Contents

♦ C	hapter-heads	<i>I-5</i>
♦ Se	ection-wise Index	I-25
	1	
	<u></u>	
	INTRODUCTION	
1.1	Background of this book	1
1.2	Administration of Companies Act	2
1.3	Company form of business organisation	2
1.4	Common seal in relation to a company	4
1.5	Company is not a 'citizen'	6
1.6	Limited liability	6
1.7	Various type of companies that can be formed	7
1.8	Company is a separate 'person' - Separate legal entity	10
1.9	Lifting the corporate veil	12
	2	
	INCORPORATION OF A COMPANY	
2.1	Initial stage in formation of a company	13
2.2	Name of company	15
2.3	Signing of memorandum and articles	23
2.4	Documents to be filed with ROC	25
2.5	Certificate of incorporation	28
2.6	Declaration after incorporation of a company before commencement of business	30

PAGE

CONTENTS	1-8

		PAGE
	3	
	MEMORANDUM OF ASSOCIATION	
3.1	Constitution of Company	33
3.2	Registered office clause	34
3.3	Objects Clauses in Memorandum	36
3.4	Capital Clause in Memorandum of Association	36
3.5	Subscriber to memorandum of association of a company	37
3.6	Persons entitled to obtain copies of Memorandum and Articles of the company and certain resolutions	37
3.7	Alteration of Memorandum of Association	37
3.8	Procedure for Amending Memorandum	38
3.9	Procedure for change of name	38
3.10	Change of Registered Office of company	40
3.11	Change of Object Clause	44
3.12	Changing Capital clause in the Memorandum of Association of a company	44
3.13	Alterations to Memorandum of Association - Provisions at a glance	46
3.14	Doctrine of <i>ultra vires</i> Memorandum	47
	4	
	ARTICLES OF ASSOCIATION	
4.1	Rules for internal management of company	48
4.2	Binding nature of Articles	50
4.3	Restrictive clauses in Articles of a company	52
4.4	Provisions as applicable to Articles of Private Limited Company	53
4.5	Suggested Draft of Articles	53
4.6	Alteration of Articles of Association	54
4.7	Compulsory alteration of Articles	55
	5	
	CAPITAL OF THE COMPANY	
5.1	'Own Funds' and 'Loan Funds'	56
5.2	Preference Shares	60

I-9 CONTENTS

		PAGE
	6	
	ISSUE OF SECURITIES	
6.1	Various modes of raising capital	65
6.2	Issue of shares at premium	68
6.3	Issue of equity shares with differential rights	71
6.4	Private placement of securities	72
6.5	Conversion of debentures or loans into shares as per loan agreement	75
6.6	Compulsory conversion of debentures and loans given by Central Government into equity shares of the company	75
6.7	Warrants	76
6.8	Procedure for issue of securities	77
6.9	Allotment of shares	78
6.10	Improper and irregular allotment	79
6.11	Calls on shares and forfeiture	80
	7	
	FURTHER ISSUE OF SECURITIES	
7.1	Rights issue	84
7.2	'Preferential Allotment' in case of fresh issue of securities	88
7.3	Bonus shares	89
7.4	Sweat equity shares	94
7.5	Employee Stock Option/Stock purchase	96
7.6	Global Depository Receipts (GDR)	98
	8	
	REDUCTION OF CAPITAL AND BUY-BACK OF SECURITIES	
8.1	Capital reduction	100
8.2	Procedure for reduction of capital of a company	102
8.3	Other powers of NCLT to order reduction of capital	104
8.4	Diminution of capital does not constitute reduction of capital	104
8.5	Company cannot buy its own shares	105
8.6	Buy-back of securities	106

	CONTENTS	I-10
		PAGE
	9	
	PUBLIC ISSUE OF SECURITIES	
9.1	Background	113
9.2	Stock exchange requirements for listing of a security	114
9.3	Restrictions on utilisation of funds collected while issuing shares to public	115
9.4	Commission that can be paid while issuing securities	116
9.5	Punishment for personation for acquisition, etc. of securities	116
9.6	Prospectus	116
9.7	Golden rule of full and proper disclosure in prospectus	119
9.8	Procedural aspects of prospectus	120
9.9	Penalty for violating provisions in respect of prospectus	121
9.10	Liabilities for false statements in prospectus	121
	10	
	MEMBERSHIP OF COMPANY	
10.1	Member and shareholder	123
10.2	Lien on shares	132
10.3	Variation in rights of shareholders	133
10.4	Member of company	135
10.5	Who can become member of a company?	136
10.6	A minor as member of a company	139
10.7	Termination of membership	141
10.8	Joint holding of shares	142
10.9	Shares held in trust	145
10.10	Register of members	150
	11	
	TRANSFER OF SECURITIES	
11.1	General provisions of share transfer	155
11.2	Stamp duty on share transfer deed	160
11.3	Procedure by company for transfer of security	162
11.4	Transfer of security in case of listed company	164
11.5	Restrictions on transfer in case of dominant undertaking	165

I-11 CONTENTS

		PAGE
11.6	Transfer when company is under winding up	165
11.7	Effect of forgery on transfer of security	165
11.8	Refusal of transfer of security	166
11.9	Instrument of transfer of security	167
11.10	Right of transferee if transfer not effected by company	169
11.11	Protection available to transferee of shares in case of listed companies	170
11.12	When share transfer cannot be refused by a company?	171
11.13	Restrictions on transfer of shares in a Private Limited Company	172
11.14	Procedure to be followed if company decides to declines transfer/ transmission	173
11.15	Appeal if company refuses to transfer shares	174
11.16	Rectification of register of members	175
11.17	Civil suit not available when NCLT has jurisdiction	179
	12	
	NOMINATION AND TRANSMISSION OF SHARES	
12.1	Nomination of shares/Debentures	180
12.2	Involuntary transfer of securities	184
12.3	Modes of transmission of security	189
12.4	Transmission in case of intestate succession	191
12.5	Position of an insolvent with regard to membership in a company	192
12.6	Transmission in case of a mentally ill person	193
12.7	Transmission of security in case of amalgamation of a company	193
12.8	Transmission when a minor becoming major	193
12.9	Transmission of security in case of Court order or Arbitration Award	193
	13	
	DEMOCRACY OF SHAREHOLDERS	
13.1	Shareholders are ultimate owners, but with limited powers	194
13.2	Meetings of shareholders	195
13.3	General provisions of meeting of members	200
13.4	Requirements of notice of a general meeting	207
13.5	Annual general meeting	210
13.6	Financial statement	214

	CONTENTS	I-12
		PAGE
	14	
	PROCEDURE OF GENERAL MEETING	
14.1	Chairperson of the meeting	215
14.2	One person meeting	221
14.3	Proxy at the meeting	223
14.4	Procedure of the meeting	229
14.5	Adjournment of general meetings	233
14.6	Rules of debate in a general meeting	237
14.7	Functions of a Company Secretary in regard to meeting	237
14.8	Resolutions and voting at general meeting	237
14.9	Members' Resolutions and Statements on Resolutions	240
14.10	Private agreements not binding	241
14.11	Voting at the meeting	241
14.12	Voting by poll	245
14.13	Voting by postal ballot	249
14.14	Voting by electronic means	252
14.15	Minutes of general meeting	254
14.16	Inspection of Minute Books of General Meeting	258
14.17	Secretarial Standard SS-5 on Minutes	259
14.18	Filing of resolutions with ROC	259
	15	
	DIRECTORS OF COMPANY	
15.1	Role of Directors	262
15.2	Board of Directors	264
15.3	Independent directors in case of public companies	264
15.4	Director elected by small shareholders	273
15.5	Protection to independent and non-executive directors	274
15.6	Who can be a Director?	274
15.7	Election and appointment of Directors	275
15.8	Contesting as Director	279
15.9	Proportional representation	280

I-13 CONTENTS

		PAGE
15.10	Nominee Directors	281
15.11	Additional Directors	285
15.12	Alternate Director	286
15.13	Appointment of director by NCLT	289
15.14	Filling of casual vacancy of a director	289
15.15	De facto director	290
15.16	Special provisions relating to banking companies	291
15.17	Restriction on number of Directorships	291
15.18	Secretarial procedures relating to directors	292
15.19	Secretarial practice for appointment/Change in Director	292
15.20	Register of Directors and KMP	297
15.21	Remuneration to non-wholetime Directors	298
15.22	Payment of sitting fees and travel expenses to Directors	300
15.23	Ceiling of total managerial remuneration	301
15.24	Calculation of 'Net Profit'	304
15.25	Managerial remuneration at a glance	306
15.26	Remuneration to director in professional capacity	307
15.27	Other provisions relating to managerial remuneration	307
	16	
	DISQUALIFICATIONS AND REMOVAL	
	OF DIRECTOR	
16.1	Disqualification of a director	309
16.2	No disqualification of nominee directors	313
16.3	Vacation of office of a Director	314
16.4	Resignation by director	317
16.5	Removal of a director	319
16.6	Removal of director in requisition meeting	321
16.7	Removal of director can amount to oppression	321
16.8	Removal of permanent directors	321
16.9	Removal by NCLT	322
16.10	Civil court has jurisdiction in respect of removal of director	322
16.11	Removal of nominee director by withdrawing nomination	322

	CONTENTS	I-14
		PAGE
	17	
	RESTRICTIONS ON DIRECTORS IN RELATION TO COMPANY	
17.1	Contracts in which directors are interested	323
17.2	Restrictions on loans to directors	325
17.3	Related Party Transactions	327
17.4	Disclosures and registers	335
17.5	Accounting Standard relating to related party transactions	337
17.6	Payment to director for loss of office, etc.	337
17.7	Restriction on non-cash transactions involving directors	339
17.8	Contract by OPC with its Sole Member	339
	18	
	DUTIES, RIGHTS AND LIABILITIES OF A DIRECTOR	
18.1	Legal position of a Director	340
18.2	Director is not an employee	341
18.3	Director has some traits of an agent of the company	341
18.4	Director has some traits as 'trustee'	341
18.5	Directors cannot enter into pooling arrangement	342
18.6	Corporate opportunity cannot be diverted for personal gains	342
18.7	Specific duties of a director	343
18.8	Rights of director and limitations	343
18.9	Legal liability of a director	344
18.10	Compliance Certificates from executive directors	346
18.11	Liability under Companies Act on 'officer in default'	346
18.12	Personal liability of Director for company's dues	348
18.13	Director may be held liable even if not personally involved in fraud, if he is negligent	350
18.14	Director liable for contempt of Court by company	351
18.15	Liability if personal guarantee given	351
18.16	Insurance of liability of Director	351
18.17	Liability of director under other Acts	353
18.18	Liabilities under some Acts	355
18.19	Liability under Negotiable Instruments Act	357

I-15 CONTENTS

		PAGE
	19	
	MEETING OF BOARD OF DIRECTORS	
19.1	Role of Board in Company Management	358
19.2	Board in supreme in management of Company	359
19.3	Decisions of Board at the meeting	360
19.4	Agenda for Board meetings	362
19.5	Circular Resolution i.e. resolution by circulation	363
19.6	Board Resolutions requiring unanimous voting	370
19.7	Committees of the Board	370
19.8	Amendment or cancellation of a Board Resolution	372
19.9	Conduct of a Board meeting	373
19.10	Chairperson of the Board meeting	375
19.11	Agenda of the Board meeting with related papers seven days before meeting	377
19.12	Quorum for the Board Meeting	378
19.13	Adjournment of Board Meeting	381
19.14	Filing of Board resolutions and agreements	381
19.15	Board meetings requirements in respect of listed companies	382
19.16	Electronic Board meeting through video conference	383
19.17	Minutes of Board Meeting	385
	20	
	REPORT OF BOARD TO MEMBERS	
20.1	Directors' Report	390
20.2	Contents of Report of Board	392
20.3	Requirements in case of listed companies	400
20.4	NBFC/Chit Fund/Housing Finance Companies to disclose unpaid deposits	401
20.5	Punishment for not complying with provisions	401
	21	
	CORPORATE GOVERNANCE	
21.1	Transparency and integrity in company management	402

	CONTENTS	I-16
		PAGE
21.2	What is Corporate Governance?	403
21.3	Fundamental Principles of Corporate Governance	403
21.4	Limitations of Corporate Governance	403
21.5	SEBI Requirements on Corporate Governance	404
21.6	Highlights of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	405
21.7	Discretionary requirements of corporate governance	410
21.8	Reporting compliance of corporate governance	412
21.9	Audit Committee	412
21.10	SEBI provisions relating to Audit Committee	416
21.11	Nomination and Remuneration Committee	419
21.12	Stakeholders Relationship Committee	422
21.13	Corporate Social Responsibility	422
	RESTRICTIONS ON POWERS OF BOARD	
22.1	Introduction	435
22.2	Sale or lease of undertaking	435
22.3	Investment of compensation received after merger or amalgamation	437
22.4	Borrowing money	438
22.5	Remitting or giving time for recovery of debt due from director	439
22.6	Contribution to bona fide charitable trusts or funds	439
22.7	No restrictions on contribution to National Defence Fund	440
22.8	Restrictions on political contributions	440
22.9	Restrictions on managerial remuneration	442
22.10	No restriction on other powers	442
22.11	Investments by companies	442
22.12	Restrictions on investment through investment subsidiaries	444
22.13	Limit in respect of investment/loan/guarantee	444
22.14	Giving guarantee or providing security for loan	445
22.15	Unanimous approval of Board in meeting	447
22.16	Punishment for contravention of provisions	450

I-17 CONTENTS

		PAGE
	23	
	KEY MANAGERIAL PERSONNEL	
23.1	Day to day management of company	451
23.2	Role of Managing Director/Manager	458
23.3	MD/Manager is subordinate to Board of Directors	460
23.4	Who can be appointed as MD/WTD/Manager?	461
23.5	Disqualification as MD/WD	462
23.6	When approval of Central Government is necessary for appointing MD/WTD/Manager?	463
23.7	Appointment of MD/WD	465
23.8	Remuneration to Managerial Person	466
23.9	Remuneration to director when profit is inadequate or company is in loss	467
23.10	Perquisites allowable to MD/WD	471
23.11	Compensation for loss of office or retirement	474
23.12	Company Secretary	475
23.13	Mandatory appointment of Secretary	476
23.14	Role of Company Secretary	478
	24	
	CHARGE ON ASSETS OF THE COMPANY	
24.1	Secured borrowings	483
24.2	Charge on assets owned by company	485
24.3	Creation of 'Charge'	489
24.4	Charges filing of which with ROC is not necessary	494
24.5	Filing of charge, its modification and satisfaction	495
24.6	Registration of charge by ROC	497
24.7	Effect of non-registration of charge	498
24.8	Penalty for not filing charges or giving false information	499
24.9	Records of charges to be maintained by the company	500
24.10	Rectification of register of charges	500

	CONTENTS	I-18
		PAGE
	25	
	DEBENTURES	
25.1	Nature of 'debenture'	503
25.2	Types of debentures	505
25.3	Debenture trustees	508
25.4	Procedure for issue of debentures	510
25.5	Other issues relating to debentures	514
25.6	Protection of interest of debenture holders	517
	26	
	PUBLIC DEPOSITS	
26.1	Deposits from public and members	518
26.2	Acceptance of secured deposits from public only in specified cases	520
26.3	Other companies can accept deposits only from members	521
26.4	Repayment of deposits	526
26.5	Borrowings which are excluded from definition of 'deposit'	529
	27	
	ACCOUNTS OF THE COMPANY	
27.1	Need for accounts and audit	532
27.2	Financial Statement of a company	535
27.3	Circulation of Financial Statement with attachments	539
27.4	Filing copy of Financial Statements with ROC	543
27.5	Reopening of accounts and financial statement	546
27.6	Internal Audit	549
27.7	Inspection of books of account	550
27 .8	Different accounts for Company Law & Income Tax	550
27.9	National Financial Reporting Authority (NFRA)	551
27.10	Accounting Standards	556
27.11	Accounting Standards applicable to other companies	557
27.12	Requirements of Financial Statement	558

I-19 CONTENTS

		PAGE
	28	
	DIVIDEND	
28.1	Share of profit to members	559
28.2	Declaration of dividend out of reserves	561
28.3	No dividend unless carried over losses and depreciation are set off against profit	563
28.4	Declaration of dividend	564
28.5	Interim dividend	565
28.6	Entitlement of dividend	567
28.7	SEBI Requirements for declaration of dividend	568
28.8	Payment of dividend	569
28.9	Dividend to be paid within 30 days	571
28.10	When payment of dividend may be withheld?	572
28.11	Payment of dividend when transfer not registered, as it was against law	573
28.12	Other provisions relating to dividend	574
28.13	Unpaid dividend	575
28.14	Investor Education and Protection Fund	577
	29	
	FINANCIAL AUDIT OF ACCOUNTS	
29.1	Role of an 'Auditor'	581
29.2	Appointment and remuneration of Auditors	582
29.3	Appointment or reappointment of auditors/firm of auditors	584
29.4	Casual vacancy of auditor	587
29.5	Appointment of auditors/firm of auditors in Government company	588
29.6	Remuneration of auditors/firm of auditors	589
29.7	Appointing another auditor	590
29.8	Powers of Auditor	593
29.9	Audit of Branch Office	593
29.10	Report of Auditors to Members	594
29.11	Additional matters to be included in report of auditor	596
29.12	Other provisions regarding audit report	597

	CONTENTS	I-20
29.13 29.14	Auditor not to render certain services Punishment for contravention of provisions relating to audit and auditors	PAGE 599 600
	<i>30</i>	
	COST AUDIT AND SECRETARIAL AUDIT	
30.1	Role of Cost Audit	602
30.2	Cost Accounting Standards	605
30.3	Distinction between Financial Audit & Cost Audit	605
30.4	Cost Records and Audit Rules	606
30.5	Secretarial Audit in respect of bigger companies	608
30.6	Secretarial Standards	611
30.7	Company Secretary in Practice	612
30.8	Certificate of Practice of only one Institute	612
	31 PRIVATE COMPANIES	
31.1	Private company is glorified partnership	613
31.2	Private company, which is subsidiary of a public company, is public company	619
31.3	Conversion of private to public company and <i>vice versa</i>	619
31.4	Director of a private company can have personal liability for income-tax, GST and CST	622
	32	
	HOLDING AND SUBSIDIARY COMPANIES	
32.1	One company owning other	623
32.2	Implications of holding/subsidiary relationship between two companies	625
32.3	Provisions in case of listed companies	627
32.4	Other provisions applicable to holding and subsidiary companies	628
32.5	Wholly owned subsidiary	629

I-21 CONTENTS

		PAGE
	33	
	COMPANIES LICENSED UNDER SECTION 8	
33.1	Non-profit companies	630
33.2	Electoral Trusts	634
	34	
	GOVERNMENT COMPANIES	
34.1	Company where Government is major shareholder	636
34.2	Auditors of Government company	639
34.3	Annual report on Government companies to Parliament/State	007
	Legislature	641
34.4	Government managed companies	641
34.5	Government Company is not 'Government', but is 'State'	641
	35	
	FOREIGN COMPANY	
35.1	Body Corporate Incorporated outside India	645
35.2	Certain provisions applicable to foreign company	649
35.3	Limitations on foreign company	650
35.4	Foreign company with control from India	650
35.5	Issue of shares/debentures by a foreign company	650
	36	
	OTHER TYPES OF COMPANIES	
36.1	Small Company	652
36.2	One Person Company (OPC)	653
36.3	Dormant Company	659
36.4	Guarantee Company	660
36.5	Insurance Companies	661
36.6	Housing Finance Companies	662
36.7	Banking Companies	662
36.8	Electricity Companies	662

	CONTENTS	I-22
		PAGE
36.9	Producer Companies	662
36.10	Non-Banking Financial Companies (NBFCs)	663
36.11	Chit funds	664
36.12	Nidhi or Mutual Benefit Society	664
36.13	Start-up Company	666
	37	
	MISCELLANEOUS PROVISIONS IN COMPANY LAW	
37.1	Service of documents	667
37.2	Removal of name of companies from register of members	668
37.3	Conversion of Partnership or LLP or society or other business	
	entity into a Company	675
37.4	Receivers and managers	678
37.5	Mediation and conciliation	678
37.6	Registered valuers	680
37.7	Insolvency and Bankruptcy Code, 2016 for companies	685
	<u>38</u>	
	OVERVIEW OF NCLT RELATED ISSUES	
38.1	Background	688
38.2	Class action under Company Law	688
38.3	Oppression and mismanagement	689
38.4	Compromise and arrangement	691
38.5	Merger and amalgamation	692
38.6	Cross border mergers	693
38.7	Takeover of another company by purchasing 100% of shares	693
38.8	Winding up of company	693
	39	
	INSPECTION, INVESTIGATION, OFFENCES, PENALTIES	
39.1	Power of Registrar to call for information	697
39.2	Search and seizure	699

I-23 CONTENTS

20.2		PAGE
	Investigation	699
	Investigation of ownership of a company	702
39.5	Protection of employees during investigation	703
39.6	Serious Frauds Investigation Office	703
	Punishments for offences	705
39.8	Officer and 'officer in default'	709
39.9		711
39.10	Company can be prosecuted if law provides for compulsory imprisonment	712
39.11	Provisions in respect of trial in Court	712
39.12	Meaning of continuing offence for purpose of limitation	715
39.13	Criminal action of directors and employees is criminal action of a company	717
39.14	Limits on liability of directors in certain cases	717
	Power of Court to grant relief to officer if he had acted honestly and reasonably	718
39.16	Punishment for wrongful withholding of property	718
	Composition of offences	719
	40	
	ADMINISTRATION OF COMPANY LAW	
40.1	Law administered by Central Government	724
40.2	Regional Directors	727
40.3	Registrar of Companies	729
40.4	Returns to ROC	731
40.5	Company Law Board	737
40.6	SEBI	737
40.7	Civil Court & Company Court	737
40.8	National Company Law Tribunal and Appellate Tribunal	738
	41	
	MCA-21 - E-GOVERNANCE	
41.1	E-governance in company law administration	739

I-24
I-2

PAGE

PROCEDURAL COMPLIANCES
BY A COMPANY

42.1 Compliance requirements 746
42.2 Registers and Records 746
42.3 Maintenance and inspection of document in electronic form by company 749
42.4 Regular returns to be filed by companies 750

SUBJECT INDEX 757