

# Essentials of COMPANY LAW

**V Balachandran**





**Essentials of  
Company Law**



# Essentials of Company Law

**V. Balachandran**

Former Senior Professor & Head and Dean,  
Faculty of Management and  
Director of Distance Education  
Alagappa University  
Karaikudi, Tamil Nadu

*AND*

Former Dean, School of Business Studies  
Head, Department of Management Studies,  
Central University of Kerala



**Vijay Nicole Imprints Private Limited**  
CHENNAI

## **Published by**



**Vijay Nicole Imprints Private Limited**

No. 1B, Second Main Road,

Ram Nagar South, Chennai – 600 091

Phone: +91 -44 -4283 7178, 72002 58368, 97898 33533

Email: [vni@vijaynicole.co.in](mailto:vni@vijaynicole.co.in) Website: [www.vijaynicole.co.in](http://www.vijaynicole.co.in)

## **Essentials of Company Law**

**ISBN (Print): 978-81-974367-2-7**

**ISBN e-PUB: 978-81-974367-0-3**

**ISBN e-PDF: 978-81-974367-9-6**

## **Copyright © 2024, Vijay Nicole Imprints Private Limited**

No part of this publication may be reproduced or distributed in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise or stored in a database or retrieval system without the prior written permission of the publishers and copyright holders. The program listings (if any) may be entered, stored and executed in a computer system, but they may not be reproduced for publication.

Information contained in this work has been obtained by publishers, from sources believed to be reliable. However, neither publishers nor copyright holders guarantee the accuracy or completeness of any information published herein, and neither publishers nor copyright holders shall be responsible for any errors, omissions, or damages arising out of use of this information. This work is published with the understanding that publishers and copyright holders are supplying information but are not attempting to render engineering or other professional services. If such services are required, the assistance of an appropriate professional should be sought.

Dedicated To His Holiness Shri Jagadguru  
*Shri Kanchi Maha Swamigal*





# Contents

<i>Preface</i>	<i>xxiii</i>
<i>Highlights of the Companies Act, 2013</i>	<i>xxv</i>
<i>The Companies (Amendment) Act, 2015 - Key Amendments</i>	<i>xxvii</i>
<i>Highlights of the Companies (amendment) Act, 2017</i>	<i>xxix</i>
<i>Highlights of the Companies (amendment) Act, 2019</i>	<i>xxxi</i>
<i>Amendments in Company Law Since 2020 – Recent Developments</i>	<i>xxxiii</i>

## **PART- I COMPANY FORMATION AND INCORPORATION**

<b>Chapter 1</b>	<b>Nature of a Company</b>	<b>1.3</b>
	Meaning of a Company	1.3
	Definition of a Company	1.3
	Characteristic Features of the Company	1.4
	Corporation or Body Corporate	1.5
	Lifting or Piercing the Corporate Veil	1.6
	Exceptions under Judicial Interpretation	1.6
	Exceptions under Statutory Provisions	1.7
	Illegal Associations (Section 464)	1.8
	Consequences	1.8
	Association Not for Profit or Licensed Companies (Section 8)	1.8
	Limited Liability Partnership	1.9
	Features of LLP	1.9
	Difference between LLP and Company	1.9
	Distinction between a Partnership and a Company	1.9
	<i>Review Questions</i>	<i>1.11</i>
<b>Chapter 2</b>	<b>Classification of Companies</b>	<b>2.1</b>
	Introduction	2.1
	Basis of Classification of Companies	2.1

Classification of Companies	2.2
Classification on the Basis of Number of Members	2.3
Private Company	2.3
Public Company - Section 2 (71)	2.3
Distinction between a Public Company and Private Company	2.3
Classification on the Basis of Liability	2.5
Limited Liability	2.5
Companies Limited by Guarantee - Section 2(21)	2.5
Companies Limited by Shares - Section 2(22)	2.5
Unlimited Company - Section 2(92)	2.5
Classification on the Basis of Ownership	2.5
Government Company - Section 2(45)	2.5
Non-Government Company	2.6
One Person Company - Section 2(62)	2.6
Licensed Companies [Section 8]	2.7
Associate Company - Section 2(6)	2.7
Small Company – Section 2(85)	2.8
Dormant Company	2.8
Foreign Companies - Section 2(42)	2.8
Investment Companies [Section 186]	2.9
Public Financial Institution - Section 2(72)	2.9
Holding Company and Subsidiary Company	2.9
Private Companies	2.9
Exemption for Government Companies and Charitable Companies	2.9
Exemption for Private Companies	2.9
Exemption for Charitable Companies	2.10
Producer Companies	2.10
Objects of a Producer Company	2.10
<i>Review Questions</i>	2.11

<b>Chapter 3</b>	<b>Formation and Incorporation of Companies</b>	<b>3.1</b>
	Introduction	3.1
	Company Promotion	3.1
	Company Formation (Stages)	3.2
	Duties of Promoters	3.2
	Incorporation of Companies	3.3
	Application for Incorporation of Companies	3.3
	Step for Formation of Company	3.4
	Declaration by Professionals	3.5
	Certificate of Incorporation is Conclusive Evidence	3.5
	Consequences of Registration (Section 9)	3.5
	Effect of Memorandum and Articles (Section 10)	3.5
	Commencement of Business	3.6
	Registered Office of the Company (Section 12)	3.6
	<i>Review Questions</i>	3.7
<b>Chapter 4</b>	<b>Memorandum of Association</b>	<b>4.1</b>
	Introduction	4.1
	Purpose of Memorandum	4.1
	Forms of Memorandum	4.1
	Contents of Memorandum - Section 4(1)	4.2
	Name Clause [Section. 4(1)(a)]	4.2
	The Registered Office Clause [Section 4(1)(b)]	4.4
	Objects Clause [Section 4(1)(c)]	4.4
	Liability Clause [Section 4(1)d]	4.4
	Capital Clause [Section 4(1)(e)]	4.5
	Declaration for Subscription	4.5
	Alteration of Memorandum of Association	4.5
	Shifting of Registered Office within the Same State (Rule 28)	4.5
	Alteration of Memorandum by Change of Name (Rule 29)	4.6
	Doctrine of Ultra Vires	4.7
	<i>Review Questions</i>	4.8

<b>Chapter 5</b>	<b>Articles of Association</b>	<b>5.1</b>
	Meaning of Articles	5.1
	Contents of Articles	5.1
	Registration of Articles	5.2
	Alteration of Articles	5.3
	Alteration of Articles to be Filed With Registrar	5.3
	Relationship between Articles and Memorandum	5.3
	Doctrine of Constructive Notice	5.4
	Doctrine of Indoor Management	5.4
	<i>Review Questions</i>	5.5

## **PART - II MOBILISATION OF RESOURCES**

<b>Chapter 6</b>	<b>Prospectus</b>	<b>6.1</b>
	Introduction	6.3
	Objectives of Prospectus	6.3
	Prospectus - Definition	6.3
	Contents of Prospectus	6.4
	Reports	6.6
	Information Memorandum	6.7
	Misleading Prospectus	6.7
	What is a False or Untrue Statement?	6.8
	Who are Liable for Mis-statements in Prospectus?	6.8
	Liabilities in Case of Mis-statements	6.8
	Civil Liability	6.8
	Allotment of Securities by Company (Section 39)	6.10
	Return of Allotment with Other Documents	6.10
	<i>Review Questions</i>	6.11
<b>Chapter 7</b>	<b>Share Capital and Debentures</b>	<b>7.1</b>
	Share Capital	7.1
	Kinds of Share Capital	7.1

Authorized Capital - Section 2(8)	7.1
Issued Capital - Section 2(50)	7.2
Subscribed Capital - Section 2(86)	7.2
Kinds of Shares	7.2
Nature of Shares or Debentures (Section 44)	7.2
Numbering of Shares (Section 45)	7.2
Share Certificate (Section 46)	7.2
Voting Rights	7.4
Equity Shares with Differential Rights - Conditions for Issue	7.4
Variation of Shareholders' Rights (Section 48)	7.5
Issue of Shares at a Premium (Section 52)	7.5
Prohibition on Issue of Shares at Discount (Section 53)	7.6
Sweat Equity Shares	7.6
Definition of Sweat Equity Shares (Section 2(88))	7.6
Register of Sweat Equity Shares	7.7
Conditions for Issue of Sweat Equity Shares (Section 54)	7.7
Issue and Redemption of Preference Shares (Section 55)	7.8
Transfer and Transmission of Securities (Section 56)	7.8
Meaning of Transfer of Shares and Transmission of Shares	7.8
Transmission of Shares	7.8
Refusal of Registration and Appeal Against Refusal (Section 58)	7.9
Rectification of Register of Members (Section 59)	7.10
Rights Issue/Further Issue of Share Capital (Section 62)	7.10
Procedure for Issue of Shares on Rights Basis	7.12
Issue of Bonus Shares (Section 63)	7.12
Reduction of Share Capital (Section 66)	7.13
Buy Back of Shares (Sections 68 to 70)	7.14

Conditions for Buy Back of its Own Shares (Section 68(2))	7.15
Debt Capital	7.16
Definition of Debenture - [Section 2(30)]	7.16
Debenture	7.17
Debentures - General Details	7.17
Debenture Stock	7.17
Debenture - Main features	7.17
Kinds of debentures	7.18
Distinction between Shareholder and Debenture Holder	7.20
Issue of Debentures under the Companies Act, 2013	7.20
Nomination by Securities Holders (Section 72(1))	7.21
<i>Review Questions</i>	7.22

### **PART - III COMPANY ADMINISTRATION**

<b>Chapter 8</b>	<b>Company Administration - I</b>	<b>8.1</b>
Director		8.3
Who may be the Directors?		8.3
Minimum Number of Directors		8.3
Maximum Number of Directors		8.3
Kinds of Directors		8.4
First Director		8.5
Woman Director		8.5
Independent Director		8.5
Small Shareholders' Director		8.8
Director Identification Number		8.8
Application for DIN		8.9
Director to Intimate DIN		8.9
Obligation of Company		8.9
Disqualifications for Appointment of Director		8.9
Appointment of Directors		8.10

Appointment of Additional Director	8.10
Appointment of Alternate Director	8.10
Appointment of Nominee Director	8.11
Filling up Casual Vacancy	8.11
Appointment of Directors to be Voted Individually	8.11
Proportional Representation for Appointment of Directors	8.11
Duties of Directors	8.11
Statutory Duties	8.11
General Duties	8.12
Responsibilities of the Board of Directors	8.12
Liabilities of Directors	8.13
Number of Directorships	8.14
Resignation of a Director (Section 168)	8.14
Constitution of Important Committees	8.15
Audit Committee (Section 177)	8.15
Number of Members	8.16
Functions of Audit Committee	8.16
Powers of Audit Committee	8.17
Vigil Mechanism	8.17
Powers of Board (Section 179)	8.17
Board of Directors - Statutory Powers	8.18
Powers of Board under Companies (Meeting of Board and its Powers) Rules, 2014	8.19
Delegation of Power	8.19
Restrictions on Powers of the Board (Section 180)	8.19
Prohibition and Restrictions on Political Contributions (Section 182)	8.19
Disclosure of Interest by Director (Section 184)	8.20
Loans to Directors (Section 185)	8.20
Contract by One Person Company	8.21
Prohibition of Forward Dealings in Securities of Company by Director	8.21

Prohibition on Insider Trading of Securities (Section 195)	8.21
Punishment	8.22
Restrictions on Communication and Trading by Insiders	8.23
Managing Director – Manager	8.23
Secretarial Audit	8.24
Related Party Transactions	8.24
Definition of ‘Related Party’	8.24
Definition of ‘Relative’	8.24
Related Party Transactions (Section 188)	8.25
Definition of ‘Office or Place of Profit’	8.25
Definition of ‘Arm’s Length Transaction’	8.25
Indemnification	8.26
Conditions	8.26
To be Included in the Board’s Report	8.27
Punishment	8.28
<i>Review Questions</i>	8.28

## **Chapter 9      Company Administration - II      9.1**

Board of Directors and Board Committees	9.1
Board Committees	9.1
Constitution of Committees - Powers of the Board of Directors	9.2
Kinds of Board Committees	9.2
Mandatory Review by Audit Committee	9.3
Composition of Stakeholders Relationship Committee	9.4
Functions of the Stakeholders Relationship Committee	9.5
Composition of Risk Management Committee	9.5
Risk Management Committee – Key functions	9.6
CSR Committee	9.6
Applicability	9.6
Composition of the Board	9.7



CSR Reporting	9.7
Strategy Planning Committee	9.8
Obligation of the Companies under Companies (CSR Policy) Rules, 2014	9.8
Composition of the Committee	9.9
<i>Review Questions</i>	9.9
<b>Chapter 10 NCLT, NCLAT and Special Courts</b>	<b>10.1</b>
The National Company Law Tribunal [ NCLT]	10.1
Characteristic Features of NCLT	10.1
Jurisdiction of the NCLT	10.2
Powers of NCLT	10.2
Additional Powers	10.3
Penalties for Non-compliance	10.3
NCLT - Technical Functions	10.3
Freezing the Assets of a Company	10.4
NCLT Rules 2016	10.4
Functions of President, Registrar and Secretary	10.5
Functions of the Registrar	10.5
Functions of the Secretary	10.5
Registers to be Maintained by the Registry of the NCLT	10.6
Arrangement of Records in Pending Matters	10.6
National Company Law Appellate Tribunal (NCLAT)	10.6
Characteristic Features of NCLAT	10.6
Special Courts	10.8
Offences Triable by Special Courts	10.8
<i>Review Questions</i>	10.9
<b>Chapter 11 Company Meetings</b>	<b>11.1</b>
Introduction	11.1
Definition	11.1
Essentials of a Valid Meeting	11.1

Proper Authority to Convene a Meeting	11.2
Notice of Meetings	11.2
General Rules	11.2
Essentials of a Valid Meeting	11.3
Rules Regarding Quorum in General Meeting	11.3
One Member Quorum	11.3
Agenda	11.4
Preparation of Agenda	11.4
Proper Chairmanship	11.4
Powers and Duties of Chairman	11.4
Classification of Meetings	11.5
Annual General Meeting [AGM] (Section 96)	11.6
Purpose of AGM	11.6
Ordinary Business	11.7
Special Business	11.8
Public Company	11.9
Private Company	11.9
Special Provisions for OPC (Section 122)	11.9
Annual Report of Directors	11.10
Can an AGM be Adjourned?	11.10
Extra Ordinary General Meeting [EGM] [Section 100]	11.11
Explanatory Statement	11.12
Board Meeting (Section 173)	11.12
Meetings of Directors	11.13
Committee Meeting	11.13
Authority to Convene Board Meetings	11.13
First Board Meeting	11.14
Number of Meetings	11.14
Non Application of Section 173	11.14
Mode of Participation	11.14
Notice to Board Meeting	11.15
Quorum for Meetings of Board (Section 174)	11.15
Notice	11.16

At the Meeting	11.17
Quorum	11.17
Venue and Time	11.17
Registers	11.17
Obligation of Participants	11.17
Vote	11.17
Access	11.18
Minutes	11.18
Passing of Resolution by Circulation (Section 175)	11.18
Defects in Appointment of Directors not to Invalidate Action Taken (Section 176)	11.18
Class Meetings	11.19
Class meetings of Debenture Holders	11.19
Meetings of Creditors or Contributories	11.20
Resolutions	11.20
Meaning	11.20
Kinds of Resolutions (Section 114)	11.20
Matters Requiring only Ordinary Resolutions	11.21
Matters Requiring Special Resolution	11.21
Registration of Certain Resolution and Agreements: (Sec. 117)	11.22
Resolutions Requiring Special Notice (Section 115)	11.23
Resolutions Passed at Adjourned Meeting (Section 116)	11.23
Reports	11.25
Statutory Reports	11.26
Non–statutory Reports	11.26
Distinction between Minutes and Reports	11.26
<i>Review Questions</i>	11.26

**PART - IV DIVIDENDS, AUDIT AND WINDING UP OF COMPANIES**

<b>Chapter 12</b>	<b>Dividends</b>	<b>12.1</b>
	Dividend	12.3
	Dividend and Interest	12.3
	Declaration of Dividend	12.4
	Source of Dividend	12.4
	Conditions Before Declaring Dividend	12.5
	Depreciation	12.5
	Articles of Association	12.5
	Types of Dividend	12.5
	Difference between Interim and Final Dividend	12.6
	Dividend out of Free Reserves Under Companies (Declaration and Payment of Dividend) Rules, 2014	12.6
	Payment of Dividend	12.7
	Prohibition to Declare Dividend	12.7
	Dividend on Preference Shares	12.7
	Right to Dividend in Abeyance	12.7
	Dividend for Beneficiaries	12.8
	Punishment for Failure to Distribute Dividends	12.8
	Defence	12.8
	Unpaid Dividend Amount	12.9
	Statement of Unpaid Dividend Amount	12.9
	Interest for Default	12.9
	Claim of Dividend	12.9
	Transfer to Investor Education and Protection Fund (IEPF)	12.9
	Transfer of Shares	12.10
	Punishment	12.10
	Creation of Investor Education and Protection Fund	12.11
	Sources of IEPF	12.11
	Utilization of Fund	12.12



**Chapter 14 Winding Up 14.1**

Part I – Winding Up by the Tribunal	14.1
Unable to Pay Debts	14.2
Who Can file Petition to the Tribunal?	14.2
Petition by Creditor	14.3
Petition by Contributories	14.3
Petition by Registrar	14.3
Petition by Company	14.4
Views of Registrar	14.4
Powers of Tribunal	14.4
Company Liquidator	14.4
Appointment of Company Liquidator	14.4
Appointment of Provisional Liquidator	14.4
Removal and Replacement of Liquidator	14.5
Winding up Committee	14.5
Areas of Liquidation functions	14.5
Minutes of the Meetings	14.6
Final Report	14.6
Effect of Winding up Order	14.6
Powers and Duties of Company Liquidator	14.6
Powers of Tribunal - [Section 296 - 301]	14.7
Dissolution of Company - [Section 302]	14.8
Punishment	14.8
Part II - Voluntary Winding Up	14.9
Circumstances in which Company may be Wound Up Voluntarily (Section 304)	14.9
Conditions for Voluntary Winding up	14.9
Declaration as to Solvency	14.9
Time Limit for Declaration	14.9
Contents of the Declaration	14.10
Creditors' Meeting	14.10
Publication of Resolution (Section 307)	14.10

Winding Up and its Effect	14.10
Role of Company Liquidator in Voluntary Winding Up	14.10
Appointment of Company Liquidator	14.10
Declaration by Company Liquidator	14.11
Filing with Registrar	14.11
Duties of Company Liquidator (Section 314)	14.11
Committee to Assist Company Liquidator	14.12
Report by Company Liquidator	14.12
Part III- Provisions Relating to Every Mode of Winding Up	14.12
Debts to be Admitted to Proof	14.12
Overriding Preferential Payments (Section 326)	14.12
Preferential Payments (Section 327)	14.13
Official Liquidator	14.13
Appointment of Official Liquidator (Section 359)	14.13
Powers and Functions (Section 360)	14.14
Procedure for Liquidation (Section 361 to 365)	14.14
<i>Review Questions</i>	14.15
<b>Chapter 15 New Concepts in Companies Act</b>	<b>15.1</b>
Secretarial Audit	15.1
CSR under the Companies Act, 2013	15.3
Clause 49 of Listing Agreement	15.4
E-Board Meetings Board through Electronic Mode	15.5
Concept of Whistle Blowing	15.5
Secretarial Standards	15.6
Nidhi Companies	15.8
Company Secretary	15.10
Cost Audit under Companies Act, 2013	15.12
Serious Fraud Investigation Office	15.13
Dormant Company	15.13
E Governance	15.14
E-Voting	15.16

Registered Valuers	15.17
Class Action	15.18
National Financial Reporting Authority (NFRA)	15.19
Schedule VII	15.20

## **PART - V KNOWLEDGE REFRESHER**

<i>Company Law Quiz</i>	<i>CLQ.1</i>
<i>Model Question Paper Series</i>	<i>MQP.1</i>
<i>Past Years University Question Papers</i>	<i>PQU.1</i>
<i>Bibliography</i>	<i>BIB.1</i>