of the Business and Corporate environment. No corporate entity can effectively work and survive without meeting its legal obligation. The law relating to companies is perhaps the most significant and all-pervasive amongst the various corporate legislations. It requires compliance on the part of the companies, their directors and other officers of numerous requirements of the Act. Non-compliance of various provisions of the law relating to companies may result in penal consequences and ill reputation. The Companies Act, 1956, the law in our country in this regard, is a complicated piece of legislation. Numerous amendments made in this legislation over the years from its inception have brought in more and more complexities. The amendments were intended to deal with increased complexities in the Business and Corporate environment. Further, a number of judicial decisions on the subject have added new dimensions to the interpretations of the provisions of this legislation. The Department of Company Affairs, Government of India, has also over the years issued a large number of clarifications. Besides, the Securities & Exchange Board of India (SEBI) has issued a number of guidelines and clarifications to regulate the capital market in India.

The present book represents an impressive and judicious blending of the provisions of the Companies Act, 1956, judicial decisions, the clarifications issued by the Department of Company Affairs and the guidelines and clarifications issued by the SEBI. The text is interspersed with interpretations, explanations and illustrations wherever felt necessary to help the readers to assimilate the provisions in a better way.

The authors have tried to present the provisions of the law in a simple and lucid style, backed by most up-to-date case decisions. The

book has effectively dealt with the secretarial practice aspects also for complying with the procedural matters in the law; a number of specimen notices, minutes and resolutions have been given at relevant places.

SEBI Guidelines for disclosure and investors' protection, originally issued in 1992, have undergone many significant changes. As many as XI clarifications have been issued. The present book has taken due notice of those guidelines and all the XI clarifications have been referred to at appropriate places.

Another feature of the book that readers may appreciate is the Summary at the end of each Chapter containing substantive provisions of law covered in that Chapter.

The work of this kind would not have been possible without reference to the authentic commentaries and other publications on the subject - Indian and foreign. We shall, therefore, like to record our gratitude to the authors and the publishers of those publications. An attempt has been made to acknowledge the contributions wherever material has been quoted.

Although every effort has been made to offer the most authentic position on the subject, claiming cent per cent accuracy will be too tall a claim. Moreover, there may be differences in interpretation. We shall, therefore, be too happy to receive suggestions and comments from our readers which we promise to acknowledge with gratitude.

We are immensely grateful to Shri Y.M. Kale, President, the Institute of Chartered Accountants of India, for being kind enough to write the Foreword of this Book.

Special thanks are due to Shri Vinay Kumar Jain, FCA and a friend, who not only was responsible for initiating this work but also continued to offer his moral support till its completion.

We must also express our thanks to M/s. Taxmann for their co-operation in many ways. Without their help this work would have just not been possible.

Last but not the least, our wives and children do need a mention for their sacrifice and co-operation in providing us with the necessary environment and the sumptuous lunches and the teas during our long sittings over weekends. Without their support, we could not have met the target date.

August 21, 1995.

A.K. MAJUMDAR
DR. G.K. KAPOOR

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HIGHLIGHTS OF THE COMPANIES (AMENDMENT) ACT, 2020

The Companies (Amendment) Act, 2020 received the assent of the President of India on 28th September, 2020.

Key highlights of the Act include:

1. Decriminalize: Decriminalise certain offences under the Act in case of defaults which can be determined objectively and which otherwise lack any element of fraud or do not involve larger public interest. While introducing the Bill, the Minister of State for Corporate Affairs Mr. Anurag Thakur said the proposed decriminalisation was only for "minor procedural and technical defaults which do not involve fraud, injury to the public interest or non-compoundable offence."

2. Empowering the Central Government: The Act empowers the Central Government to exclude, in consultation with the Securities and Exchange Board, certain classes of companies from the definition of "listed company", mainly for listing of debt securities.

3. Producer Companies: The Act has Incorporated a new chapter relating to Producer Companies, which was still a part of the Companies Act, 1956.

4. NCLAT Benches: The Act provides for Setting up Benches of the National Company Law Appellate Tribunal.

5. Remuneration to the non-executive directors: It allows payment of adequate remuneration to non-executive directors in case of inadequacy of profits, by aligning the same with the provisions for remuneration to executive directors in such cases.

6. Other Relaxations include:

- Exemption of any class of persons from complying with the requirements relating to declaration of beneficial interest in shares.
- Reduction in timelines for applying for rights issues so as to speed up such issues.

- Exemption of certain classes of non-banking financial companies and housing finance companies from filing certain resolutions.
- Making a provision for exemption from penalties for delay in filing annual returns and financial statements in certain cases.
- The Act provides for specific classes of unlisted companies to prepare and file their periodical financial results.
- The amendments also include enabling provisions for the direct listing of securities of Indian public companies in permissible foreign jurisdictions.
- The Act also exempts companies whose corporate social responsibility (CSR) obligation is below ₹ 50 lakh from constituting a CSR committee. It also allows eligible companies to set off any amount spent in excess of their Corporate Social Responsibility spending obligation in a particular financial year towards such obligation in subsequent financial years.

Additionally, the exemption provided to key managerial personnel from government restrictions on compensation in case a company is facing liquidation, is expanded to include independent directors.