

*Elements of*

# COMPANY LAW

(Academic Textbook on The Companies Act, 2013)

**N.D. Kapoor**

**As Amended by  
The Companies  
(Amendment)  
Act, 2020  
(Schedules  
I to VII)**

**32nd**  
EDITION



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**Sultan Chand & Sons**

*Elements of*  
**COMPANY LAW**  
(Academic Textbook on The Companies Act, 2013)

*(For B.Com., M.Com., CA, CS, CMA, MBA, LLB and  
Other Commerce Courses of all Indian Universities)*

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**SULTAN CHAND & SONS**  
*Educational Publishers*  
New Delhi

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Fax : 011-23266357; Website: www.sultanchandandsons.com

ISBN : 978-93-91820-97-8 (TC-1226)

Price : ₹ 395.00

30th Revised Edition: 2015; Reprinted: 2016, 2017, 2018 & 2019

31st Revised Edition: 2020; Reprinted 2021, 2022, 2023, 2024

32nd Revised Edition: 2025

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**Author's Acknowledgement:** The writing of a Textbook always involves creation of a huge debt towards innumerable author's and publications. We owe our gratitude to all of them. We acknowledge our indebtedness in extensive footnotes throughout the book. If, for any reason, any acknowledgement has been left out we beg to be excused. We assure to carry out correction in the subsequent edition, as and when it is known.

# Preface

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## TO THE THIRTY SECOND EDITION

Companies (Amendment) Bill, 2020 was introduced in Lok Sabha on 17-3-2020. The Bill was passed and converted into an Act by Parliament on 22-9-2020. Various provisions of the Amendment Act were had been made effective from time to time on 21-12-2020, 22-1-2021, 11-2-2021, 18-3-2021, 24-3-2021, 1-9-2021, and 1-7-2022. The Companies (Amendment) Act 2020, introduced several significant changes to the Companies Act, 2013. Here are some of the key features:

- (a) **Producer Companies:** The amendment introduces a new chapter specifically addressing producer companies, removing certain provisions from the Companies Act, of 1956, and incorporating similar provisions in the Companies Act, 2013.
- (b) **Changes to Offences:**
  - Removal of penalties for certain offenses.
  - Elimination of imprisonment in specific offenses.
  - Reduction in the maximum fine for certain violations, such as failure to file annual returns.
- (c) **Penalty Reduction for Small Companies and One-person Companies**
  - Extension of the provision allowing reduced penalties (up to 50%) for one-person companies and small companies to all producer companies and start-up companies.
  - Extension of the provision to cover violations of any provision of the Act.
  - Limitation of the maximum penalty to two lakh rupees for the company and one lakh rupees for a defaulting officer.
- (d) **Direct Listing in Foreign Jurisdictions:** The central government is empowered to permit certain classes of public companies to list classes of securities in foreign jurisdictions.
- (e) **Beneficial Shareholding:** Empowerment of the central government to exempt certain classes of persons from compliance with the requirements related to the declaration of interest in case of beneficial shareholding.
- (f) **Exemptions from Filing Resolutions:** Extension of the exemption from filing resolutions related to borrowing money or granting loans to include registered non-banking financial companies and housing finance companies.

- (g) **Corporate Social Responsibility (CSR)**
- Exemption for companies with CSR liabilities of up to ₹ 50 lakh a year from constituting CSR Committees.
  - Provision for setting off excess amounts spent on CSR in a financial year towards CSR obligations in subsequent years.
- (h) **Periodic Financial Results for Unlisted Companies:** Empowerment of the central government to require certain classes of unlisted companies to prepare and file periodical financial results and complete the audit or review of such results.

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## TO THE THIRTY FIRST EDITION

We have great pleasure in presenting the 31<sup>th</sup> Revised and Enlarged Edition of the book entitled “*Elements of Company Law*” with the Companies Act, 2013 (Schedules) which has been thoroughly updated and amended upto 2019 to our esteemed readers. The salient features of the present edition are as follows:

**The Companies (Amendment) Act, 2019** issued on 2<sup>nd</sup> November 2018 brought about key changes of certain provisions of the companies Act, 2013. The 2018 Ordinance which was due to expire on January 21, 2019 was passed by the Lok Sabha as it could not be taken up by the Rajya Sabha. In order to give continuity to the amendments introduced by the 2018 ordinances, and was published on January 12, 2019 by another ordinance *i.e.*, ‘Companies Amendment Ordinance 2019’ with its provisions effective from November 2, 2018. Again since Companies (Amendment) Ordinance, 2019 was to terminate on 13<sup>th</sup> March 2019, to give effect to the Ordinance dated 2018 and 2019. Now the Companies (Amendment) Act, 2019 has been passed by the Lok Sabha on 26<sup>th</sup> July, 2019 and by the Rajya Sabha on 29<sup>th</sup> July, 2019. It was notified on 31<sup>st</sup> July, 2019 to replace Companies Amendment Ordinance, 2019. The Amendment Act reinstated the requirement of commencement of business declaration, introduced the requirement for the physical verification of the registered office, made Corporate Social Responsibility (CSR) spending mandatory, prohibits unfit and improper persons from managing companies and rationalize penalty under various sections besides other charges.

1. The following Sections have been amended under **Companies (Amendment) Act, 2019**:
  - Amendment of Section 2 – (hereinafter referred to as the Principal Act), in clause (41);
  - Insertion of new Section 10A (Commencement of business, etc.);
  - Amendment of Section 12 – (Insertion of sub-section 9, physical verification of registered address);
  - Amendment of Section 14 – [(sub-section (1) conversion of a public company into a private approved by the Central Government on a prescribed form)], sub-section (2) for the word “Tribunal” the words “Central Government” shall be substituted;
  - Amendment of Section 26 – (in Sub-sections (4), (5) & (6) for the word “registration”, the word “filing” shall be substituted, sub-section (7) shall be omitted ;
  - Amendment of Section 29 – (i) (in sub-section (1) in clause (b) the word “public” shall be omitted, (ii) after sub-section (1) a new sub-section (1A) shall be inserted;

- Amendment of Section 35 – in sub-section (2) in clause (c);
- Amendment of Section 53 – for sub-section (3);
- Amendment of Section 64 – for sub-section (2);
- Amendment of Section 77 – in sub-section (1), in clause (a) and clause (b);
- Amendment of Section 86 – of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section is inserted, namely-sub-section (2);
- Substitution of new section for Section 87 – (Rectification by Central Government in Register of Charges;
- Amendment of Section 90 – (i) after sub-section (4), the following sub-section shall be inserted namely; (4A), (ii) for sub-section (9), (iii) after sub-section (9) as so substituted, the following sub-section shall be inserted namely: sub-section (9A), (iv) in sub-section (11);
- Amendment of Section 92 – sub-section (5);
- Amendment of Section 105 – sub-section (3);
- Amendment of Section 117 – for sub-section (2);
- Amendment of Section 121 – sub-section (3);
- Amendment of Section 132 – (a) after sub-section (1) following sub-section is inserted namely (1A), (b) after sub-section (3) sub-section (3A) and (3B) are inserted, (c) sub-section (4) in clause (c) for sub-clause (B);
- Amendment of Section 135 (a) in sub-section (5), after sub-section (5), the following sub-sections shall be inserted sub-section (6), sub-section (7) and sub-section (8);
- Amendment of Section 137;
- Amendment of Section 140 – for sub-section (3);
- Amendment of sub-section 157 – for sub-section (2);
- Substitution of new Section for Section 159 – (Penalty for default of certain provisions);
- Amendment of Section 164 in sub-section (1), after clause (h);
- Amendment of Section 165 – sub-section(6);
- Amendment of section 191 – for sub-section (5);
- Amendment of Section 197 – (a) Sub-section (7) shall be omitted, (b) for sub-section (15);
- Amendment of Section 203 – in sub-section (5);
- Amendment of Section 212 – in sub-section (8), sub-section (9), sub-section (10), after sub-section (14) sub-section (14A) shall be inserted;
- Amendment of Section 238 – in sub-section (3);
- Amendment of Section 241 – in sub-section (2), after sub-section (2) sub-section (3), sub-section (4) and sub-section (5) shall be inserted;
- Amendment of Section 242 – after sub-section (4) sub-section (4A) shall be inserted;
- Amendment of Section 243 – (a) after sub-section (1) sub-sections (1A) and (1B) are inserted, (b) in sub-section (2);

- Amendment of Section 248 – in sub-section (1) in clause (c) and after clause (c);
  - Amendment of Section 272 – in sub-section (3);
  - Amendment of Section 398 – in sub-section (1) in clause (f);
  - Amendment of Section 441 – in sub-section (1), in clause (b), for sub-section (6);
  - Amendment of Section 446 B;
  - Amendment of Section 447 – in the provision, for the words “twenty lakh rupees”, the words “fifty lakh rupees” shall be substituted;
  - Amendment of Section 454 – in sub-section (3), in sub-section (4) in sub-section (8) in clause (i) in clause (ii);
  - Insertion of new Section 454 A – (Penalty for repeated default).
2. To improve the grasp and understanding of the subject-matter, more questions like – 104 Test Question and 62 Practical Problem (with Hints and Solutions) have been updated.
  3. Presentation of Examples, Illustrative Cases, etc., have been highlighted in indention and different type face to make it more reader friendly.
  4. New Typography of the book makes the book strain-free and reader friendly.

We acknowledge with gratitude the help received from scholars, friends and well-wishers at the various stages of preparation of this Edition. Suggestions are invited to further improve the book. Kindly share your views at [info@sultanchandandsons.com](mailto:info@sultanchandandsons.com).

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# Features of The Companies Act, 2013

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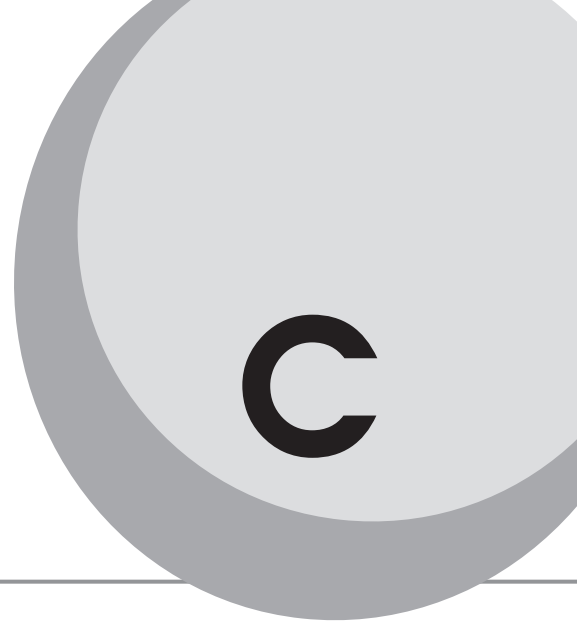


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1. The new Companies Act, 2013 effective from 01.04.2014 has dispensed with the prior approval of the Central Government on most of the matters of companies which have now been left to be decided by the Boards of Directors of companies and/or the shareholders. The objective is promotion of a legal framework of responsible self-regulation in the corporate sector.
2. The urgent need for in *preventing serious irregularities auditing job* which came to light in the country in the recent past is reflected in the elaboration of the functions of statutory Auditors in the new Companies Act. Further there is threat of punishment with imprisonment of one year and hefty fine in case as Auditor has contravened any of the provisions knowingly or willfully with the intention to deceive the stakeholders.
3. The new Companies Act, 2013 *has introduced the concept of key managerial personnel* which comprises of Chief Executive Officer (CEO), Company Secretary and the Chief Financial Officer. The rules provide that it is mandatory for every company having paid-up share capital of ten crores of rupees or more to have whole-time key managerial personnel, which only goes to give statutory backing to the position generally prevalent in the corporate sector.
4. Under the new Companies Act, 2013 the composition of the Board of certain class or classes of companies shall *at least include one woman Director*. This provision will be applicable to all listed companies and also to certain big public companies.
5. The Companies Act, 2013 has now made it compulsory to have *one-third of the Board as Independent Directors* for listed companies and also to certain big public companies.
6. The new Companies Act, 2013 provides for constitution of the *Corporate Social Responsibility (CSR) Committee of the Board* to formulate the CSR policy for undertaking *the activities specified, in large companies of the size prescribed. Such companies are required to spend at least two per cent of their profits in every financial year.* The shortfall if any, in spending the amount having to be disclosed in the Board's report with the reason for not spending the amount. There is the need for big companies to extend some help to the community in which they function and prosper.
7. The secretarial audit report provided in respect of listed companies to be annexed to the Board's Report, given by a company secretary will help in improving the compliance by the companies.



8. A new category of company introduced by the Companies Act, 2013 namely One Person Company limited will be private limited in nature. This Category will enable sole proprietorships to convert themselves into one person companies and to derive the benefits of incorporation under the Companies Act, 2013.
9. The law of acceptance of deposits by companies has been rationalized with the predominant objective being to protect the interest of several depositors. The latter objective is proposed to be achieved by making it mandatory for companies accepting deposits to give the depositors insurance cover with guaranteed recovery of deposit upto Rs. 20,000 per depositors in case of default. The companies are also required to create a charge on the assets of the company in favour of depositors as security for the repayments of balance money, if any. The Companies Act, 2013 restricts the option to invite deposits from public to fairly big public companies like companies having net worth of rupee one hundred crores or turnover of rupees five hundred crores while all companies, public or private, are allowed to accept deposits upto 10% from their members.
10. Transaction with related parties are subjected to greater disclosure.
11. The procedure regarding *managerial remuneration* in the new Companies Act, 2013 continue to be the same as it was under the previous Companies Act, 1956 and the same will be governed by the provisions of Schedule V which gives the freedom to companies making profits to fix remuneration up to 5% or 10% of net profits, as the case may be, and in respect of companies having no or inadequate profits, to fix remuneration on the basis of the scale of remuneration given depending on the effective capital of such a company. With the graded scale of remuneration having been composed in a manner to suit the current trends and in a liberal way, it is expected that there may be fewer occasions for companies to seek the prior approval of Government for managerial remuneration.
12. The companies Act, 2013 has included *Nidhis* which are small public companies formed to promote the habit of thrift amongst its member. These will be founded to be, valued to the community in cities and towns.



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