

With
The Companies (Amendment) Act, 1988

JEHANGIR M.J. SETHNA

Indian Company Law

TENTH EDITION

VOLUME-2

WADHWA & COMPANY

**With
The Companies (Amendment) Act, 1988**

Indian Company Law

Act of 1956 with upto date amendments, together with rules, forms, notifications, clarifications, guidelines, etc. etc., with special features like chapters on foreign collaborations, company taxation, comparative company law of five important countries and useful material from the publications of the Institute of Company Secretaries of India and the Institute of Chartered Accountants of India.

by

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Preface to the Tenth Edition

In this treatise, we have not only given a picture of the Indian Company Law and Practice but have also discussed, at some length, the Company Law of five important countries of the world with which India has very important and close business relations; these countries are—**Japan, Federal Republic of Germany, France, U.S.A. and Britain**. These are the five countries with which there have been maximum number of foreign collaboration and transfer of technology agreements. Therefore, we consider it worthwhile to give to the readers a good idea of the comparative position of Company Laws of these five countries.

This is the **first book in this country on Company Law** which discusses at some length relationship between a multinational corporation, a foreign company and a **foreign collaboration**. In view of the fact that Indian companies are entering into foreign collaboration agreements in large numbers, we consider it desirable to add a full chapter on this theme.

Corporate taxation also being an important consideration in the formation of a company and in the drafting of foreign collaboration agreements, a chapter has been added on Corporate Taxation also.

Sethna on Indian Company Law, already a well established treatise upto its Ninth Edition, nationally as well as internationally, has undergone tremendous improvements in the present Tenth Edition in numerous ways. Some of the special highlights have already been stated above. Another special feature is that in this Edition, chapterisation scheme of Companies Act, 1956, has been followed.

The treatment given in this treatise to important topics which are particularly current in view of the litigation going on in connection with the Bhopal 1984 Tragedy, namely, the **Holding-Subsidiary Company relationship** and the **Doctrine of Lifting the Corporate Veil**, is really unique and not to be found in any book on Company Law in this country.

We are grateful to the Institute of Company Secretaries of India for having permitted us to use the material contained in the Institute's Publication **Check-list/Working Sheet under the Companies Act, MRTP Act and Capital Issues (Control) Act**, in this publication by suitably incorporating it at appropriate places. The practical tips based on the material contained in the publication of the Institute, we are sure, would enhance the utility of this book.

We are also very grateful to the Institute of Chartered Accountants of India for permitting us to use part of their publication, entitled, **A Guide to Company Audit**, and another of their publication, entitled, **Guidance Note on Section 293A of the Companies Act and the Auditor**. These two constitute appendices 72 and 73 in Volume II of this Treatise.

This Edition carries cases reported upto June 1987.

We place on record the assistance rendered to us in the preparation of this book by Shri Sudhir Kumar Dixit, B.A., LL.M.

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P.S. SANGAL

Preface to the Ninth Edition

This edition has been brought up-to-date. Substantial alterations, necessitated by the various amendments, have been made. Care has been taken to ensure accuracy in the commentaries, the case law, the various explanations, and the various Rules, Forms and Precedents and Drafts of Company Documents. The case law, English and Indian, has been brought up-to-date and made exhaustive.

Forms, Precedents and various Drafts of Company Documents, such as agreements, assignments, powers-of-attorney, contracts of appointment of managing and whole-time directors and secretaries, promoter's agreements, memoranda of association, objects clauses and sub-clauses in the memoranda of association, share certificates, stock certificates, share warrants to bearer, debentures, notices of various types of meetings and the minutes thereof, transfer forms, winding-up notices, declaration of solvency, etc. add to the value of the work and are indispensable to company officers, secretaries, directors and practitioners. These have been relegated to Volume II of this Work. New Guidelines relating to issue of Bonus Shares, 1981, the Company Secretaries Act, 1980 and the Company Secretaries Regulations, 1981, have been added as Appendix 42, Appendix 43 and Appendix 44 in Volume II.

Though this Book has been written in the subject-by-subject style and not through the conventional method of commentaries section-by-section, references to the relevant sections of the Companies Act have been given throughout the commentaries; and to every section, in the Text of the Companies Act, mention is made of the pages on which the relevant commentaries to that section are found in the Book. That makes the Work doubly convenient, and suitable to the busy practitioner also who looks up a section and needs all the law pertaining to that section without the necessity of going through the Index and the trouble of finding out numbers of the relevant pages for commentaries. Hence, in this Book, there is a combination of the conventional section-by-section style with the modern and more logical subject-by-subject treatment.

I am thankful to the Publishers and the Printers for having afforded facilities. I shall feel gratified by this Work serving the purposes it is meant to serve.

A word from the Publishers

We are very happy to present Sethna's **Indian Company Law** in its Tenth Edition. We are a well-known publishing house of more than 45 years standing and Sethna's **Indian Company Law** is also a book of very great standing in the field of books on Indian Company Law.

Upto its Ninth Edition, it had almost become a classic and this Tenth edition has introduced several improvements. We have introduced several new features which are not to be found in any other book on Company Law in this country and those new features have been elaborated in the Preface by the learned authors.

We are very grateful to Shri D.C. Singhanian, an Advocate of very great standing in the field of Company Law and to Professor P.S. Sangal of Law Department of Delhi University, a very distinguished Professor of Company Law, who acceded to our request to undertake this gigantic task of not only revising this book but also enlarging it and introducing several new features. We are also grateful to Shri C.C. Shah of Bombay for his constant encouragement and support.

We are also grateful to the Institute of Company Secretaries of India and the Institute of Chartered Accountants of India for their kind permission to use some of their materials.

We are enclosing a coupon in this book which will entitle the purchaser of the book to a free supplement incorporating the amendments, if any, effected to the Companies Act, 1956 during this year i.e. upto December 1987.

The publishers welcome suggestions for improvement of the book so that we may serve our readers better in the future.

Recent Notification in regard to Foreign Collaborations

Delegation of powers to administrative Ministries for sanctioning foreign collaboration proposals

(Issued by the Ministry of Industry, Department of Industrial Development, S.I.A. Foreign Collaboration—I Section vide their F.No. 9 (10) 86-FC (1) dated 16-1-1987.

In order to further streamline and expedite the procedures for securing approvals relating to foreign collaboration proposals, Government have decided to enhance the delegated powers of the administrative Ministries to accord approvals for foreign collaboration proposals. The Administrative Ministries will henceforth issue approvals in the types of cases mentioned below—

- (i) Where there is no foreign equity participation in the proposal.
- (ii) The applicant is not a company with existing foreign equity investment.
- (iii) The item proposed to be manufactured is consistent with the priorities set out in the Industrial Policy Statement.
- (iv) The proposal is not one envisaging extension of the period of collaboration approved earlier.
- (v) The royalty payable is not more than 5% (taxable, and will be comprised within the period of agreement which may extend to 10 years. The period of going into commercial production is included within this period of 10 years. The total lumpsum and royalty payments should not be more than 8% of total expected sales (calculated on an ex-factory value basis) over a period not exceeding 10 years. The above should be treated as the upper ceiling and the rate of royalty, the amount of lumpsum and the period of the agreement in respect of the individual cases should be decided by the Administrative Ministry on a case to case basis, taking into account all relevant factors. It is desirable that normally the period of agreement should be for eight years and royalty for five years allowing three years for commencement of commercial production.
- (vi) The period of foreign collaboration should run from the date the agreement is filed with the Reserve Bank of India.

(vii) Lumpsum payments, if any, are paid in not less than three standard instalments, the first instalment to be paid after the agreement is submitted to the Reserve Bank of India, the second instalment on delivery of technical documentations, and the third instalment to be paid on the commencement of commercial production or four years after the agreement is filed with the Reserve Bank of India whichever is earlier. If the Indian party so desires, the lumpsum amount sanctioned could be net of Indian taxes with taxes being borne by the Indian party.

(viii) The foreign exchange outgo in each case on lumpsum payments, if any, and royalty together does not exceed Rupees one crore in the aggregate.

(2) All applications seeking approval for foreign collaboration will continue to be received centrally in the Secretariat for Industrial Approvals (SIA), Foreign Collaboration-I Section, Department of Industrial Development, New Delhi, as hitherto. Applications in respect of proposals which could be disposed of by the Administrative Ministries under the delegated powers will be forwarded by the Secretariat for Industrial Approvals to the Adm. Ministries.

(3) Proposals not within the ambit of the above delegations will be processed by the Secretariat for Industrial Approvals and submitted to the Foreign Investment Board for due consideration.

(4) Foreign collaboration proposals in industries falling within the illustrative list of industries where no foreign collaboration, financial or technical, is considered necessary (as amended from time to time) would not be decided under these delegated powers, but would be brought before the Foreign Investment Board. A copy of the illustrative list is at Annexure.

(5) Indian entrepreneurs seeking approval for foreign collaboration can apply in the prescribed form (being used at present) to the Secretariat for Industrial Approvals. However, information on the following additional points may also be furnished in sixteen copies, alongwith the FC application :—

(i) Please indicate standard to which your product conforms to. In case it is not as per ISI standards, please indicate the standard to which it would conform.

(ii) Reasons for not conforming to ISI standards.

Y.A. RAO
Director.

ANNEXURE

Illustrative list of Industries where no foreign collaboration, financial or technical, is considered necessary.

1. Metallurgical industries :

Ferrous : Ordinary Castings, Bright Bars Structural,

Welded CI Steel Pipes & Tubes.

Non-Ferrous : Antimony, Sodium Metal, Electrical Resistance,

Heating (nickel free alloy), aluminium litho plates.

2. Electrical equipment

Electrical fans, common domestic appliances, common types of winding wires and strips, iron clad switches, AC motors, cables and distribution transformers.

3. Electronic components and equipments

General purpose transistors and diodes, paper, mica and Variable Capacitors, T.V. Receivers, tape recorders, teleprinters, R.A. Systems, record players/changers.

4. Scientific and Industrial Instruments

Non-specialised types of valves, meters, weighing machinery, and mathematical, surveying and drawing instruments.

5. Transportation

Railway wagons, bicycles.

6. Industrial machinery

Building and constructional machinery, oil mill machinery, conventional rice mill machinery, sugar machinery, tea processing machinery, general purpose machinery.

7. Machine tools

Forged hand tools, general purpose machine tools.

8. Agricultural machinery

Tractor drawn implements, power tillers, foodgrain dryers, agricultural implements.

9. Miscellaneous mechanical engineering industries.
10. Commercial office and household equipments of common use.
11. Medical and surgical appliances.
12. Fertilizers
Single super phosphate, granulated fertilizers.
13. Chemicals (Other than fertilizers)
Acetic acid, acetanilide, ethyl chloride, viscose filament yarn/staple fibres, melathion technical, sulphate of alumina ; potassium chlorate, fatty acid & glycerine ; butyl titanate ; warfarin, silica gel, lindane, endosulfan, phanthoate ; nitrofen, ethyl ether ; plastiopal.
14. Dyestuffs
Benzidine ; O-Toluidine ; carbozole dioxazine ; violent pigment, cadmium sulphide orange.
15. Drugs & pharmaceuticals
Caffeins (natural) ; phenyl butazone, tol butamide, para acetamel phanacetin, senna extract, diasogenin, clofibrate ; 4-hydroxy coumarin, xanthopotoxin, calcium gluconate ; choline chloride ; glyceryl gualacolate ; phenylethyl biguanide hydro-chloride, scopolarine ; hydro-bromide ; niacinamide ; orthoolelyl biguanide ; colchicine ; diazepam ; sorbito! from dextrose monohydrate, berberine hydrochloride ; balladonna ; acrilavine, calcium hypophosphite ; chloridiazepoxido.
16. Paper and pulp including paper products.
17. Consumer goods
18. Vegetable oils and vanaspati
19. Rubber industries
Viscose tyre yarn ; metal bonded rubber ; latex foam ; rubberised fabrics : tyres and tubes.
20. Leather, leather goods and pickers Belting-leather ; cotton and hair finished leather ; pickers ; picking bands ; vegetable tanning extracts ; fat liquors other than synthetic.
21. Glass ceramics.
22. Cement and gypsum products.

Note : List is illustrative and not exhaustive. Clarification of details within the broad headings is the responsibility of Administrative Ministries.

Foreign collaboration agreements

(Issued by the Ministry of Industry, Department of Industrial Development Secretariat for Industrial Approvals, Foreign Collaboration—I Section vide their Press Note No. 9 (8)/85 FC (I) dated 12-6-1986).

In order to streamline the procedure and encourage speedier implementation of technology upgradation, Government has decided vide Press Note dated 2-8-85, to abolish the procedure of taking the foreign collaboration agreements on record. The new procedure as enunciated in the Press Note dated 2-8-85 was applicable to cases where approvals had been issued on or after 3-8-85. It has now been decided to extend this procedure to foreign collaboration cases approved before 3-8-85, which have yet not been taken on record according to old procedure. For all such approvals before 3-8-85 letters may be written to the concerned Administrative Ministries requesting for amendment to the existing approval letters.

J.S. RANA

Deputy Secretary to the Govt. of India

Technical collaboration and remittance of royalties/technical fees

(Issued by the Reserve Bank of India, Exchange Control Department, Central Office, Bombay, vide their A.D. (M.A. Series) Circular No. 7 dated 25-6-1986).

Attention of authorised dealers is drawn to paragraph 24 A, 11 of the Exchange Control Manual (1978 Edition) which, *inter alia*, lays down that Government will take each technical collaboration agreement on record if it is in conformity with the terms approved by Government and that Reserve Bank will issue its formal authorisation under Foreign Exchange Regulation Act, 1973, to the applicant on receipt of intimation from Government that the agreement has been taken on record by it. Similarly, in terms of paragraph 24 A.2 of the Manual firms/companies in India are required to make applications to Reserve Bank for permission to issue shares to non-residents only after the collaboration agreement has been taken on record by Government and consent of the Controller of Capital Issues is obtained where the total capital to be raised in a period of one year exceed Rs. 50 lakhs. (This limit has since been raised by Government to Rs. 100 lakhs).

2. The existing procedure relating to grant of approvals for technical collaboration agreements has since been revised by Government in respect of approvals granted on or after 2nd August, 1985, vide Press Note No. 1 (1985 Series) of even date issued by the Ministry of Industry and Company Affairs. In terms of the revised procedure, collaboration agreements will not be taken on record by Government but they will be filed with Reserve Bank. The

letter of approval issued by Government will, besides giving the terms and conditions of approval, also include the following clause :

“This approval letter is made a part of the collaboration agreement to be executed between you and the foreign collaborator and any provision of the same agreement which is not covered by the said letter or is at variance with the provisions of that letter shall be void and be not binding on the Government or Reserve Bank of India. If a question arises as to whether a provision in this agreement is or is not covered by the Government approval, the parties hereto agree that the decision of Government in the Department of Industrial Development (SIA) shall be final.”

3. As a result of the above procedural changes introduced by Government, Reserve Bank will hereafter communicate its formal authorisation under the Foreign Exchange Regulation Act, 1973, to Indian firms/companies immediately on receipt of letter of approval from the Government approving the terms of the collaboration arrangements. The Indian firm/company may thereafter execute the collaboration agreement with the foreign collaborators strictly in accordance with the approved terms and file two copies of the collaboration agreement, after it is concluded, with the concerned office of Reserve Bank and furnish requisite number of copies to Government as indicated in their letter of approval. Applications for permission to issue shares to foreign collaborators should be made to Reserve Bank by Indian firms/companies only after copies of the collaboration agreements are filed with it and consent of the Controller of Capital Issues is obtained where necessary.

The directions contained in this circular have been issued under section 73 (3) of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and any contravention or non-observance thereof is subject to the penalties prescribed under the Act.

Contents

| | |
|--|------|
| Preface to the Tenth Edition | v |
| Preface to the Ninth Edition | vii |
| A word from the Publishers | viii |
| Recent Notification in regard to Foreign Collaboration | xv |

CHAPTER I

FOREIGN COMPANIES, MULTINATIONAL CORPORATIONS AND FOREIGN COLLABORATIONS

| | |
|--|----|
| Multinational or Transnational Corporations | 10 |
| TNCs not to be equated with Foreign Direct Investment | 11 |
| Relationship of Transnational Corporation to a Foreign Company | 12 |
| Relationship between a Transnational Corporation and A Foreign Collaboration | 12 |
| Foreign Collaborations and investments | 13 |
| Areas of Foreign Collaboration | 13 |
| Equity Participation | 14 |
| Protection of Minority Interests | 15 |
| Technical Collaboration | 17 |
| Guidelines for Foreign Collaborations | 18 |
| Procedure for Setting up a Collaboration | 20 |
| Repatriation and Remittance Facilities Foreign Exchange Implications | 22 |
| Remittance of Projects and Dividends | 23 |
| Some Recent Facts and figures about Foreign Collaborations | 24 |

CHAPTER II

CORPORATE TAXATION

| | |
|--|----|
| Foreign Company | 30 |
| Domestic Company | 31 |
| Widely Held Company | 31 |
| Trading Companies | 32 |
| Tax Laws and Incentives for Foreign Collaborations | 33 |
| Tax Holiday | 33 |
| Tax Concessions in Backward Areas | 33 |

| | PAGE |
|---|------|
| Investment Allowance | 34 |
| Deduction of Expenditure on Scientific Research | 34 |
| The Budget and Tax Relief | 35 |
| Electronics | 36 |
| Tax Rates | 36 |
| Relief from Taxation | 37 |

CHAPTER III

COMPANY LAWS OF JAPAN, FEDERAL REPUBLIC OF GERMANY, U.S.A. FRANCE, AND U.K.

Japan

| | |
|--|----|
| Types of Business Organizations | 38 |
| Determining a proper form of Organization | 39 |
| Legal Background of the Stock Company | 40 |
| Matters which must be included in the Articles of in- corporation to be effective | 42 |
| Par value and no par value shares | 43 |
| Voting and non-voting shares | 44 |
| General Meeting of shareholders | 45 |
| Directors | 46 |
| Dividends | 50 |
| Change to another form of Organization | 50 |
| Dissolution and Liquidation | 51 |
| Foreign Companies | 52 |
| Taxation | 53 |
| An introduction to the GmbH Law | 58 |
| Amendments of the Articles | 67 |
| Some Tax Aspects | 69 |
| Transfer Taxes | 71 |

France

| | |
|---|----|
| Private and Public Companies | 72 |
| Formation of an SA with Recourse to the Public | 73 |
| The Foundation Phase | 74 |
| Formation of an SA without Appealing to the Public for Funds | 77 |

| | PAGE |
|--|------|
| Sanctions relating to the formation of a Company | 77 |
| Issue of Shares | 79 |
| Class of Shares | 79 |
| Management and Control | 85 |
| The SA with an Executive Board | 91 |
| Procedure for formation and Registration | 97 |
| Management and Control | 99 |
| United States of America | |
| The Development of Corporation Law in the U.S. | 106 |
| Costly held and Publicly held Corporations | 108 |
| The Limited Role of ultra vires | 109 |
| Financing the Corporation | 111 |
| Oppressive Issuance of Shares | 115 |
| United Kingdom | |
| Major Trends in the Law between 1862 and 1972 | 117 |
| 1972 Until the Present Day | 118 |
| Company's Capacity : Power of Directors to bind it | 119 |

APPENDICES

| | |
|--|-----|
| 1. The Capital Issues (Control) Act, 1947 | 120 |
| 2. Capital Issues (Application for Consent) Rules, 1966. | 125 |
| 3. Capital Issues (Exemption) Order, 1969 | 138 |
| 4. Guidelines for Issue of Shares Other than Bonus Shares. | 148 |
| 5. Guidelines for Issue of Bonus Shares. | 151 |
| 6. Guidelines for Issue of Cumulative Convertible Preference Shares. | 154 |
| 7. Guidelines for Issue of Debentures by Public Limited Companies. | 156 |
| 8. Guidelines for Issue of Bonds by Public Sector Undertakings. | 159 |
| 9. Guidelines for Issue of Employees' Convertible Debentures. | 161 |
| 10. The Securities Contracts (Regulation) Act, 1956. | 164 |
| 11. The Securities Contracts (Regulation) Rules, 1957. | 182 |
| 12. The Preference Shares (Regulation of Dividends) Act, 1960. | 200 |
| 13. The Companies (Issue of Share Certificates) Rules, 1960. | 205 |

APPENDIX

PAGE

| | | |
|-----|--|-----|
| 14. | The Companies (Appeal to the Central Government) Rules, 1957. | 209 |
| 15. | Company Law Board (Procedure) Rules, 1964. | 212 |
| 16. | Trustees (Declaration of Holdings of Shares and Debentures) Rules, 1964. | 214 |
| 17. | The Companies (Preservation and Disposal of Records) Rules, 1966. | 218 |
| 18. | Disposal of Record (In the Offices of Registrars of Companies) Rules, 1984. | 220 |
| 19. | The Companies (Official Liquidator's Accounts) Rules, 1965. | 227 |
| 20. | The Company's Liquidation Account Rules, 1965. | 231 |
| 21. | The Companies (Court) Rules, 1959. | 238 |
| 22. | The Companies (Central Government's) General Rules & Forms, 1956. | 487 |
| 23. | The Companies Regulations, 1956. | 605 |
| 24. | The Company Law Board (Bench) Rules, 1975. | 618 |
| 25. | Companies (Particulars of Employees) Rules, 1975. | 644 |
| 26. | Companies (Declaration of Beneficial Interest in Shares) Rules, 1975. | 645 |
| 27. | Application of Section 159 of Companies Act, 1956 to Foreign Companies Rules, 1975. | 649 |
| 28. | The Companies (Transfer of Profits to Reserves) Rules, 1975. | 657 |
| 29. | The Companies (Declaration of Dividend out of Reserves) Rules, 1975. | 659 |
| 30. | The Public Companies (Terms of Issue of Debentures and of Raising of Loans with option to convert such Debentures or Loans into Shares) Rules, 1977. | 660 |
| 31. | The Companies (Fees on Applications) Rules, 1968. | 661 |
| 32. | Manufacturing and other Companies (Auditor's Report) Order, 1975. | 663 |
| 33. | Cases in which Special Resolution is obligatory, under the Companies Act, 1956. | 667 |
| 34. | Powers of the Central Government, under the Companies Act, 1956. | 670 |
| 35. | Cases in which approval or sanction of the Central Government is required, under the Companies Act, 1956 | 680 |
| 36. | Documents and Notices required to be registered produced before, or filed with the Registrar, under the Companies Act, 1956. | 684 |