



CONTENTS

	PAGE
<i>About the Authors</i>	<i>I-5</i>
<i>Preface to the Twenty-sixth Edition</i>	<i>I-7</i>
<i>Preface to the First Edition</i>	<i>I-9</i>
<i>Chapter-heads</i>	<i>I-11</i>
<i>Section-wise Index</i>	<i>I-29</i>

1

HISTORY OF COMPANY LEGISLATION

1.1	History of company legislation in India	1
-----	---	---

2

MEANING AND NATURE OF A COMPANY

2.1	What is a company ?	11
2.2	Definition of a company	12
2.3	Characteristic features of a company	12
2.4	Lifting the corporate veil	17
2.5	Advantages of Incorporation	26
2.6	Disadvantages of Incorporation	28
2.7	Company <i>vis-a-vis</i> Body corporate	29
2.8	Is company a citizen ?	30
2.9	Illegal association [Section 464]	32
2.10	Distinction between a company and a partnership	33
2.11	Difference between a company and limited liability partnership	35

	PAGE
2.12 Can a company become partner in a partnership firm ?	36
TEST YOUR KNOWLEDGE	36

3

KINDS OF COMPANIES

3.0 Introduction	38
3.1 Private company	38
3.1A One Person Company	40
3.1B Small Company	44
3.2 Public company	45
3.3 Distinction between private and public company	45
3.4 Special privileges and exemptions available to private companies	46
3.5 Conversion of a private company into a public company	49
3.6 Conversion of a public company into a private company	50
3.7 Statutory company	54
3.8 Registered companies	54
3.9 Limited liability companies	54
3.10 Unlimited liability company	56
3.11 Association not for profit	58
3.12 Memorandum and Articles of Association	59
3.13 Government companies	60
3.14 Foreign company	62
3.14A Offer of Indian Depository Receipts [Section 390]	66
3.15 Holding and subsidiary companies	67
3.16 Associate Company [Section 2(6)]	68
3.17 Public financial institutions [Section 2(72)]	68
3.18 Unregistered Companies [Section 375]	69
3.19 Dormant Company [Section 455]	70
3.20 Inactive Company [Section 455]	70
3.21 Producer Companies [Sections 378A to 378ZU of the Companies Act, 2013]	70
TEST YOUR KNOWLEDGE	81

4**FORMATION AND INCORPORATION
OF A COMPANY**

4.1	Promotion	84
4.2	Registration/Incorporation of a company	91
4.3	Simplified Proforma for Incorporating Company Electronically (SPICe) + (Pronounced as SPICe Plus)	95
4.3A	Certificate of incorporation	99
4.3AA	Online Registration of a company	99
4.3B	Effect of certificate of incorporation	102
4.3C	Conclusiveness of certificate of incorporation	102
4.4	Commencement of business	103
TEST YOUR KNOWLEDGE		104

5**MEMORANDUM OF ASSOCIATION**

5.1	Meaning and importance	106
5.2	Memorandum of Association - Whether an unalterable charter	106
5.3	Form and contents	107
5.4	Alteration of memorandum	121
TEST YOUR KNOWLEDGE		131

6**ARTICLES OF ASSOCIATION**

6.1	Introduction	134
6.2	Memorandum and Articles - Their Relationship	134
6.3	Distinction between memorandum of association and articles of association	136
6.4	Contents	136
6.5	Model form of articles	138
6.6	Signing of Articles	138
6.7	Alteration of articles	139
6.8	Binding effect of memorandum and articles	143
6.9	Doctrine of constructive notice	147

	PAGE
6.10 Doctrine of indoor management	148
TEST YOUR KNOWLEDGE	151

7 **PROSPECTUS**

7.1	Meaning and definition of a prospectus	155
7.2	Contents of a prospectus	157
7.3	Draft Prospectus to be made public	160
7.3A	Abridged Prospectus	160
7.4	Is issue of prospectus compulsory/When prospectus is not required to be issued?	161
7.5	Statutory requirements in relation to a prospectus	161
7.6	Prospectus by implication/Deemed prospectus [Section 25]	163
7.7	Shelf Prospectus and Information Memorandum [Section 31]	164
7.8	Red herring prospectus [Section 32]	165
7.9	Misstatements in a prospectus and their consequences	165
7.10	Golden Rule for framing of Prospectus	169
7.11	Allotment of shares in fictitious names prohibited [Section 38]	170
7.12	Announcement regarding proposed issue of capital [Section 30]	171
TEST YOUR KNOWLEDGE		171

8 **ACCEPTANCE OF PUBLIC DEPOSITS**

8.1	Meaning of deposits	174
8.2	Acceptance of deposits	177
TEST YOUR KNOWLEDGE		184

9 **SHARE AND SHARE CAPITAL**

9.1	Meaning and nature of a share	185
9.2	Share v. Share certificate	187
9.3	Share v. Stock	187
9.4	Kinds of Shares	188
9.5	Par Value of Shares	193
9.6	Raising of capital/Issue of shares	193
9.7	Public issue of shares	197

	PAGE
9.8 Employees' Benefits Schemes	217
9.8A Employees Stock Option Scheme (ESOS)	218
9.8B Employee Stock Purchase Scheme (ESPS)	220
9.8C Stock Appreciation Rights Scheme (SARS)	220
9.9 Allotment of shares	220
9.10 Purchase of its own shares by a company/Buy-back of shares by a company	230
9.11 Financial Assistance for Purchase of its Own Shares	233
9.12 Issue of securities at a premium	235
9.13 Issue of shares at a discount [Section 53]	236
9.14 Issue of sweat equity shares [Section 54]	237
9.15 Share certificate	238
9.16 Rights shares/Further issue of capital [Section 62]	241
9.17 Conversion of loans or debentures into shares	243
9.18 Bonus shares [Section 63]	244
9.19 Distinction between bonus shares and rights shares	246
9.20 Reduction of share capital	246
9.21 Calls on shares	250
9.22 Forfeiture of shares	252
9.23 Surrender of shares	256
9.24 Transfer of shares	257
9.25 Forged transfer	267
9.26 Priority between transferees	268
9.27 Transmission of shares and debentures	268
9.28 Rectification of register of Members [Section 59]	269
9.29 Distinction between transfer and transmission	272
9.30 Nomination of shares and debentures [Section 72]	273
9.31 Lien on shares	273
9.32 Lien and forfeiture compared	274
9.33 Variation of shareholders' rights	274
TEST YOUR KNOWLEDGE	275

10

MEMBERSHIP

10.1 Definition of a member	282
------------------------------------	-----

	PAGE
10.2 Member v. Shareholder	283
10.3 Modes of acquiring membership	284
10.4 Who may become a member?	285
10.5 Termination of membership	289
10.6 Impersonation as a shareholder	289
10.7 Rights of a member/shareholder	290
10.8 Duties and Liability of members	291
10.9 Member v. Contributory	292
10.10 Expulsion of a member	293
TEST YOUR KNOWLEDGE	294

11

REGISTERS AND RETURNS

11.1 Introduction	295
11.2 Statutory books to be kept by a company	295
11.3 Optional books	295
11.4 Register of Charges [Section 85]	296
11.5 Register of Members/Debenture-holders	297
11.6 Register of investments not held in company's name [Section 187]	299
11.7 Register of fixed deposits [Section 73]	299
11.8 Books of account	299
11.9 Register of contracts or arrangements in which directors are interested [Section 189]	300
11.10 Register of Directors	302
11.11 Register of Loans and Investments by company [Section 186]	303
11.12 Minutes book	304
11.13 Annual return [Section 92]	306
11.14 Return of allotment [Section 39]	308
11.14A Return of Changes in Shareholding position of Promoters and Top Ten Shareholders	309
11.15 Place of keeping and inspection of registers, returns, etc. [Section 94]	309
TEST YOUR KNOWLEDGE	311

12**INVESTMENTS, LOANS, BORROWINGS
AND DEBENTURES**

12.1	Investments	312
12.2	Investments in other companies and bodies corporate/Inter-corporate loans and investments [Section 186]	314
12.3	Borrowings	317
12.4	Debentures	325
TEST YOUR KNOWLEDGE		338

13**DIVISIBLE PROFITS AND DIVIDEND**

13.1/2	Meaning of Dividend	339
13.3	Concept of Profit	339
13.4	Sources out of which dividends may be paid	340
13.5	Declaration of dividend on preference and equity shares	342
13.6	Interim dividend	344
13.7	Payment of dividend	345
13.8	Dividend warrants	347
13.9	Unpaid and unclaimed dividends	348
13.10	Establishment of Investor Education and Protection Fund [Section 125]	349
13.11	Can dividends be paid out of capital ?	352
13.12	Payment of dividend out of capital profits	352
TEST YOUR KNOWLEDGE		353

14**COMPANY MANAGEMENT**

14.1	Meaning of a Director	355
14.2	Who may be appointed as a Director?	355
14.3	Qualifications for Directors	356
14.4	Disqualifications of a Director	356
14.5	Legal position of Directors	358
14.6	Appointment of Directors	360
14.7	Resident Director	367

CONTENTS

I-20

	PAGE
14.8 Independent Director	367
14.9 Appointment of directors by proportional representation [Section 163]	376
14.10 Assignment of office by Director [Section 166(6)]	377
14.11 Minimum and maximum number of directors	377
14.12 Appointment of woman director on the Board	378
14.13 Appointment of director elected by small shareholders [Section 151]	378
14.14 Number of directorships	380
14.15 Vacation of office of a director [Section 167]	380
14.16 Removal of a director	382
14.17 Resignation by a Director [Section 168]	385
14.18 Validity of the acts of a director where his appointment is invalid [Section 176]	387
14.19 Powers of the Board of Directors	387
14.19A Committees of the board	392
14.20 Political contributions by Directors [Section 182]	395
14.21 Related party transactions [Section 188]	396
14.22 Interested Director	400
14.23 Duties of Directors	401
14.24 Liabilities of Directors	405
14.25 Loans to Directors	408
14.26 Remuneration of Directors (Managerial Remuneration)	410
14.27 Managing Director and other Key Managerial Personnel	417
14.28 Manager	422
14.29 Prohibition of simultaneous appointment of different categories of managerial personnel [Section 196]	423
14.30 Distinction between managing director and manager	423
14.31 Whole-time director	423
TEST YOUR KNOWLEDGE	424

15

COMPANY SECRETARY AND PRACTISING COMPANY SECRETARY

15.1 Definition of company secretary/secretary	430
15.2 Appointment of whole-time company secretary	430
15.3 Duties of secretary	431

	PAGE
15.4 Liabilities of company secretary	432
15.5 Company secretary in practice	436
15.6 Functions of company secretary [Section 205]	436
15.7 Secretarial audit [Section 204]	436
TEST YOUR KNOWLEDGE	437

16

COMPANY MEETINGS-I - GENERAL

16.1 Meaning of 'Meeting'	438
16.2 Kinds of Meetings	438
16.3 Requisites of a valid meeting	438
16.4 Meeting to be properly convened	439
16.5 Meeting to be legally constituted	446
16.6 Meeting to be properly conducted	450
16.7 Resolutions	459
16.7A Validity of votes	461
16.8 Circulation of members' resolutions [Section 111]	461
16.9 Registration of certain resolutions and agreements [Section 117]	462
16.10 Minutes	463
TEST YOUR KNOWLEDGE	464

17

COMPANY MEETINGS-II - GENERAL BODY MEETINGS

17.1 Need for meetings	468
17.2 Annual General Meeting (AGM)	468
17.3 Default in holding AGM	472
17.4 Extraordinary General Meeting (EGM)	473
17.5 Class meetings	477
TEST YOUR KNOWLEDGE	477

18

COMPANY MEETINGS-III - BOARD MEETINGS

18.1 Need for Board Meetings	481
18.2 When to hold ?	481

CONTENTS

I-22

	PAGE
18.3 Participation of directors through video conferencing or other audio visual means [Section 173(2)]	482
18.4 Board meeting	485
18.5 Contents and Agenda of Board Meeting	487
18.6 Time and place of Board meeting	488
18.7 Quorum	488
18.8 Adjournment for want of quorum	489
18.9 Passing of Resolutions by Circulation [Section 175]	490
18.10 Minutes of the Board meeting	490
TEST YOUR KNOWLEDGE	491

19

ACCOUNTS AND AUDIT

ACCOUNTS

19.1 Books of account required to be kept	493
19.2 Inspection of books of account	495
19.3 Persons responsible for keeping proper books of account [<i>vide</i> sub-section (6) of section 128]	496
19.4 Financial Statements	496
19.5 Authentication of Accounts	499
19.6 Board's Report	500
19.7 Circulation of Financial Statements	504
19.8 Adoption and filing of Financial Statements	505
19.9 Accounting Standards	508
19.10 Internal Audit	509

AUDIT

19.11 Who can be appointed as an Auditor (Qualifications)?	510
19.12 Who cannot be appointed as an Auditor (Disqualifications)?	511
19.13 Auditor not to render certain services	513
19.14 Appointment of First Auditors	513
19.15 Appointment of subsequent Auditors	514
19.16 Tenure of appointment	514
19.17 Compulsory rotation of auditors	514
19.18 Reappointment of retiring auditor	516

	PAGE
19.19 Rights of retiring auditor [Section 140(4)]	516
19.20 Casual vacancy	516
19.21 Removal and resignation of an auditor	517
19.22 Remuneration of auditors	518
19.23 Rights of the company auditor	519
19.24 Duties of Company Auditor	521
19.25 Special provisions relating to audit of Government Companies	523
19.26 Punishment for Contravention	525
19.27 Audit Committee	525
19.28 Cost audit [Section 148]	526
19.29 Secretarial Audit	528
TEST YOUR KNOWLEDGE	529

20

INSPECTION, INQUIRY AND INVESTIGATION

INSPECTION

20.1 Power to call for information, inspect books and conduct inquiries	532
20.2 What books and papers can be inspected?	534
20.3 Place and time of inspection	534
20.4 Duties of directors, officers, employees of the company to assist in inspection	534
20.5 Powers of the inspector	535
20.6 Supply of report	536

INVESTIGATION

20.7 Investigation	536
20.8 Who can apply and the scope of investigation?	536
20.9 Investigation into affairs of a company by Serious Fraud Investigation Office	537
20.10 Investigation into company's affairs in other cases	539
20.11 Firm, body corporate or association not to be appointed as inspector	540
20.12 Investigation of ownership of a company [Section 216]	540
20.13 Powers of inspectors	541
20.14 Report of the Inspector	543

	PAGE
20.15 Follow up action by the Central Government on the investigation report of the inspector	543
20.16 Investigations etc. of foreign companies [Section 228]	544
20.17 Penalty for furnishing false statements, mutilation or destruction of documents	544
20.18 Difference between Inspection and Investigation	544
TEST YOUR KNOWLEDGE	545

21

MAJORITY RULE AND MINORITY PROTECTION

21.1 Rule of majority	546
21.2 Personal rights of members	548
21.3 Representative and Derivative Action	549
21.4 Exceptions to 'the rule in Foss v. Harbottle'	550
TEST YOUR KNOWLEDGE	553

22

PREVENTION OF OPPRESSION AND MISMANAGEMENT

22.1 Meaning of oppression	554
22.2 Application to Tribunal for relief in cases of oppression etc.	564
22.3 Power of Tribunal	568
22.4 Oppression of majority	569
22.5 Appeals against the orders of the Tribunal and variation of the order of Tribunal	570
22.6 Composite/simultaneous petition under sections 241 and 271 - Whether maintainable	571
22.7 Powers of the Tribunal [Section 242]	571
22.8 Class Action	574
TEST YOUR KNOWLEDGE	577

23

COMPROMISES, ARRANGEMENTS, RECONSTRUCTION AND AMALGAMATION

23.1 Meaning of compromise	579
23.2 Meaning of arrangement	579

	PAGE
23.3 Statutory provisions regarding compromise or arrangement	580
23.4 Exercise of the Tribunal's discretion	582
23.5 Powers of the Tribunal	586
23.6 Information as to compromise or arrangement [Section 230]	587
23.7 Reconstruction and amalgamation	589
23.8 Meaning of reconstruction	589
23.9 Meaning of amalgamation and merger	590
23.10 Difference between amalgamation and reconstruction	590
23.11 Take-over <i>v.</i> Merger	590
23.12 Legal provisions regarding reconstruction and amalgamation	591
23.13 Reconstruction/Amalgamation by sale of undertaking [Section 232]	591
23.14 Merger and Amalgamation of certain companies [Section 233]	597
23.14A Application of section 233 to Start up Companies	599
23.15 Merger or Amalgamation with foreign company [Section 234]	599
23.16 Power to acquire shares of shareholders dissenting from scheme or contract approved by majority [Section 235]	600
23.17 Amalgamation of companies in public interest [Section 237]	603
23.18 Preservation of Books and Papers of Amalgamated Company [Section 239]	605
23.19 Offences committed prior to merger, amalgamation [Section 240]	606
23.20 Valuation by registered valuers	606
TEST YOUR KNOWLEDGE	606

24

WINDING UP

24.1 Meaning	609
24.2 Modes of winding up [Section 270]	609
24.3 Winding up by the Tribunal	610
24.4 Who can make petition? [Section 272]	617
24.5 Commencement of winding up [Section 357]	620
24.6 Procedure for winding up order	620
24.7 Consequences of winding up order	623
24.8 Submission of report by Company Liquidator [Section 281]	625
24.9 Promoters, directors etc. to cooperate with the Company Liquidator [Section 284]	627

	PAGE
24.10 Advisory Committee [Section 287]	627
24.11 General Powers of Tribunal in case of winding up by Tribunal	629
24.12 Dissolution of company [Section 302]	629
24.13 Enforcement of and appeal from orders	630
24.14 Summary procedure for Liquidation [Section 361]	631
24.15 Liquidators	632
24.16 Liquidators in winding up by the Tribunal	632
24.17 Liquidator in Summary Procedure	635
24.18 Official Liquidators	635
24.19 Provisions applicable to every mode of winding up	635
24.20 Debts of all descriptions to be admitted to proof [Section 324]	635
24.21 Preferential Payments	636
24.22 Antecedent and other transactions	639
24.23 Avoidance of voluntary transfer [Section 329]	640
24.24 Transfer for benefit of all creditors [Section 330]	640
24.25 Liabilities and rights of certain fraudulently preferred person [Section 331]	641
24.26 Effect of floating charge [Section 332]	641
24.27 Disclaimer of onerous property [Section 333]	641
24.28 Avoidance of transfers, etc. after commencement of winding-up [Section 334]	643
24.29 Avoidance of certain attachments [Section 335]	643
24.30 Offences by officers of companies in liquidation [Section 336]	644
24.31 Penalty for fraud by officers [Section 337]	645
24.32 Liability for not keeping proper books [Section 338]	646
24.33 Liability for fraudulent conduct of business [Section 339]	646
24.34 Damages for misfeasance etc. [Section 340]	647
24.35 Prosecution of Delinquent Officer and Members of the Company [Section 342]	650
24.36 Miscellaneous provisions	650
24.37 Distribution of property	653
24.38 Default by the Company Liquidator to make returns [Section 353]	654
24.39 Meetings to ascertain wishes of creditor and contributories [Section 354]	654
24.40 Contributory	654
24.41 Unregistered Companies	658
24.42 Winding-up of a Foreign Company	660

	PAGE
24.43 Removal of name of company from Register of Companies	660
24.44 Transfer of winding-up proceedings to Tribunal	666
TEST YOUR KNOWLEDGE	667

25

AUTHORITIES UNDER THE COMPANIES ACT, 2013

25.1 Registrar of Companies (R.O.C.)	670
25.2 Regional Director	672
25.3 National Financial Reporting Authority [Section 132]	673
25.4 Serious Fraud Investigation Office [Section 211]	675
25.5 National Company Law Tribunal	676
25.6 National Company Law Appellate Tribunal	678
25.7 Special Courts	681
TEST YOUR KNOWLEDGE	682

26

SERVICE OF DOCUMENTS

26.1 Service of documents on a company	683
26.2 Service of documents on R.O.C. [Section 20]	683
26.3 Service of documents on members by company [Section 20]	683
26.4 Electronic communication	684
TEST YOUR KNOWLEDGE	684

27

CORPORATE GOVERNANCE

27.1 Meaning of Corporate Governance	685
27.2 Need for Corporate Governance	685
27.3 Corporate Governance in India	687
27.4 Kotak Committee on Corporate Governance	691
27.5 Certain Provisions of the Companies Act, 2013 <i>vis-a-vis</i> Corporate Governance	692
TEST YOUR KNOWLEDGE	694

28**DEPOSITORIES ACT, 1996 : AN ANALYSIS**

28.1	Objectives	695
28.2	Salient features of Depositories Act, 1996	695
28.3	Meaning of Depository	696
28.4	Benefits of depository system	696
28.5	Services to be rendered by a Depository	696
28.6	Dematerialisation of securities	699
28.7	How does an investor avail services of a depository?	699
28.8	Free transferability of services	700
28.9	Rematerialisation	701
28.10	Powers of SEBI under the Depositories Act, 1996	701
28.11	Bye-laws of a depository	701
28.12	Stamp duty on security certificates	702
28.13	Distinctive number of shares	703
28.14	Exercise of membership rights in respect of securities held by a Depository	703
28.15	The evidential value of the records of the depository	703
28.16	Cognizance of offence by Courts	703
28.17	Penalty for offences under the Depositories Act	703
TEST YOUR KNOWLEDGE		704

29**COMPANY LAW IN A COMPUTERISED ENVIRONMENT - E-GOVERNANCE AND E-FILING**

29.1	What is e-Governance	705
29.2	Filing of applications, documents, inspection etc. in electronic form	705
29.3	Advantages of e-Filing	707
29.4	MCA-21 Programme	707
29.5	MCA-21 Version 3	709
29.6	Five Step e-Filing Process	710
TEST YOUR KNOWLEDGE		713