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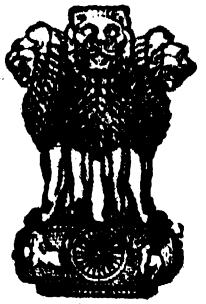
LOK SABHA

THE COMPANIES BILL, 1953

(Report of the Joint Committee)

VOL. I



LOK SABHA SECRETARIAT
NEW DELHI
May, 1955.

COMPANIES BILL, 1953

1. Report of the Joint Committee on the Companies Bill, 1953 - Vol. I

2. Report of the Joint Committee on the Companies Bill, 1953 - Vol. II (MINUTES)

3. Joint Committee on the Companies Bill, 1953 (EVIDENCE)

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CONTENTS

Composition of the Joint Committee

LOK SABHA

1. Shri Hari Vinayak Pataskar—*Chairman.*
2. Shri Chimanlal Chakubhai Shah
3. Shri Awadheshwar Prasad Sinha
4. Shri V. B. Gandhi
5. Shri N. M. Lingam
6. Shri Dev Kanta Borooah
7. Shri Shriman Narayan Agarwal
8. Shri R. Venkataraman
9. Shri Ghamandi Lal Bansal
10. Shri Radheshyam Ramkumar Morarka
11. Shri B. R. Bhagat
12. †Shri Narendra P. Nathwani
13. Shri Purnendu Sekhar Naskar
14. Shri T. S. Avinashilingam Chettiar
15. Shri K. T. Achuthan
16. Shri Kotha Raghuramaiah
17. Pandit Chatur Narain Malviya
18. Dr. Shaukatullah Shah Ansari
19. Shri Tekur Subrahmanyam
20. Col. B. H. Zaidi
21. Shri Mulchand Dube
22. Pandit Munishwar Dutt Upadhyay
23. Shri Radhelal Vyas
24. Shri Ajit Singh
25. Shri Kamal Kumar Basu
26. Shri C. R. Chowdary
27. Shri M. S. Gurupadaswamy
28. Shri Amjad Ali
29. Shri N. C. Chatterjee
30. Shri Tulsidas Kilachand
31. Shri G. D. Somani
32. Shri Tridib Kumar Chaudhuri
33. Shri C. D. Deshmukh.

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*Appointed on the 23rd December, 1954 *vice* Shri Khandubhai K. Desai esigned.

†Appointed on the 23rd December, 1954 *vice* Shri Nityanand Kanungo esigned.

34. Dr. P. Subbarayan
35. Shri Shriyans Prasad Jain
36. Shri Somnath P. Dave
37. Dr. R. P. Dube
38. Shri Braja Kishore Prasad Sinha
39. Dr. Nalinaksha Dutt
40. Shri R. S. Doogar
41. Shri Jaspat Roy Kapoor
42. Shri S. C. Karayalar
43. Shri Amolakh Chand
44. Shri M. C. Shah
45. Shri V. K. Dhage
46. Prof. G. Ranga
47. Shri S. Banerjee
48. Shri B. C. Ghose
49. Dr. P. V. Kane.

DRAFTSMEN

Shri K. V. Rajagopalan, Shri R. Ganapathi Iyer } *Officers on Special Duty, Department of Economic Affairs, Ministry of Finance.*

SECRETARIAT

Shri N. N. Mallya—*Deputy Secretary.*
Shri P. K. Patnaik—*Under Secretary.*

Report of the Joint Committee

I, the Chairman of the Joint Committee to which the Bill *to consolidate and amend the law relating to companies and certain other associations was referred, having been authorised to submit the report on their behalf, present this their report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 2nd September, 1953. The motion for reference of the Bill to a Joint Committee of the Houses was moved by the Minister of Finance, Shri C. D. Deshmukh, on the 28th April, 1954, was discussed on the 29th and 30th April, and the 1st and 3rd May, 1954 and was adopted on the 3rd May, 1954 (Appendix I).

3. The Rajya Sabha discussed the motion on the 12th and 13th May, 1954, and concurred in it on the 13th May, 1954 (Appendix II).

4. The Committee held 61 sittings in all.

5. The Committee appointed two sub-Committees. The first sub-Committee was appointed on the 13th November, 1954 to examine the drafting of original clauses 209—306 (clauses 223 to 322 of the Bill as now amended) of the Bill and to suggest necessary amendments therein. The Report of the Sub-Committee was presented to the Committee on the 27th November, 1954 (Appendix III).

The second sub-Committee was appointed on the 7th February, 1955, to examine the Schedules to the Bill and its Report was presented to the Committee on the 12th February, 1955 (Appendix IV).

6. The Report of the Joint Committee was to be presented by the last day of the first week of the Seventh Session of the House. The Committee were granted extension of time twice, for the first time on the 24th August, 1954; and again on the 18th November, 1954, upto the first day of the last week of the Ninth Session.

7. The Committee heard the evidence tendered before them by the associations, and at the dates, specified in Appendix V. The evidence *in extenso* will be laid on the Table of the House.

8. The principal changes proposed by the Committee in the Bill and the reasons therefor are set out in the following paragraphs.

9. *Clause* 1:

Sub-clause (2).—The commencement clause of the Bill, as introduced by Government, provided for the Bill coming into force on the 1st day of April, 1954. That date has, necessarily to be altered now. As it will take time to make rules under the Act and as companies have to order their affairs, wherever possible, in such a manner as to make it easier for them to comply with the provisions of the Bill

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* Published in Part II — Section 2 of the *Gazette of India Extraordinary*, dated the 2nd September, 1953.

when they actually come into operation, the Committee have provided for the Bill coming into force on such day as the Central Government by notification in the Official Gazette appoint.

Sub-clause (3).—The Committee considered the question of making the Act applicable, so far as it may be possible to do so under the Constitution, to companies in the State of Jammu and Kashmir. Parliament has legislative competence, so far as that State is concerned, only in regard to banking and insurance companies and financial corporations. Financial corporations in India are very few and may be left out of consideration in this connection. So far as banking and insurance companies are concerned, these are governed not only by the Companies Act but also by the Insurance Act of 1938 (Act IV of 1938) and by the Banking Companies Act, 1949 (Act X of 1949). It is undesirable to extend the Companies Act alone to banking or insurance companies in the State of Jammu and Kashmir, without at the same time making the Insurance Act or the Banking Companies Act also, applicable to the companies in question. The Committee understand that the Government have under preparation a Bill providing comprehensively for the extension of all Acts of Parliament, so far as is permissible under the Constitution of India, to the State of Jammu and Kashmir. In these circumstances, the Committee consider that no change need be made in this clause, in regard to this matter.

10. *Clause* 2: *Sub-clause* (3).—The scope of the defintion has been widened. In particular it has been made applicable to relatives of the person concerned or where the person concerned is a firm, to the relatives of members of the firm. An explanation has been added to make it clear that if A is an associate of B, B is also to be regarded as an associate of A.

New sub-clause (4).—In clauses 378 to 383 newly added by the Committee for the reasons explained in paragraph 141 of this report, the appointment, remuneration and conditions of service of "Secretaries and Treasurers" have been provided for; and all provisions which apply to the managing agents and those associated with them must be made applicable *mutatis mutandis* to the Secretaries and Treasurers and those associated with them also. A separate definition of "associate" in relation to Secretaries and Treasurers, closely modelled on that of the definition of associate of managing agent has therefore been added in sub-clause (4).

Sub-clause (17).—The Committee have added a proviso to make it clear that in relation to an insurance company, "financial year" means the "calendar year".

The Committee have revised some of the other definitions, particularly those of "branch office", "manager", "managing agent", "officer" and "prospectus"; and inserted new definitions of "alter" and "alteration", "Board of directors" or "Board", "Government company", "limited company", "member", "modify" and "modification", "Public holiday", "recognised stock exchange", "secretary", "secretaries and treasurers" and "variation".

The new definition of "secretaries and treasurers" is on the same lines as that of "manager". The difference consists in this, namely,

that while only an individual can be a manager, only a firm or body corporate can be secretaries and treasurers.

11. *Clause* 6 (*New clause*).—As the expression "relative" occurs not only in Schedule VII but also in the definition of "associate", the definition of "relative" in Schedule VII has been included in the body of the Bill, and omitted from the Schedule.

12. *Clause* 8 (*New clause*).—This clause empowers the Central Government to declare an establishment carrying on either the same or substantially the same activity as that carried on by the head office or any production or manufacture, not to be a "branch office".

13. *Clause* 13 (*Original clause* 11).—The Committee are of the view that the name of a company should indicate whether it is a private or a public company. It has been accordingly provided that the name of every private company should end with the words "Private Limited".

14. *Clause* 14 (*New clause*).—The best place for a provision that the model forms of memoranda of association set out in Schedule I should be adopted by companies as far as possible is in this part of the Bill which deals with the memorandum of association, and not in original clause 595.

15. *Clause* 17 (*Original clause* 14).—The Committee consider it necessary to empower the Registrar to appear before the Court in case he desires to point out any irregularity in an alteration to its memorandum proposed by a company. Sub-clause (4) makes the necessary enabling provision in this behalf.

16. *Clause* 22 (*Original clause* 19).—There are some cases now, especially in Part B States, in which two or more companies have the same name. Government have therefore been given power to direct an alteration of the names of such companies, within twelve months from the coming into operation of this Bill.

17. *Clause* 24 (*Original clause* 21).—It was pointed out that if the companies referred to in this clause were exempted from the requirement of submitting lists of their members to the Registrar, no one could find out who were, in fact, members of that company and that this might lead to undesirable and harmful results. The power to grant this exemption has therefore been vested in the Government so that they might use their discretion in restricting the exemption to deserving cases.

Sub-clause (11) of original clause was considered by the Committee to be unnecessary in view of the Constitution, and the Committee have accordingly deleted it.

18. *Clause* 28 (*New Clause*).—The appropriate place for the provision contained in this clause is here and not in original clause 595. See paragraph 14 dealing with clause 14.

19. *Clause* 31 (*Original Clause* 27).—This clause has been slightly recast to bring it into conformity with section 67 of the existing Act on which it is based.

20. *Clause* 32 (*Original clause* 28).—There was, and there is to be, only one Registrar for the whole of a State with a number of Deputy and Assistant Registrars. The words "or part of the State" are therefore unnecessary and have been omitted.

Sub-clause (2) of original clause 30 has been incorporated in this clause which the Committee consider to be the more appropriate place for it.

As recommended in the Report of the Company Law Committee, the managing agency agreement, if any, which the company proposes to execute is also to be registered with the articles of association.

21. *Clause* 34 (*Original clause* 30).—Sub-clause (2) of this clause has been transferred to clause 32,—See paragraph 20 *ante*.

22. *Clause* 37 (*Original clause* 33).—The words 'whether directly or indirectly' have been deleted from this clause as being unnecessary.

23. *Clause* 43 (*Original clause* 39).—A new sub-clause, sub-clause (6), has been inserted to clarify the meaning of the expression "included" as used in different places in this clause.

24. *Clause* 48 (*Original clause* 44).—The Committee consider that this clause which requires a company to hold all investments in its own name should not apply to an investment company whose business consists of the buying and selling of shares, stock, debentures or other securities. Deposits of securities in a bank for the collection of dividend or interest and deposits or transfers by way of security are permitted. In the case of investments held by a company at the commencement of this Bill, the period of six months allowed by the Bill as introduced for compliance with the provisions of this clause has been increased to one year. The Committee have also provided for the keeping of a register of all securities belonging to, but not held by, a company in its own name.

25. *Clauses* 56 to 58 (*New clauses and original clause* 52).—The Committee are of the view that no person who is connected either with the formation or with the management of a company should function as an "expert". This is provided for in clause 56. The penalty clause has, as a consequential change been removed from clause 57 and placed as clause 58 which will apply both to clause 57 and to new clause 56.

26. *Clause* 64 (*Original clause* 58).—The same changes have been made in this clause as have been made in clause 43 (original clause 39). See paragraph 23 *ante*.

27. (*Original clause* 60).—This clause has been omitted from the Bill in view of the Securities Contracts (Regulation) Bill, 1954, recently introduced in the Lok Sabha (Bill No. 65 of 1954) which provides for the regulation of stock exchanges and the licensing of dealers in securities.

28. *Clause* 67 (*Original clause* 62).—Sub-clause (2) has been omitted as the case will, in the view of the Committee, be sufficiently covered by the relevant provisions of the Indian Penal Code.

29. *Clause* 68 (*Original clause* 63).—In order to cover all kinds of instruments by means of which payments may be made, the words "or by other instrument" have been added after the word "cheque" in sub-clause (1).

The period provided in this clause for repayment by the Company of the moneys to the applicants for shares has been increased from 90 to 120 days. As a consequential change, the period on the expiry of which the liability of the directors to repay the moneys will arise has been extended from 100 to 130 days. On the other hand, the rate of interest fixed under the clause has been raised from 5 to 6 per cent.

30. *Clause* 69 (*Original clause* 64).—The wording has been brought into conformity with that in clause 64 as revised by the Committee.

Sub-clause (6) corresponds to Sub-clause (2) of clause 64.

31. *Clause* 71 (*Original clause* 66).—Sub-clause (6) of this clause has been omitted by the Committee as being unnecessary.

32. *Clause* 72 (*Original clause* 67).—*Sub-clause* (5). This is based on a corresponding provision in the English Act—section 51(5)—the adoption of which the Committee consider desirable.

Although permission for shares and debentures may not have been granted, yet, if the stock exchange has agreed to give further consideration to the application for the shares or debentures being dealt in on a stock exchange, it is only reasonable to treat the case as one where permission has not been refused.

Sub-clause (7).—It is very desirable that a prospectus should not state that application has been made for a proposed issue of shares or debentures being dealt in on a stock exchange unless it is a recognised stock exchange.

33. *Clause* 74 (*Original clause* 69).—The Committee have omitted the explanatory definition of "bonus shares" in sub-clause (1) (c) and also the words "and the extent to which they are to be treated as paid up" occurring at the end.

34. *Clause* 75 (*Original clause* 70).—The Committee are of the opinion that the ceiling of *ten* per cent. provided for the commission is high and have reduced it to *five* per cent.

35. *Clause* 76 (*Original clause* 71).—The Committee have substituted for the words "No company shall have power to buy its own shares or the shares of its holding company" which occur in sub-clause (1) the words "No company limited by shares and no company limited by guarantee and having a share capital shall have power to buy its own shares." That a subsidiary cannot be a member of, or hold any shares in, its holding company has been made clear in clause 41 and the exceptions to that rule have also been stated there. It is unnecessary to restate the same proposition in this clause.

Since the Court has been given power by clause 401 to permit a company to purchase the shares of its members in certain circumstances, that clause has also been specified in sub-clause (1) of this clause.

The Committee think that the employees of a company should be encouraged to purchase shares in the company and have accordingly enhanced the limit set on loans by the company for enabling such purchases to be made from *three* months' salary or wages to *six* months' salary or wages—See sub-clause (3).

36. *Clause* 78 (*Original clause* 73).—A new sub-clause (1) has been inserted, restricting the power of a company to issue shares at a discount except as provided in this clause. The Committee consider that a discount higher than ten per cent. should also be allowable in proper cases, but that the permission of the Central Government should be obtained therefor. The clause has been amended accordingly.

37. *Clause* 79 (*Original clause* 74).—The intention of this clause is to provide for the redemption of redeemable preference shares issued by a company either out of its profits or out of capital specially raised for the purpose and not from the sale proceeds of other property of the company. The retention of the words "or out of the sale proceeds of any property of the company" would enable a company to redeem the shares practically at will. The words have therefore been deleted from sub-clause (1) (a).

38. *Clause* 80 (*Original clause* 75).—Sub-clause (1) has been redrafted so as to bring out the meaning clearly.

The period of ten days provided in this clause for accepting an offer to take up further shares has been increased to fifteen days.

39. *Clause* 82 (*Original clause* 77).—The proviso to the original clause would have enabled companies, under certain circumstances, to issue shares without numbers. The Committee consider that there is no necessity for this proviso and it has accordingly been deleted in the new clause.

40. *Clauses* 84 *to* 89 (*Original clauses* 79 *to* 83).—The Committee are of the view that "preference shares" should be more precisely defined and that the tests should be (i) whether there is security of income; and (ii) whether there is a preferential right to the repayment of the capital on a winding up. Clause 84 has been recast accordingly.

It has also been made clear in the clause that the dividend on preference shares may be either free of or subject to income-tax. The facts (a) that a preference share is entitled in addition to the preferential right to the fixed dividend, to a portion of the dividend depending upon the quantum of the profits, or (b) that on a winding up it carries in addition to the preferential right to repayment of capital, a right to participate in the surplus assets after the entire capital has been paid in full will not have the effect of making the definition of "preference capital" inapplicable to the case.

41. The Bill as introduced (clause 80) provided that failure to pay the fixed dividend on the preference capital for a period of two consecutive years in the case of non-cumulative preference shares, and for a period of one year in the case of cumulative preference shares, should enable the holders of the preference shares to vote on all resolutions placed before the general meeting of the company, instead of only on resolutions which affect their special

rights as preference shareholders. The Committee have altered this portion of original clause 80 so as to provide instead for general voting rights if at any time the dividend is in arrear in the case of cumulative preference shares, for an aggregate period of not less than two years (which need not be consecutive) or in the case of non-cumulative preference shares, either for a period of two years immediately preceding or for an aggregate period of not less than three years comprised in the six preceding years—See clause 86.

The definition of "cumulative preference shares" has also been amplified so as to make it more accurate and applicable to all the cases which it is intended to cover.

It has been made clear that dividend should be deemed to be due within the meaning of this clause, although no dividend has, in fact been declared on or before the last date on which the dividend has to be paid according to the articles or other instruments governing the matter.

42. *Clause* 87 (*Original clause* 81).—The Committee consider that there should be an absolute prohibition against the issue of shares with disproportionate voting rights after the coming into force of this Bill. The clause has been amended accordingly.

43. *Clause* 88 (*Original clause* 82).—The Committee have provided for every order of exemption from the provisions of sub-clause (1), (2) or (3) being laid before both Houses of Parliament.

The recommendation of the Company Law Committee in paragraph 48(vi) of their report with regard to shares issued with disproportionate voting rights before the 1st December, 1949, has also been given effect to in this clause.

44. *Clause* 90 (*Original clause* 84).—An explanation has been added, making it clear that shares though of the same nominal value, will belong to different classes, if the amounts paid up on the shares are different.

45. *Clause* 91 (*Original clause* 85).—The Committee have added a sub-clause to this clause making it clear that the payment of any amount voluntarily, towards the uncalled share capital, will not give voting rights in respect of that amount.

46. *Clause* 92 (*New clause*).—A new clause has been added providing for payment of dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others, if so authorised by the articles of the Company. Such a provision occurs in the existing Act [section 49(3)] and should, in the opinion of the Committee, be retained to remove all doubts on the point.

47. (*Original clause* 89).—In view of the provision contained in clause 96, the Committee consider this clause to be redundant. The clause has therefore been omitted.

48. *Clause* 97 (*Original clause* 91).—The original clause was a reproduction of section 68 of the Indian Companies Act of 1913, with the omission of certain words. The Committee have restored the wording of section 68.

49. *Clause* 103 (*Original clause* 97).—The original clause was a reproduction of section 63 of the Indian Companies Act of 1913 with certain verbal amendments. The Committee have restored the original wording of section 63.

50. *Clause* 106 (*Original clause* 100).—The period of 14 days provided in this clause has been increased to 21 days in accordance with the recommendation of the Company Law Committee.

51. (*Original clause* 101).—The Committee have omitted this clause, and made appropriate changes in clause 108.

52. *Clause* 108 (*Original clause* 103).—This clause is based on section 35 of the Indian Companies Act of 1913 with the omission of the words "or other interest". The Committee have restored these words.

53. *Clause* 110 (*Original clause* 105).—The Committee consider that not only the specific refusal of a Company to register a transfer of shares, but also its failure to do so within two months of the lodging of the instrument of transfer, should be made appealable to the Central Government. The Committee have omitted sub-clause (4) so that appeals will be decided by the Central Government to whom they are presented, and not by some other authority designated by the Central Government. Consequential amendments have been made in sub-clauses (5) to (7).

54. *Clause* 111 (*Original clause* 106).—The words "or initials (whether hand written or not)" have been deleted.

55. (*Original clause* 107).—This clause although a similar provision occurs in the English Act (Section 82), has been omitted as being unnecessary.

56. *Clause* 112 (*New clause*).—This simply reproduces original clause 379. The Committee consider that the proper place for this provision is here.

57. *Clause* 113 (*Original clause* 108).—For the word "company" the words "public company" have been substituted in sub-clause (1). There is no need to authorise a private company to issue bearer share warrants.

58. *Clause* 117 (*Original clause* 112).—It has been provided in this clause that the documents referred to in this clause should be open to inspection by any member or debenture-holder of the company concerned.

59. *Clause* 120 (*Original clause* 115).—Sub-clause (1) (b) of this clause has been omitted as being unnecessary.

60. *Clause* 124 (*Original clause* 119).—The Committee are of the opinion that the words "but not including a charge for any rent or other periodical sum issuing out of land in sub-clause 4(c) of original clause 119 should be omitted as they do not occur in the corresponding provision in section 109 of the existing Indian Act. The reference to "stock-in-trade" in sub-clause (4) (e) has been omitted by the Committee. Sub-clause (9) has also been omitted as being unnecessary.

61. *Clause* 136 (*Original clause* 131).—The use of the expression "manager" in a difference sense from that in which it has been defined in clause 2 is undesirable; and the Committee have made suitable changes in the wording of this clause.

62. *Clauses* 137 *to* 139 (*Original clauses* 132 *and* 133 *and new clause*).—New clause 139 makes the provision in sub-clause (5) of the original clause 132 applicable with the case dealt within clause 132 and also to that dealt with in original clause 133. This is clearly necessary. Sub-clause (5) of original clause 132 has been omitted and sub-clause (6) of that clause renumbered as sub-clause (5).

63. *Clause* 145 (*Original clause* 139).—The Committee have substituted a new proviso for the existing proviso to sub-clause (2). Removal of the registered office to a place in the same city, town or village, although at a greater distance than ten miles from the former registered office will be permissible.

64. *Clause* 150 (*Original clause* 144).—The Committee are of opinion that the index to the register of members should always be kept at the same place as the register of members. New sub-clause (3) provides for this.

65. *Clause* 159 (*Original clause* 153).—The time-limit within which a company has to submit its annual returns to the Registrar has been raised from *one month* from the date of the annual general meeting to *forty-two* days from that date.

66. *Clause 162* (*Original clause 156*).—The Committee are of opinion that it will be sufficient to make copies of the annual returns and other documents, instead of the originals themselves, available for the inspection of the persons concerned and have amended the clause accordingly.

67. *Clause* 164 (*Original clause* 158).—The changes made are minor or drafting ones.

68. *Clauses* 165 *to* 167 (*Original clause* 159).—The clause has been amended so as to provide that the *first* annual general meeting of the company must be convened within the period specified in this clause and that no extension of time should be granted for holding that meeting.

The insertion of the definition of "public holiday" in clause 2 has rendered it unnecessary to keep the Explanation to sub-clause (2).

Sub-clauses (3) and (4) of the original clause 159 have been put as separate clauses, 166 and 167, as they deal with distinct matters.

69. *Clause* 168 (*Original clause* 160).—Sub-clauses (1) to (4) of this clause have been re-drafted as sub-clauses (1) to (6), in order to bring out the intention more clearly.

70. *Clause* 171 (*Original clause* 163).—Sub-clause (2) (ii) has been re-cast, the language of sub-clause (5) of clause 52 having been adopted as far as possible.

71. (*Original clause* 172).—In the opinion of the Committee this clause is unnecessary and it has accordingly been omitted.

72. *Clause* 180 (*Original clause* 173).—In order to avoid any possible conflict with other provisions of the Bill, the words "Notwithstanding anything contained in this Act" have been added at the commencement of the clause

73. *Clause* 188 (*Original clause* 181).—Sub-clauses (3) and (4) of the original clause have been omitted by the Committee as being unnecessary.

74. *Clause* 191 (*Original clause* 184).—The Committee being of the opinion that all agreements relating to the appointment of a managing director must be registered, paragraph (c) of sub-clause (4) makes the necessary provision.

75. *Clause* 197 (*New clause*).—The Committee consider that there should be an over-all maximum for the managerial remuneration payable to the directors, managing agent, Secretaries and Treasurers, and manager. The limit has been fixed at 11 per cent of the net profits, inclusive of any monthly payments made by way of remuneration but exclusive of fees payable to directors for attending the meetings of the Board of directors. It has been made clear that the operation of clauses 351 to 354 and 356 to 360 will not be affected by the provisions contained in this clause.

The Committee also consider that if in any financial year a company earns no profits or the profits are inadequate, it may pay to any director including a managing or whole-time director, its managing agent or Secretaries and treasurers, if any, and its manager, if any, or if there are two or more of them holding office in the company, to all of them together, a minimum remuneration not exceeding fifty thousand rupees per annum. New sub-clause (4) makes the necessary provision.

76. *Clause* 198 (*New clause*).—This reproduces original clause 296 of the Bill with some changes. It is considered that this provision is more appropriately placed in "Chapter I—General Provisions" than in "Chapter II—Directors", as it applies not only to directors but also to other officers and employees of the company.

A special provision having been made for the calculation of the commission in the case of the manager, the clause has been made inapplicable to him also.

77. *Clause* 199 (*New clause*).—This reproduces original clause 299 of the Bill. Being also a general provision, it has also been removed from Chapter II to Chapter I.

78. *Clause* 200 (*New clause*).—This clause reproduces original clause 304 of the Bill. Being a general provision, it has had also to be put in Chapter I instead of in Chapter II. Clause (a) of the proviso to sub-clause (1) has been omitted as being unnecessary and a consequential change has been made in sub-clause (2).

79. *Clauses* 201 *and* 202 (*New clauses*).—These reproduce original clauses 297 and 298 of Chapter II. Being general provisions, applicable to other besides directors, they have also been put in Chapter I.

In new clause 201, the reference to an undischarged insolvent functioning as a director etc. with the leave of the Court has been

omitted, as such an insolvent cannot act as a director at all. Sub-clause (2) which provides the procedure for applications for grant of leave by the Court has also had to be omitted, as a consequential change.

In new clause 202, sub-clause (8) is an addition made by the Joint Committee as a measure of caution.

80. *Clause* 204 (*Original clause* 190).—It has been made clear, *ex abundanti cautela,* that a company may pay dividends not only out of profits but also out of moneys provided by the Central or a State Government for the payment of dividend, in pursuance of a guarantee given by such Government.

81. *Clause* 205 (*Original clause* 191).—The clause has been amended so as to provide that where a share warrant has been issued in respect of shares under clause 113, the dividend may be paid to the bearer of such warrant or to his bankers.

82. *Clause* 206 (*Original clause* 192).—Where any default in the payment of a dividend within the time limit, is not due to the negligence of the company, the Committee consider that the Company should not be made punishable for the default. This is provided for in new sub-clause (e) of the proviso, while new sub-clause (d) thereof specifically provides for the case where the dividend payable to a shareholder has been lawfully adjusted against any sum due to the company from him.

83. *Clause* 210 (*Original clause* 196).—Sub-clause (5) of the clause has been re-cast so as to bring it into conformity with clause 610. All the cases specified in that clause have now been specified in this clause also—See new sub-clauses (5) (iii) and (iv).

84. *Clause* 216 (*Original clause* 202).—The Committee consider that where any proceedings have been instituted against the director of a company for failure to comply with any of the provisions of sub-clause (1) of this clause, he must be permitted to defend himself on the ground that he had reasonable ground to believe, and did believe, that a competent person was charged with the duty of complying with those provisions and was in a position to discharge that duty—Compare the proviso to clause 210, sub-clause (5).

85. *Clause* 225 (*Original clause* 211).—The original clause contained a provision to the effect that a company may appoint a person as auditor, with the approval of the Central Government, although he is not a Chartered Accountant or is not possessed of similar qualifications, if he has adequate knowledge and experience in the matter. This provision has been omitted.

Sub-clause (2) has been inserted in this clause for the purpose of acccrding a limited measure of recognition to certain classes of auditors who have been functioning in Part 'B' States. It reproduces the provisions of the existing Act, Section 144(2) and (2A), with very slight changes. The omission of these provisions was apparently in error.

86. *Clause* 226 (*Original clause* 212).—The Committee consider that if the auditors' report answers in the negative or gives a qualified answer to the matters dealt with in sub-clauses (2) and

(3) of this clause, the report should also state the reasons for such negative or qualified answers—*Vide* new sub-clause (4).

87. *Clause* 236 (*Original clause* 222).—The Committee think that, as recommended in the Report of the Company Law Committee, a suitable provision should be inserted in the Bill to provide that the Government should have power to appoint inspectors in case there has been any failure on the part of the company to give necessary information relating to the calculation of the commission payable to directors, managing agents, secretaries and treasurers or managers. Sub-clause (b)(iii) of clause 236 has therefore been suitably amplified.

88. *Clause* 237 (*New clause*).—This new clause provides no firm, body corporate or other association can be appointed as inspectors by the Government.

89. *Clause* 240 (*Original clause* 225).—Under the proviso to this clause in the Bill as introduced, the Government need not furnish to the company the information contained in the Report of the inspector. This proviso has been omitted as harmful and unnecessary. It does not occur in the corresponding provision of the English Act *viz.* section 168.

90. *Clause* 246 (*Original clause* 231).—A provision on the lines of the proviso which has been omitted from clause 240 referred to in the preceding paragraph, has been added to this clause. The provision is necessary in this case. A similar provision exists in the corresponding section of the English Act, *viz.*, section 172(5) (b). It has also been provided that in such cases the Government may direct the Registrar to keep such parts, if any, of the report as are not of a confidential nature.

91. *Clause* 255 (*Original clause* 240).—The latter part of sub-clause 4(b) of this clause has been completely recast so as to bring out the meaning quite clearly.

92. *Clause* 258 (*New clause*).—This clause reproduces section 86J (1) (b) of the existing Act. That section was included in the Bill as introduced in Schedule XI and was consequently intended to be in operation only for a period of three years—*vide* original clause 598. The Committee consider that this provision, like most of the other provisions in Schedule XI of the original Bill should be placed permanently on the Statute Book, especially in view of the continuance of the managing agency system. It has effectively prevented abuses in the past and the Committee consider it both desirable and necessary to keep it.

93. *Clause* 259 (*New clause*).—This clause corresponds to original clause 242(2). It is necessary to make a reference in this clause not only to clauses 254 and 257 but also to clause 258. In the first proviso, the reference to the "next general meeting" has been altered into a reference to the "next annual general meeting".

94. *Clause* 264 (*New Clause*).—This clause deals with a very important matter which was discussed at length and on more than one occasion by the Joint Committee. On the one hand, it was represented to the Committee that under the present system of voting a majority of 51 per cent or more of the shareholders was able to

monopolise all the directorships with the result that even a respectable minority of the shareholders could not get even one of their representatives into the directorate. Consequently, they had no means of knowing how the affairs of the company were being managed and this fact handicapped the minority in asserting its legitimate rights and for the exercise of which rights machinery has been provided in the Bill—see for instance clauses 396 to 406. *Per contra* it was urged that the adoption either of cumulative voting or of any other form of proportional representation might result in the Board of directors becoming a contending field for warring factions and that the smooth working of the business of the company might be rendered virtually impossible. Clause 264 as drafted by the Joint Committee steers a middle course. The provision for the annual retirement of one-third of the directorate by the ordinary method of voting will operate normally. A company will however, have power if it so desires, to adopt any form of proportional representation by making provision in that behalf in its articles. The Committee feel that this is a matter which is best left to the shareholders of the company. As no form of proportional representation can work on the basis of an annual renewal of a portion of the directorate, the election has been made triennial. Interim vacancies will be filled in the manner provided in clause 261 for the filling of casual vacancies under the ordinary system of voting.

95. *Clause* 266 (*New clause*).—This is based on original clause 295 in the Bill as introduced which applies to managers (*vide* clause 385). The Committee feel that the provision should be stiffer in the case of the managing director than in the case of a manager and have therefore omitted the provision found in original clause 295(2) for the removal of the disqualification imposed by the clause. The limitation of the disqualification to a period of five years has also been removed.

96. *Clauses* 267 *and* 268 (*New clauses*).—These clauses also, like new clause 258 reproduce provisions of the existing Act which were included in Schedule XI of the Bill as introduced. The provisions contained in these clauses will therefore be in operation permanently, instead of for a period of three years only, as proposed in the Bill as introduced.

97. *Clause* 273 (*Original clause* 252) *New sub-clause* (1) (c).—Where a person voluntarily applies to be adjudicated as an insolvent, the Committee consider it necessary to disqualify him for appointment as director forthwith, and that in such cases it is hardly necessary to wait until the application results in a formal adjudication. New sub-clause (c) has accordingly been added to this clause.

New sub-clause (1) (*d*).—The Bill as introduced provided for two disqualifications based on conviction for a criminal offence, namely,

(a) conviction for a non-bailable offence, irrespective of the sentence imposed; and

(b) conviction for any other offence resulting in a sentence of imprisonment for not less than two years.

A definition of "non-bailable offence" was also necessary—See sub-clause (3) of the original clause. The Committee consider that it is

unnecessary to have two varying disqualifications based upon the non-bailable or bailable character of the offence. In the opinion of the Committee, the true criterion is the sentence. The Committee have accordingly provided that disqualification for any offence (whether it be bailable or non-bailable) resulting in a sentence of imprisonment for not less than *six months* (as against the two years provided in the Bill as introduced in the case of non-bailable offence) should disqualify a person from appointment as a director. Sub-clauses (1)(c) and (d) of the Bill as introduced have therefore been combined into a single sub-clause, sub-clause (d), and sub-clause (3) of the Bill has been omitted.

98. *Clause* 276 (*Original clause* 255).—Only a period of seven days was allowed in the Bill as introduced for making the choice of directorships. This period has been extended by the Committee to *fifteen* days.

99. *Clause* 277 (*Original clause* 256).—Sub-clause (2) provides for the case where a company ceases to be a private company, or an unlimited company, etc. In such a case, the Committee consider that the imposition of the disqualification with immediate effect will not be right. Sub-clause (2) therefore provides for continuing the exclusion of the companies, notwithstanding the alteration in their character, for a period of three months.

100. *Clause* 282 (*Original clause* 261).—A new sub-clause has been added to make provision for cases where there is an appeal against the adjudication or sentence. In such cases, the disqualification will not come into force for a reasonable period after the date of adjudication or sentence, so as to enable the disqualifying person to prefer an appeal. If an appeal is actually filed, the disqualification will not operate until the appellate court pronounces judgment. These are based on similar provisions in the Chapter on managing agents—*vide* clause 330.

101. (*Original clause* 267).—This clause has been omitted as in the opinion of the Committee it is unnecessary.

102. *Clause* 291 (*Original clause* 271).—The proviso to sub-clause (1) has been modified by including the manager or other principal officers of a branch office of a banking company within the scope of the delegation provided for in the proviso.

103. *Clause* 292 (*Original clause* 272).—*Sub-clause* (1) (*d*).—Temporary loans obtained from the company's bankers in the ordinary course of business have been excluded when reckoning the limit up to which a company may borrow.

Sub-clause (1) (*e*).—It has been made clear that the contributions referred to in this sub-clause relate to charitable and other funds which do *not* directly relate to the business of the company or the welfare of its employees. The limit of the contribution has been raised to *ten* thousand rupees *or three* per cent of the annual net profits.

Sub-clause (4) provides that the acceptance of deposits from the public by a banking company is not a borrowing of moneys within the meaning of this clause.

Sub-clause (5).—The Committee have provided that where any borrowing by a company is in excess of the limit imposed by sub-clause (1) (d), the debt will not be binding on the company, unless the lender who advances the loan has done so in good faith and without knowledge of the limit having been exceeded.

104. *Clause* 293 (*New clause*).—This new clause provides that appointments of sole selling agents made by the Board of Directors of a company should be specifically approved by the company in general meeting. If such approval is not accorded within six months, the appointment will cease to be valid.

Sub-Clause (2) provides for some measure of control being exercised by the general meeting in respect of appointments of sole selling agents made before, and in force when, this Bill comes into operation.

105. *Clause* 294 (*Original clause* 273).—The Committee are of opinion that where any loan given or any guarantee or security provided by a company, which is outstanding at the commencement of this Bill, could not have been given or provided without the prior approval of the Central Government if the provisions of this clause had then been in force, the company should obtain the approval of the Central Government to the transaction within a period of six months from the commencement of this Bill.

A new sub-clause has accordingly been inserted in this clause.

106. *Clause* 308 (*Original clause* 287).—Sub-clause (1) has been amended so as to make it clear that the determination of the remuneration of the directors under the provisions of this clause should be in accordance with new clause 197 which imposes an overall limit on managerial remuneration. The Committee consider that where there is more than one full-time or managing director, the percentage of net profits payable to all of them may be raised to ten, taking into consideration the over-all limit of eleven per cent imposed by clause 197. New sub-clause (5) provides for the manner in which the net profits should be computed for the purposes of this clause. In new sub-clause (8), the Committee have made an addition to provide for the cases where the commencement of the Act does not coincide with the end of the financial year of the company.

107. *Clauses* 309 *and* 310 (*New clauses*).—These reproduce sections 86J (1) (a) (ii) and 86J (1) (d) of the existing Act. The provisions will be permanent instead of being in force only for three years, as provided in the Bill as introduced. (See Schedule XI read with clause 598).

108. *Clause* 312 (*Original clause* 289).—Absence from the State in which the meetings of the Board are held, instead of from the district in which such meetings are held, has been made the criterion for the application of the provision contained in this clause.

109. *Clause* 315 (*Original clause* 292).—This clause relates to managing directors as well as managers. As this Chapter relates to directors, the Committee have restricted the clause to managing directors. The provision in the original clause, relating to managers,

has been made applicable to them by a separate clause in Chapter IV "B. Managers"—See new clause 386.

110. *Clause* 316 (*Original clause* 293).—The provision contained in this clause applies to managing directors and also to firms and bodies corporate. Clause 316 has been accordingly confined to managing directors while clause 203 provides for the application of the provision contained in this clause to firms and bodies corporate.

111. (*Original clauses* 294 *and* 295).—These clauses which relate only to managers are better put in Chapter IV "B. Managers"—See new clauses 384 and 385.

112. (*Original clause* 296).—This is a general provision applicable not only to directors but also to other officers and it has accordingly been placed in Chapter I: "General provisions" as new clause 198.

113. (*Original clauses* 297 *and* 298).—These are also general provisions and have therefore been placed in Chapter I as clauses 201 and 202.

114. (*Original clause* 299).—This clause which regulates the subject of tax-free payments is a general provision and has accordingly been placed in Chapter I as clause 199.

115. *Clause* 317 (*Original clause* 300).—This clause has been recast so as to make it self-contained and complete in itself.

116. Clauses 318 to 320 (*Original clauses* 301 *to* 303).—The Committee have merely made slight drafting changes which are intended to make the meaning clear.

117. (*Original clause* 304).—This is a general provision which has been put as clause 200 in Chapter I.

CHAPTER III—MANAGING AGENTS

(Clauses 323 to 377)

118. *Clauses* 323 *and* 325 (*New clauses*).—The principal changes made by the Joint Committee in regard to Managing Agents are contained in these two clauses.

Clause 323 gives the Central Government power to notify that all companies engaged, whether wholly or in part, in any industry or business specified in the notification shall have no managing agents. The effect of such a notification will be as follows:—

(a) No company which did not have a managing agent on the date from which the notification is to take effect can appoint one after that date.

(b) Where a company has a managing agent on that date, the managing agent will cease to hold office with effect from the expiry of a period of three years from the specified date or with effect from the 15th August, 1960, whichever is later.

Where no notification applicable to a company has been issued under clause 323 and the case does not fall under clause 324, clause 325 provides that a managing agent cannot be appointed for the company without the specific approval of the Central Government.

The Central Government cannot accord such approval unless it is satisfied in regard to three matters, namely,—

(a) that it is not against the public interest to allow the company in question to have a managing agent;

(b) that the managing agent proposed is a fit and proper person, and that the conditions of the managing agency agreement proposed are fair and reasonable; and

(c) that any conditions which the Central Government requires the managing agent to fulfil have been fulfilled.

119. *Clause* 327 (*Original clause* 309).—New sub-clause (3) added by the Committee makes it clear that an appointment of a managing agent which purports to be made for more than the maximum permissible period will be void for the entire period, and not merely in respect of so much thereof as may be in excess of the maximum period permissible.

120. *Clause* 329 (*Original clause* 311).—All existing managing agents will cease to hold office on the 15th August, 1960, that is to say, on the expiry of about five years from the coming into force of this Bill. Where however a managing agent is reappointed before that date under this new law, which will be possible only if the Central Government approves of such re-appointment, this clause will not apply.

121. *Clause* 330 (*Original clause* 312).—The Committee do not consider it necessary to postpone the application of the provisions contained in the Bill by two years, as was proposed in the Bill as introduced. They have accordingly omitted sub-clause (2). To prevent any inconvenience which may arise from the Bill coming into operation in the middle of the financial year of a company, the Committe have provided for this clause being given effect to, in such cases, from the end of that financial year. The omission of sub-clause (2) of original clause 312 has entailed the omission of original clauses 313 and 314.

122. *Clause* 331 (*New Clause*).—The Committee consider that no person should be managing agent of more than ten companies after the 15th August, 1960, when all existing managing agencies will except where they have been renewed with the consent of Government come to an end. In order to prevent evasion of this requirement, persons closely associated with the managing agent of a company will be treated as the managing agent of that company for the purposes of reckoning the number ten. The following persons will accordingly be treated as managing agents of a company, namely (a) every member of the firm acting as the managing agent or as secretaries and treasurers, and (b) where a body corporate acts as the managing agent, every director, manager, or member of the firm acting as managing agent or secretaries and treasurers, of that body corporate.

The following companies will not be taken into account in calculating the number of companies which may be managed by one person, namely:—

(a) a private company which is neither a subsidiary nor a holding company of a public company;

(b) an unlimited company;

(c) an association which does not carry on business for profit or which prohibits the payment of a dividend.

A heavy penalty *viz.*, a fine of one thousand rupees for each day on which, and in respect of each company for which, a person acts as managing agent of more than ten companies, has been provided. Where a person continues to manage more than ten companies in contravention of this provision, the Government will have power to choose *not more than* ten companies in which alone such person should function as managing agent.

123. *Clause* 332 (*New Clause*).—This clause merely reproduces the effect of original clause 311(2) in a clearer and simpler form. A managing agent whose office will stand terminated as a result of new clause 323 or new clause 331 will be entitled to a charge on the assets of the company, in respect of all sums which are, or may become, due to the managing agents from the company.

124. Clause 335 (*Original Clause* 317).—The distinction between bailable and non-baliable offences has been removed and a sentence of imprisonment for a period of not less than six months will attract the disqualification imposed by this clause.

125. Clause 336 (*Original Clause* 318).—The Committee have omitted the proviso which made the clause inapplicable where the company was aware of the fraud or breach of trust of which the managing agent was guilty. The Committee are of opinion that the grant of an exemption couched in these terms would lead to difficulties in practice. The Committee have however made the clause applicable to cases where a partner of a managing agency firm, or a director of a body corporate acting as managing agent, has been guilty of fraud or breach of trust such as is referred to in this clause.

126. *Clause* 340 (*Original Clause* 322).—The Committee have made it clear that the provisions of sub-clause (1) will over-ride any provision to the contrary contained in any other law or agreement. In other words, it will be open to the managing agent to expel or dismiss a convicted director, partner or officer, although the agreement entered into with him does not provide for a right to effect such removal.

127. Clause 343 (*New Clause*).—Many of the admitted evils of the managing agency system result from the managing agency being heritable. In future, no managing agency agreement can provide for the managing agency being heritable or devisable by will. Such an agreement will be void.

128. *Clause* 344 (*New Clause*).—Where however such an agreement has been already entered into, that is, before the coming into force of the new Bill, the heir or devisee of the managing agent will be entitled to act as managing agent, if, and only if, the Government are satisfied that the heir or devisee is a fit and proper person to manage the affairs of the company. The Committee attach much importance to this provision, as they consider that it will prevent a great evil to which the existing law has given rise.

129. *Clause* 345 (*Original Clause* 325).—Most of the managing agencies are held by firms or bodies corporate. The principle adopted by the Committee in regard to changes in the constitution of the managing agency firm or corporation is that any change which may take place should be approved within six months of the occurrence thereof by the Government and that if such approval is not accorded, the firm or body corporate should cease to be managing agent.

130. Clause 348 (*Original Clause* 330).—Only slight amendments of a clarificatory nature have been made in this clause by the Committee.

131. *Clause* 356 (*Original Clause* 338).—The Committee have provided that sales in India of goods produced by a company will not entitle its managing agent to any commission. The provision regarding the making of payment for goods received by the managing agent for sale, within one month of the date on which the goods were supplied to him by the company, has been omitted. It is left to the company to make its own agreement in such cases.

132. *Clause* 357 (*Original Clause* 339).—This makes changes consequential upon those made in clause 356.

133. *Clause* 358 (*Original Clause* 340).—In the case of all purchases made in India, only the expenses incurred by the managing agent will be payable by the company.

134. *Clause* 359 (*Original Clause* 341).—It has been made clear that the company in general meeting may agree to a commission being paid on future transactions.

135. *Clause* 361 (*Original Clause* 343).—In view of the delay in passing this Bill, the date "first day of March 1957" has been changed into the "first day of March 1958".

136. *Clause* 368 (*Original Clause* 351).—The words "except to such extent as is otherwise provided in Schedule VII" which occur in clause 351 of the original Bill are inaccurate as there is no provision of that nature in Schedule VII. The words have therefore been omitted; and it has been made clear that the managing agent of a company should exercise his powers subject to the control and direction of the Board of directors and also subject to the provisions of the memorandum and articles of the company and the restrictions contained in Schedule VII.

137. *Clauses* 369 *and* 370 (*Original Clauses* 352 *and* 353).—If a company gives a guarantee, or provides any security, in connection with a loan made to any other person by its managing agent or an associate of its managing agent, the prohibitions contained in these clauses should obviously apply. The Committee have secured this result by adding the words "or, to any other person by," in the opening paragraph of the clauses.

138. *Clause* 372 (*Original Clause* 355).—The Committee consider it unnecessary to provide for the passing of a special resolution by the company for making the investments referred to in sub-clause (3). Instead, the Committee consider it more useful to add the safeguard of approval by the Central Government. Sub-clauses (5)

to (8) provide for the maintenance of a register of investments and for all consequential provisions in relation thereto. The period within which companies are to dispose of all existing investments in excess of the limits imposed by this clause has been extended from one year to two years, from the commencement of the Act.

139. *Clause* 373 (*Original Clause* 356).—Here again the requirement of a special resolution has been altered by the Committee into the requirement of an ordinary resolution coupled with the approval of the Central Government.

140. *Clause* 377 (*Original Clause* 359).—The main complaint against the managing agency system is that the managing agents by virtue of provisions in their agreements, acquire a right to make nominations up to one-third of the directorate of the company. By exercising this right and by securing the appointment by the general body to the remaining two-thirds of the directorate, of persons closely connected with them, managing agents are in most cases able to obtain a comfortable working majority in the Boards of directors of the companies with which they are concerned. The second danger is obviated in a large measure by clause 260 which requires a special resolution for the appointment of persons connected with managing agent. The Joint Committee consider that to permit managing agents to nominate even one-third of the directorate (a limit imposed by the Amending Act of 1936) will be to confer on them an excessive right, especially where the directorate is large. In the opinion of the Committee, a managing agent should in no case have a right to nominate more than two directors or one-third of the directorate, whichever is smaller. Accordingly, under clause 377 as altered by the Committee, the managing agent can nominate not more than two directors where the total number of directors exceeds five, and one director where the total number does not exceed five.

141. *Clauses* 378 to 383 (*New Clauses*) (*Secretaries and Treasurers*).—The Committee have no wish to make changes in the system of "secretaries and treasurers" who ordinarily exercise much the same functions as "managing agents" or "managers" but with this vital difference, namely, that "secretaries and treasurers" have no right to appoint any of their nominees to the directorate. The system is free from most of the abuses to which the managing agency system has unfortunately been subject. The Committee consider it very desirable to give statutory recognition to the system of secretaries and treasurers, laying adequate emphasis on the safeguards subject to which alone the office can be held. The definition of "secretaries and treasurers" makes it clear that only a firm or body corporate can hold that office but that in other respects, "secretaries and treasurers" should fulfil all the requirements of the definition of "manager". Provision is made in clauses 378 to 383 for the appointment, functions and powers, and remuneration of secretaries and treasurers. "Secretaries and treasurers" cannot be appointed when there is a managing agent (proviso to clause 378). The Government will have no power to notify that there shall be no secretaries and treasurers in companies engaged in particular classes of business (clause 380). Their remuneration will be subject to a maximum of 7½ per cent. as against the 10 per cent fixed for managing agents (clause 381). Secretaries and treasurers cannot be appointed as selling or buying

agents either by the articles or by the agreement entered into by them with their companies but only by the Board of Directors and to the extent determined by the Board (clause 383).

142. *Clauses* 384 *to* 388 (*New Clauses*).—The provisions relating to "Managers" have been brought together in this part of Chapter IV. New clause 384 corresponds to original clause 294, and new clause 385 to original clause 295.

143. *Clause* 386 (*New Clause*).—This clause reproduces original clause 292 in so far as it relates to managers, clause 292 being confined in its operation to managing directors.

144. *Clause* 387 (*New Clause*).—This clause provides for a limit on the remuneration of the Manager. Not more than five per cent. of the net profits may be paid to a Manager.

145. *Clause* 388 (*New Clause*).—This clause provides for the application of clauses 311 and 316 to the case of managers, these clauses having been restricted to directors in accordance with the arrangement of Chapters adopted by the Committee.

146. Part VI—Chapter VI. *Clauses* 396 *to* 408 (*Original Clauses* 367 *to* 377 *and New Clauses* 407 *and* 408).—These clauses deal with the prevention of oppression by, and the mismanagement of companies.

In clause 398, the provision in the existing Act [section 153C(3)(a)(i)] for 100 members of a company having a share capital, making an application under the clause, has been restored. In clause 401, new sub-clauses (e) and (f) reproduce the provisions of the existing Act [section 153C (5) (e) and (f) as in the opinion of the Committee, there is no sufficient justification for omitting them.

Clause 405 provides for the application of clauses 536 to 541 of the Bill in relation to complaints preferred under clauses 396 and 397. It is considered desirable to set out the exact form in which the clauses in question are to apply in a Schedule. This is done by new Schedule XI of the Bill as amended by the Committee.

New Clause 407.—The Committee are of the opinion that the Central Government should be vested with power to prevent mismanagement or oppression by nominating one or two members of the company to hold office as directors for a period not exceeding three years.

New Clause 408 merely reproduces in a permanent form the provisions of section 86J(2) of the existing Act. That section was included in Schedule XI of the Bill as introduced and could therefore have remained in force only for a period of three years.

147. Part VI—Chapter VII. *Clauses* 409 *to* 414 (*New Clauses*).—The Indian Companies (Amendment) Act of 1951 (Act LII of 1951) provides for the setting up of a Commission of not more than three persons to advise the Government in regard to the exercise of the powers conferred on them by that Act. It was represented to the Committee that the time has now come for the replacement of this Commission by a statutory body to which most of the powers conferred on the Central Government by the Bill could be assigned.

Although this view has the support of the Company Law Committee, the Joint Committee consider that much the preferable course will be to keep the provision in the Bill as introduced, that is, to continue the Commission on an advisory basis. The Committee are of opinion that responsibility for the due fulfilment of the functions assigned by the Bill to the Central Government should squarely be placed on the Government and that nothing should be done to impair or obscure this responsibility.

Although the Joint Committee have thus retained the Commission on an advisory basis, they think that it should be put on a permanent footing instead of its life being restricted to a period of three years as was proposed in the Bill (Schedule XI—Part VI, read with original clause 598). The Committee have, however, increased the maximum membership from 3 to 5, so as to enable Government to provide for the adequate representation of all the different interests concerned—see clause 409, sub-clause (a). At the same time, the Committee have also extended the scope of the Commission by providing that it should advise the Government on *all* matters which are referred to it instead of only on those falling within the scope of the 1951 Act—See clause 410, sub-clause (b). The other clauses in this Chapter reproduce in a much clearer form the provisions of section 289B of the existing Act.

148. Part VI—Chapter VIII. *Clauses* 415 *to* 423 (*Original clauses* 378 to 388).—These clauses deal with certain miscellaneous matters relating to contracts by agents of the company, employees' securities and provident funds etc.

Original clause 379 has been placed as clause 112, as that is a more appropriate place for the provision in the view of the Committee.

Original clause 380 has been omitted as unnecessary in view of clause 218.

The other clauses have been reproduced with certain minor amendments.

149. Part VII—Chapter I. *Clauses* 424 *to* 430 (*Original clauses* 389 *to* 395).—These clauses relating to modes of winding up of companies have been adopted with certain minor changes.

150. Part VII—Chapter II. *Clauses* 431 *to* 481 (*Original clauses* 396 *to* 449).—These clauses deal with the winding up of companies by the Court.

The Committee are of the opinion that only official liquidators should function as liquidators in the winding up of companies by the Court and that in such cases the Court should not have power to appoint private persons as liquidators.

Original clause 414 which provided for the appointment of private persons as liquidators by the Court has accordingly been omitted. Consequential and other minor changes have also been effected in the other clauses.

151. Part VII.—Chapter III. *Clauses* 482 *to* 518 (*Original clauses* 450 *to* 484).—These clauses relating to the voluntary winding up of companies have been adopted with a few minor amendments.

152. Part VII—Chapter IV. *Clauses* 519 *to* 524 (*Original clauses* 485 *to* 489).—These clauses relating to the winding up of companies subject to the supervision of the Court have been adopted with certain minor amendments.

153. Part VII—Chapter V. *Clauses* 525 *to* 555 (*Original clauses* 490 *to* 519).—These clauses contain certain general provisions applicable to every mode of winding up of companies.

Under the Constitution of India, money received by a public servant in his official capacity, must be paid into the public account of India. In view of this provision, the original clause 514 has been suitably re-cast.

Certain other minor changes have also been made in some of the other clauses.

154. Part IX. *Clauses* 560 *to* 576 (*Original clauses* 524 *to* 540).—Original clauses 526 (c)(iii) and 432 have been amended so as to ensure that private limited companies are registered with the words "Private Limited" as the last words of their name—See clause 13(i)(a) as amended by the Committee.

155. *Clause* 611 (*Original clause* 575).—The Committee are of opinion that so far as Government Companies are concerned, it will be inappropriate to apply those clauses of the Bill which impose a penalty in respect of failure to do various things by directors, managers etc. But the provisions requiring the supply of information to shareholders, the submission of returns and the like should be made applicable to Government Companies also in the same manner as in the case of other companies.

The Government had prepared a set of clauses, setting forth in detail the provisions of the Bill which should not apply to Government Companies at all, and the manner in which other provisions should apply to them. But an examination of these clauses soon revealed various difficulties and in particular that the exemptions and modifications could not be made on a uniform pattern, as the amount of Government interest in and the nature of the activities carried on by, the various Government Companies differed very widely. The question has therefore to be determined in each case on its merits; and the only authority which could possibly be entrusted with the function is the Government. The Committee have, however, provided a safeguard, *viz.*, that copies of every notification issued by the Government exempting a Government Company from, or modifying in relation to such a Company, the provisions of the Bill, should be laid as soon as possible after the issue of the notification before both Houses of Parliament—See new clause 614.

It has, however, been made clear that Government Companies newly constituted should not have managing agents—New Clause 612.

The Auditor General has been given power in specific terms, to direct the manner in which audit should take place, to conduct supplimentary and test audits and to comment on the audit report. The comments of the Auditor-General are required to be placed before the general body meeting—See New clause 613.

"Government Company" has been expressly defined. The percentage of Government interest has, however, been lowered from 80 to 51 per cent., so that the Auditor-General can exercise his statutory powers in respect of companies where the Government have a majority interest—See new clause 612.

156. *Clause* 630 (*Original clause* 592).—The Committee consider that Government should not delegate their powers in favour of a "person" generally, but only in favour of an "officer". They also consider that some important powers should not be delegated at all. A list of these will be found in new sub-clause (2).

157. *Clause* 631 (*Original clause* 593).—This clause has been amended so as to provide that the annual report on the working of the Act should be laid before both Houses of Parliament within a year of the close of the year to which the report relates.

158. *Clauses* 632 *and* 633 (*Original clauses* 594 *and* 596).—*In* accordance with the recommendation contained in the First and Second Reports of the Parliamentary Committee on Subordinate Legislation, new sub-clauses have been added in each of these clauses providing for all rules made by the Government thereunder being laid before both Houses of Parliament.

159. *Original clause* 595.—This has been omitted, as the ground is covered by clauses 14, 28 and 222.

160. *Clause* 642 (*New clause*).—The Bill as introduced divided the "resolutions" of a company, only into two categories *viz.*, "ordinary resolution" and "special resolution".

The third category "extraordinary resolution" provided for in the existing Act has been abolished. New clause 642 inserts a consequential provision necessitated by the abolition. Any reference to an "extraordinary resolution" which now occurs in the articles of a company or in any other document will be construed as a reference to a "special resolution".

SCHEDULES

161. *Schedule* 1.—*Regulation* 2 has been omitted as it really adds nothing to the provision contained in clause 84 of the Bill.

Regulation 21 has been re-drafted to make it clearer.

162. *Schedule VII.*—Part I of this Schedule setting out the specific powers of "managing Agent" has been omitted as unnecessary. All powers not referred to in Part II must be capable of being exercised by managing agents.

The Schedule has been made applicable to "secretaries and treasurers".

The Explanation to item 2 of Part II which defined "relatives" has been omitted here, as the definition has been incorporated in clause 2 of the Bill.

163. *Original Schedule XI.*—All the provisions contained in the original Schedule having been incorporated in the body of the Bill that Schedule has been omitted by the Committee. The necessity for new Schedule XI is explained in paragraph 146 in the portion dealing with clause 405.

164. There is one matter which the Committee would emphasize. The Bill confers very wide powers on the Central Government, the exercise of which will involve the taking of decisions at the highest level in the Ministry concerned. The Joint Committee consider that it is of the utmost importance that Government should create a full-fledged Department under the appropriate Ministry, functioning directly under the Minister concerned, for the administration of the Companies Act and the discharge of other related functions.

165. The Committee also recommend that Government should accord the highest possible priority to the consideration of this Bill at the next session of Parliament. The Company Law Committee, which was appointed by the Government of India at the end of 1950, submitted its report in March, 1952. The present Bill, which embodies those recommendations of the Company Law Committee which were accepted by Government, was introduced in the Lok Sabha on the 2nd September, 1953, and referred to a Joint Select Committee of the two Houses in May 1954. The Joint Committee have considered the Bill at great length after giving full hearing to representatives of Industry, Business, Labour, Shareholders, Chartered Accountants and members of the Legal Profession. Thus the Bill has been before Parliament for over a year and a half. Having regard to the scope and character of the Bill, and its bearing on the organization and working of the private sector in this country the Committee consider that it is of urgent importance to place this Bill on the Statute Book without delay, as otherwise complication and difficulties might well arise. In the opinion of the Committee it is therefore necessary that the Bill should be passed into Law during the next session of Parliament.

166. The Joint Committee recommend that the Bill as amended be passed.

H. V. PATASKAR,

NEW DELHI; CHAIRMAN,

The 2nd May, 1955. *Joint Committee.*

MINUTES OF DISSENT

I

The Joint Select Committee had to face a very formidable task in dealing with a very comprehensive Bill which is the longest Bill ever presented to Parliament, of 612 clauses and 12 Schedules.

I wish the Bill could be pressed into more manageable dimensions relegating provisions regarding details to schedules or rules. We have in fact managed to make the Bill more formidable in size with about 650 clauses and with 12 schedules.

The object of the Bill was to amend and consolidate the law relating to Companies. The last substantial amendment was effected in 1936 when Sir N. N. Sircar introduced the Bill which ultimately became Act XXII of 1936. The actual working of the Indian Companies Act as modified by Sir N. N. Sircar's amendments disclosed many defects.

Certain malpractices in Company management excited public attention and comments. The terrific increase in industrial production during the Second World War in response to the tempo of war demands made it clear that there must be a thorough over-hauling of the Companies Act of 1913. This was not an isolated factor in India. In England similar shortcomings excited public comments. The Lacunae in the Companies Act and the defects in administration enabled profiteers and big financiers who lacked honourable traditions to misuse and pervert the Company law to serve their own ends.

In England Mr. Justice Cohen's Committee was appointed by the President of the Board of Trade in June 1943. After taking oral evidence and considering the Memoranda submitted by experts the Cohen Committee was satisfied that the great majority of limited companies, both public and private, were honestly and conscientiously managed. I wish we could say the same thing for India. Yet on the whole the system of limited liability companies has been beneficial to the trade and industry of this country and essential to the prosperity of the nation as a whole.

The role of Joint Stock Companies in the economic development of the country is of peculiar importance. Since the amending Act of 1936, the growth of Joint Stock Companies in India has been rapid and they cover a very large area of industrial and commercial field in the private sector. Their operations embrace by far the largest part of the economic life of the community that is not under direct State control.

The directive principles of our Constitution enjoin that the ownership and control of the material resources of the country

should be so distributed as best to subserve the common good. The operation of the economic system should not result in the concentration of wealth and of the means of production in a manner detrimental to the common good.

The Planning Commission rightly pointed out that the directive principles do not prescribe any rigid economic or social frame-work, but provide the guiding lines of State policy.

The Bhabha Committee had observed that Company law was primarily concerned with means and not with ends. It can at best provide a legal frame-work for the corporate form of business management in which organisation, capital and labour are brought together in a particular form of relationship which constitutes the essence of private enterprise.

Private enterprise must accept certain broad essential objectives and it is our hope that those who will operate the mechanics of company management under the new Statute will maintain certain standards and not be oblivious of their responsibilities. We are going to have a planned economy and that means private enterprise must accept a new code of discipline in the larger interest of the nation. The Planning Commission has rightly observed that private enterprise will justify itself only to the extent to which it proves to be an agent for promoting the public good.

I have not much faith in ensuring honest and efficient administration of Companies by means of legislation. Business would be conducted in an efficient and honest manner provided the shareholders would take an intelligent interest in the activities of their concerns and they are vigilant in safeguarding their interests and those of the creditors and the general public. I hope that some of the amendments we are suggesting in the Indian Companies Act will make it possible for shareholders to exercise a more effective general control over the management of their companies.

No lawyer or legislator can be against the enactment of legal provisions for checkmating illegal practices or inefficient administration. Yet I must admit that legal doctrines afford sometimes illusory protection to shareholders. That has also been the verdict of Lord Justice Cohen's Committee. They have definitely declared that, as applied to Companies, the doctrine of *ultra vires* serves no useful purpose but is, on the other hand, a cause of unnecessary prolixity and vexation. Therefore, the Cohen Committee recommended that it would be a sufficient safeguard if provisions in the Memoranda were alterable by a special resolution without the necessity of obtaining the sanction of the Court subject to certain safeguards where debentures had been issued.

With regard to mis-statements in Prospectus we have made important recommendations and have made provisions both for civil and criminal liability.

The Company Law Committee presided over by Mr. Bhabha pointed out that the objects of the Amending Act of 1936 had been

to a large extent defeated and Managing Agents had found it possible to swamp the Board of Directors with their own nominees. Mr. Sushil C. Sen, who was the Special Officer-in-Charge of the Company Bill and who had considerable experience, had remarked in his book on the Indian Companies Act— that it would make it impossible to make the Board of Directors a packed body of persons representing any particular interest. But the Bhabha Committee has found that Boards of Directors were still being swamped by persons closely connected or associated with Managing Agents.

We have made many drastic provisions with regard to Managing Agents and Directors and put some restrictions on their over-all remuneration and also on their power to borrow on the security of the assets of the Company. Unless the Government is prepared to accept the suggestion of the Company Law Committee regarding the creation of a Central Authority to administer the Act, I would not be prepared to vest very wide and almost uncanalised powers on the Government in diverse matters as contemplated by the Bill as amended by the Joint Committee. Parliament should impose adequate safeguards before it vests the Government with the extra-ordinary power of terminating the Managing Agency system in such industries as it may choose to notify by a publication in the Gazette. This power of abolition of the Managing Agency system by executive fiat may be influenced by political objectives and may act as a deterrent on company formation and may check initiative and may lead to undue cramping of the activities of the existing concerns unless an alternative system is achieved it would be unwise to destroy the existing system in a precipitate manner.

The apprehension is not unreasonable that in our anxiety to tighten up the provisions of the Companies Act in order to make the Managing Agency system shorn of its abuses and malpractices, we have gone too far and prescribed too many restrictions which in actual practice would make difficult, if not impossible, the smooth and efficient management of business. At least in respect of Director-controlled Companies which do not appoint any Managing Agents, the minimum restrictions should be provided as in the United Kingdom Act.

It is one thing to prescribe restrictions, limitations or fetters, sitting in a Select Committee or discussing a Bill in the placid atmosphere of a legislative chamber. Yet the sum total may create an impracticable situation from the point of view of Company formation or the practical working of a business concern. It is not wise to drive the private sector to the tender mercies of a bureaucracy and this may lead to jobbery or corruption. We can only hope the restrictions and fetters would not introduce too much rigidity and would cause lack of incentive and that they would not prejudice the interests of the private sector and the efficient working and growth of industries so vital for the economic uplift of India.

I must express my regret that the basic recommendation of the Company Law Committee for the creation of a Central Authority on the lines suggested by them has not been accepted by the Joint

Committee. In my opinion the absence of a Central Authority, as strongly urged by the Bhabha Committee, would to a large extent defeat the object of this comprehensive Statute. Very cogent reasons have been advanced by the Bhabha Committee for the creation of a Central Authority to direct and supervise the administration of the Indian Companies Act. There is a need for a Central Organisation continuously watching closely the activities of Joint Stock Companies in India. Law can formulate certain conditions or circumstances in which the provisions of the Companies Act would be applicable. The Bhabha Committee administered the appropriate admonition that their intentions may be frustrated by superficial changes in the management of the competitive business or its nature. The applicability of definitions or categories or conditions or circumstances prescribed in the Statute to marginal cases would be a difficult and delicate task. The avoidance of rigidity may be desirable in some cases. Only an appropriate authority with requisite experience and knowledge can administer the law properly and command public confidence so vital in these matters. Sir N. N. Sircar's Amending Act of 1936 was not *per se* defective. But the lack of an appropriate organisation maintaining a close watch over the working of Joint Stock Companies was responsible for the unsatisfactory working of the Statute and the prevalence of malpractices. There is no good having a comprehensive Company law unless you set up a regular machinery for making proper application of it.

The Bhabha Committee pointed out that in the United Kingdom the Board of Trade functions as a central authority. They also referred to the Securities and Exchange Commission set up in U.S.A. by the Act of 1934 as discharging vital functions. I would impress upon the hon'ble members of the Parliament the desirability of accepting the recommendation of the Bhabha Committee and to provide for the creation of a Central Authority or Organisation as recommended by that Committee in paragraph 257 of its report. The majority of witnesses who appeared before that Committee favoured a statutory authority created under the Indian Companies Act in preference to purely departmental organisation. Departmental organisation may be easier to work. But a statutory authority, as the Bhabha Committee rightly pointed, will create more confidence and possess more elasticity and initiative. I am strongly urging that such a statutory authority should be created for the purpose of working this statute. The Advisory Commission suggested in clause 409 will not serve the purpose. The powers are not adequate and their functions are not as comprehensive as recommended by the Bhabha Committee. Major issues of economic policy certainly would be determined by the Government. But once such issues are settled, the application of the same to individual companies should be the responsibility of a quasi-independent authority which will examine the problems involved in a detached manner and be guided solely in this regard by the general directions given under the Statute or in the decisions of the Government.

There is considerable force in the recommendations of the Company Law Committee that it is only in this way that the Central Authority can maintain its independent character and avoid suspicion of bias or partisanship in the discharge of its functions. The

Commission, as suggested by the Bhabha Committee, should have the powers of inspection and investigation as well as supervision of winding up proceedings and should also keep investment markets in the private sector of the economy under continuous observation.

It is to be admitted with regret that the Government of India, as has been pointed out by the Bhabha Committee, have not the adequate organisation for dealing with important matters relating to capital issue control, regulation of stock exchanges and other matters connected with the promotion and formation of Joint Stock Companies. The Commission can also help in the building up of a cadre of trained technical and administrative staff needed for proper and efficient administration of Indian Companies Act and to analyse and study prospectuses, company accounts and problems of investment finance.

N. C. CHATTERJEE.

NEW DELHI;

The 28th April, 1955.

II

I shall make a few observations on the Bill as revised by the Joint Committee.

To me it appears that the dominant features of the Bill are the treatment of the Managing Agency System and the powers vested in the Central Government in relation to the administration of incorporated companies. The Bill with about 650 clauses and 12 schedules is probably the biggest piece of legislation in size and scope, on the subject in any country. Although the Bill in its original form was framed largely on the model of the U.K. Act and the recommendations of the Company Law Committee it has undergone radical changes at the hands of the Joint Committee. The original Bill embodied provisions relating to the Managing Agency System designed to give effect to the recommendations of the Company Law Committee. The object of these recommendations was to remedy the situation arising from the abuses which had crept into the system on account of the practices of a section of the Managing Agents, during the postwar days and they proposed to achieve the object by tightening up the control over the system. The Committee were definitely of opinion that the system had served a useful purpose and that shorn of the abuses that had crept in, it had great potentialities for developing the private sector. The Joint Committee have however introduced provisions of a sweeping character which virtually seek to abolish the system, instead of mending it. The Bill as revised by the Joint Committee does not openly and expressly provide for the abolition of the system. In my opinion, open abolition of the system would have been better in the interest of the economy of the country than the veiled one. This State of affairs gives rise to a large measure of uncertainty and unbalance in the economic situation which is more damaging to the economy than a straight abolition. In this context the provisions of clause 323 of the Bill may be examined. The first stage in the process of abolition of the Managing Agency system is envisaged in this new

clause which empowers the Central Government to declare that companies engaged in certain classes of industry or business shall not have Managing Agents and on such declaration being made by them, the companies concerned should terminate the Managing Agency contracts within a specified period. The Bill also vests powers in the Central Government to approve or disapprove of Managing Agency contracts when they are due for renewal. The provisions embodied in clause 323 and the provisions relating to approval of renewal introduce a large degree of uncertainty into the private sector of the economy which in the context of the industrial progress of the country cannot be contemplated with equanimity. The psychological effect of these provisions will prove to be far more disastrous to the economy than the physical effect of the provisions.

Chapter VI provides for prevention of oppression and mismanagement. The court is empowered to give appropriate relief against oppression of the application of a certain number of members. The Central Government too are given powers simultaneously to deal with cases of oppression or mismanagement. They are vested with powers to appoint two directors to hold office at their discretion. This is a novel provision which seems to be fundamentally opposed to the accepted canons relating to management of companies. This provision is calculated to disrupt the working of the company itself rather than to secure the proper management of the company.

The Bill contains some clauses which deal with persons in accordance with whose directions or instructions, directors are accustomed to act and penalties are provided for breach of the provisions. The interpretation of these clauses may often lead to anomalous results as they impose legal obligations of an onerous character on persons who may really have no part or lot to play in the affairs of the company.

It appears to me that there are two distinct spheres in the affairs relating to companies one which is exclusively for the company concerned in which the operation will be the sole responsibility of the company and the other which should be of a regulatory character in which the State and the Legislature should have their say in the public interest. I feel that this distinction which is the characteristic of the existing companies Act seems to have been abrogated almost completely. The absence of a clear delimitation of the two spheres seems right through the whole Bill. The machinery relating to administration of companies has therefore become very complicated. In fact the Bill imposes on company Management so many obligations of an onerous character which are mostly technical that the company will be hard to put to it to comply with them strictly. Broadly speaking the approach to the question of company law reform has been completely legalistic and the structure has become very complicated. The requirements of the situation could have been adequately met by amendment of the portions of the existing law which needed reform.

NEW DELHI;

The 28th April, 1955. S. CHATTANATHA KARAYALAR.

III

We do not agree with the halfhearted recommendations of the Committee in regard to the Managing Agency System. We feel strongly that this system is not only responsible for many malpractices and abuses and has long outlived its span of useful existence. The capital market is more developed to-day than it was in the 19th century and it is not so difficult now to raise capital from the market even in the absence of the managing agency system. Moreover, a number of financial institutions have recently been set up to provide long-term capital to industry. In our view, therefore, there is no reason whatsoever for the retention of a system which already stands self-condemned.

The managing agency system has all along been associated with the concentration of economic wealth and power in the hands of a few. It represents the cult of *'Ceazarism'* in economic affairs. And economic concentration only too often leads to political concentration of power. As long as this system continues to exist it will not be possible to achieve an egalitarian society based on economic justice and fair play.

It is our firm view that the managing agency system is a relic of industrial feudalism in this country and should be forthwith abolished. That even the majority of the members of the Select Committee are not satisfied with the system will be evident from the fact that it has been now proposed to vest the Central Government with power to notify that companies engaged in specified classes of industry or business shall not have managing agents as from a specified date. Under the circumstances and particularly in view of the overwhelming evidence against the past conduct of most of the managing agents it is difficult to appreciate the reasons which have deterred the majority of the members from recommending the total abolition of the system of managing agency forthwith, or even setting a definite time limit within which the system will be completely abolished. We may also add that Secretaries and Treasurers for whom provision has been made in Chapter IV could easily fulfil such useful functions as the managing agents are at present considered to be performing.

2. As stated above we are unconditionally opposed to the continuance of the managing agency system. If, however, Parliament would nevertheless acquiesce in its continuance, we would suggest the following modifications in the recommendations made by the Select Committee:—

(a) In clause 327 the term of office of the managing agency of any company should be reduced to 10 years in the case of reappointment or subsequent appointment of managing agents.

(b) In clause 327 remuneration should be limited to 7½ per cent of net profits. This is the amount which the Committee recommends (in clause 381) for payment to secretaries and treasurers who occupy a position similar to managing agents.

(c) In clause 352, the minimum remuneration in case of loss or inadequacy of profits should be limited to a maximum of Rs. 30,000 a year.

3. We feel extremely unhappy that the committee has not recommended the establishment of a Central Authority, for the many grave irregularities in the management of company affairs could not be prevented and even the moderate provisions of the company law were not enforced as the administrative staff were not in a position to give undivided and expert attention to the working of the Company Law. It will serve little or no purpose to streamline the Company unless an adequate and competent machinery is set up for its proper and efficient working. We do not think that the departmental machinery that is proposed would be able to fulfil this onerous responsibility. The Company Law Committee after considering fully all aspects of this question has recommended the establishment of a Central Authority for working of the Company Law. They have advanced very cogent arguments in support of this suggestion which we do not consider it necessary now either to recaptulate or dilate upon. We need only say that the Law, however good it may be, will be ineffectual in the absence of a proper and efficient administrative apparatus.

4. We regret that the Bill does not provide for representation of labour on the Board of Directors. We are strongly of opinion that labour should have some representation on the Board. In modern industry and business, labour plays as important a role as capital or management. Further we feel that such a provision will promote better industrial relations and improve efficiency.

5. As regards the appointment of auditors we are of opinion that this should not be allowed in the name of the firm but in the name of the individual. The auditor must not be regarded as a businessman, but as one belonging to a profession. The practice of appointing auditors in the name of the firm is tending to give the character of a commercial venture to the profession. And in consequence some of the firms of auditors are developing into hereditary concerns. Besides, the audits are getting concentrated in the hands of a few firms. This practice does not allow real talent to play its role. On the contrary, as is inherent in commercialisation, it is tempting auditors to unprofessional conduct.

It follows from the above proposition that there should be limitation placed on the number of audits that an individual can take up without marring efficiency. Under the scheme of the Bill limitation is put on the number of directorship that a person can hold. And we feel that, in the interest of the profession and that of the shareholders similar limitation be placed on the auditors.

M. S. GURUPADASWAMY.
V. K. DHAGE.
BIMAL C. GHOSE.
AMJAD ALI.

NEW DELHI;
The 29th April, 1955.

IV

We wish to record our note of dissent on the following clauses:—

1. *Clauses* 84—89.—The provisions regarding classification of shares and the rights to be attached to each class have undergone careful revision by the Committee and incorporate progressive ideas. However, we feel that the recommendation of the Company Law Committee, 1952, that preference shares should have only qualified voting rights in certain contingencies (*vide* Report, Para. 48) should be fully implemented. While clause 86 of the Bill qualifies the right of the holders of Preference shares to vote in the manner envisaged by the Company Law Committee, Clause 89 provides that the present voting rights in respect of preference shares, already issued, will be unaffected by clause 86. We do not feel that there is any justification for discrimination between the existing preference shareholders and those who will hold preference shares issued after the commencement of the Companies Act, 1955. They should all be treated alike.

2. *Clause* 223.—We are of the opinion that Government should have power to appoint a duly qualified person or persons as an auditor of the Company, in supersession of one appointed by the Company, if the Government thinks it necessary and proper to do so in the interest of the company. Such a provision would ensure more independence on the part of an auditor in examining the accounts of the company and enable him to discharge his duties more effectively.

3. *Clauses* 264 *and* 407.—(i) The Committee has recognised the wholesome principle that while the right of decision is that of the majority, the minority have a right of representation. This has been embodied in clause 264 which permits companies to provide for cumulative voting at elections of its directors and in clause 407 which provides for the nomination by the Government of two directors to represent minority. We feel, however, that this does not go far enough, as cumulative voting is only optional. Company promoters would be slow to exercise this option not only because of conservatism but also because they would not readily give up the right which they now have and exercise of appointing all the directors because of their holding or controlling a major block of shares in the company.

(ii) We are conscious that clause 407 makes provision for Government to accord representation to minorities by nomination but these powers can be exercised only under given circumstances. It is not easy for minority shareholders, who are kept in ignorance of the actual working of the companies' affairs, to make out a case for relief by the Government except on hearsay and rumour. The lack of information puts a handicap on the minority to get relief from a court of law, though there may be a general feeling of dissatisfaction amongst them about the management of the company. It is our submission that the right of minorities to representation on Boards should be regarded as axiomatic.

(iii) Of all the proposals made to ensure the constitution of a Board of Directors some of whose members at least are independent of the controlling interest, the system of cumulative voting commends itself because of its effectiveness and simplicity. It has been tried and appreciated in countries abroad, and we plead that when we introduce the principle in our Company Law we should do so whole-heartedly and give it the best chance of survival and success.

NARENDRA P. NATHWANI.

R. R. MORARKA.

NEW DELHI;

The 29th April, 1955.

V

The Joint Committee have made many major changes in the Draft Bill, some of which are of a fundamental nature. The more important of the new provisions are those relating to managing agents and secretaries and treasurers; those requiring greater details to be given in balance-sheets and profit and loss accounts, and filing of balance-sheets of private companies with the Registrar; those affecting the qualifications, rights and duties of directors; those providing for investigation of the ownership of companies and giving increased powers to the Central Government in respect of appointment of inspectors; and those tightening up the provisions relating to prospectus. The Bill in its present form is prolix, instead of concise; complex, instead of simple and intelligible; and restrictive and rigid, instead of flexible. It is mainly on the issue of these objectionable features of the Bill that we differ from the majority view.

The existing Companies Act has about 300 sections. The Draft Bill contained 612 clauses, whereas the Bill as it has emerged from the Joint Committee contains about 650 clauses. Even the revised U.K. Companies Act is shorter, and includes 462 sections. Moreover, there are many instances of loose drafting, especially in clauses 2(3), 4, 56, 136, 197, 238, 293 and 454. There are many provisions which add to the complexity of the Bill. Probably, clauses 2(3), 6 and 7 defining "associate", "relative" and "persons in accordance with whose directions or instructions the directors are accustomed to act" are the ones that are chiefly responsible for the complexity of the Bill. The meaning of the term "associate" has been made more comprehensive, and now includes a number of persons, firms and corporations, who were not regarded as "associates" at all in the draft Bill or in the existing law. The third term will lead to arbitrary interpretations. Complications will also arise owing to provisions such as liability of promoters for omission of relevant facts from prospectuses, even where such omission is of an immaterial nature, or gives an impression to shareholders less favourable than that which they would otherwise have got. Other provisions which are unnecessary in our opinion are: independent auditing by qualified auditors of private companies; filing of balance sheets of private companies with the

Registrar; and the filing of the draft of the managing agency agreement (before the agreement is signed) with the Registrar along with the memorandum and articles. The margin of time in the existing Act for raising the minimum subscription before allotting shares has been reduced from 180 days to 120 days. We think this will cause the abortion of many new enterprises, as in India the capital markets are not highly developed and other conditions are not as favourable as in other countries. At the same time, it will not afford a commensurate benefit to subscribers. The provision in the Bill allowing persons who are not members to attend and vote at company meetings, and to speak in the meetings of private companies, is a dangerous provision, as it will enlarge the scope of professional mischief-mongers. The provision in one of the Schedules to disclose the secret reserves of a company in its published accounts is unnecessary, and it will create confusion and might lead to embarrassing demands on the management from shareholders and others that are inconsistent with the present policy of the Government to encourage corporate savings.

The complexity of company management would certainly increase if this Bill is enacted, as it contains many clauses which have a retrospective effect, and which would cause disturbance in existing rights and liabilities of shareholders and others and create embarrassing situations. Especially objectionable in this respect are the clauses relating to the voting, dividend and other rights of shareholders, and investments of a company in excess of the prescribed limit. Prevailing share values are based on existing rights of shareholders, and if these rights are disturbed, changes in share value would occur, resulting in undeserved losses to some and windfalls to others. According to clause 373, investments made after 1st April, 1952 and before the commencement of this Act, which are in excess of the prescribed limit, and which do not get the requisite approval in a general meeting of the company and of the Government, are required to be sold off within two years. This may lead to heavy losses to the companies affected, particularly if there is no ready market for such shares.

Over and above these complexities, there are many needless prohibitions and restrictions in the Bill. The absolute prohibition against the issue of equity shares with differential rights in respect of voting, dividends, etc., does not seem to us to be advisable in the prevailing circumstances. Similarly, the prohibition to appoint associates as buying and selling agents on commission basis in India irrespective of the fact that their business connection with managing agents or secretaries and treasurers is remote, and irrespective of the fact that they may be the best qualified parties, may not necessarily operate to the benefit of the company. Clause 79 prohibits the redemption of preference shares from sale proceeds of the company's property. We do not see why a company should not be allowed to redeem its preference shares out of the sale proceeds of its unwanted property. Similarly, we are unable to understand why clause 77 prohibits the application of, or writing off of, premiums received on shares to or against items other than those laid down in the clause, especially the writing off of premiums against revenue losses. In many instances, even minute details which should best

have been left to the company to work out, are sought to be regulated by law.

There are many instances of restrictions being needlessly heavy. For instance, the appointment of managing agent or associate as selling or buying agent outside India requires a special resolution instead of an ordinary resolution. Similarly, loans to companies under the same management in excess of specified limits also require a special resolution, instead of an ordinary resolution. There is no reason why a special resolution instead of an ordinary one is necessary for the appointment of certain persons connected with managing agents as directors, especially as the right of managing agents to nominate *ex-officio* directors is limited to one-third of the board or two persons, whichever is less. Under clauses 309 and 310, an increase in the remuneration of directors is subject to Government approval although the fixing of such remuneration in the first instance is not subject to their approval. Similarly, Government approval is necessary whenever there is a change in the constitution of managing agents, not only when such change is of a material nature, but also when such change is of no consequence at all, as for example, when a nominal or infinitely small fraction of the shareholding is transferred.

Joint Stock Companies have been the most important form of industrial and commercial organisation in all democratic countries during the last century, and, indeed the number of joint stock companies and the value of their paid up capital in any country may be regarded as a rough index of its industrial and commercial development. As the company law of a country has an important bearing on its economic development, its provisions should be conducive to the promotion of joint stock companies, their efficient and honest management and healthy growth. In our view, the present Bill contains many provisions which are needlessly restrictive rather than helpful, and complex and ambiguous rather than simple and intelligible. This will hinder rather than facilitate promotion of companies, and make their day to day administration rigid and difficult, especially for smaller parties who cannot afford either to employ legally qualified staff or to pay heavy fees to legal experts. In India, the companies tend to be smaller in size than in advanced countries such as the U.K., and the U.S.A. Moreover, in the interest of industrialisation, especially in the country-side, it is necessary that more and more companies should come into existence, and, to this purpose, the Company Law should be made simple and flexible, in order to make its operation easy for promoters and organisers in the country-side. If the present complex and restrictive character of the Bill is retained, it may discourage the formation of small companies, especially in the country-side, and cause the conglomeration of companies in large cities, such as Bombay and Calcutta, where expert legal advice and other facilities are available. In our opinion, the cumulative effect of the Bill, if passed, on economic growth will be, to say the least, not salutary.

Another important feature of the Bill to which we would draw attention is that the Government have acquired powers—listed in Appendix VI—some of which are unnecessary in our opinion, which will restrict the scope of the formation of healthy traditions so

necessary for the growth of human institutions. It is our conviction that most of the malpractices in the past have been due not to imperfections in the law itself, but due to the laxity and lack of vigilance on the part of the administration. We are, therefore, of the view that, in order to carry out their responsibilities under this Act, the Government should create a special department under the Finance Ministry, staffed by top-ranking administrators and legal experts, to cope up with the work. Wherever the Government wish to delegate the powers to other persons or authorities, they should take care to see that such persons are of the highest calibre, in no case below the rank of a Joint Secretary, and that such authorities have adequately qualified and experienced members and staff.

The most revolutionary change brought about by the Joint Committee is the incorporation of a provision authorising the Government to prohibit by notification the managing agency system in any industry. Although the Company Law Committee and other responsible bodies had recommended that the managing agency system should be amended rather than ended, certain powerful political elements have been obsessed with the idea of gradually abolishing it. The Joint Committee have added a provision authorising Government to do away with managing agents in any industry, allowing the appointment of secretaries and treasurers in their place.

The problem which neither the Joint Committee nor the Government have solved is that of an alternative form of managerial organisation to replace managing agents. That the system is indispensable in the present circumstances is proved by the fact that the Joint Committee have found it necessary to allow in notified industries the appointment of secretaries and treasurers, whose functions, powers and terms of appointment differ only slightly from those of managing agents. We are of the view that it is not advisable to abolish the managing agency system merely because of the abuses to which it has been subjected by a few managing agents, in the same way as it is not advisable to place needless restrictions on the working of joint stock companies because of the malpractices of a few. Moreover, since the Company Law Committee have reported, and since the Company Law has been amended in 1951, nothing has happened which calls for such drastic steps as the abolition of the managing agency system or the imposition of undue restrictions on management. If the Government are in favour of abolishing the managing agency system, they should try to foster some alternative system of management.

Shri Tulsidas Kilachand had submitted to the Committee a memorandum suggesting that instead of abolishing the managing agency system, encouragement may be given for the development of the director-controlled form of company management by relaxing restrictions in favour of the latter. Since the Bill is coloured by a bias against managing agents, and since the apprehension about the likelihood of their malpractices is responsible for the excessively restrictive character of its provisions, the logical method of encouraging

the growth of director-controlled companies is by appropriately relaxing in their favour those restrictions that are laid down with a view to preventing abuses by managing agents. As a basis for such relaxation it is suggested that no more restrictions be placed on our director-controlled companies than those prevailing in the laws of other countries in which the director-controlled form obtain. Since our Company Law is based on that of the U.K., and since the director-controlled form of campany management obtains in that country, it is suggested that the restrictions placed on director-controlled companies in India should be more or less in line with those obtaining there.

In conclusion, we feel that the Bill was gone through the Joint Committee with extraordinary speed, particularly during the later stages, very little time being available for the study of the Report of the Committee and the final draft of the clauses. We are giving below our views on some of the clauses where they materially differ from those of the majority. We have differences on other clauses too, but as they are relatively less important, we do not think it fit to bring them out at this stage.

Clause 2(2).—This clause defines an "associate". On the recommendation of the Company Law Committee the term "associate of a managing agent" was introduced by, and defined in the Indian Companies (Amendment) Act, 1951, which definition was adopted in, the draft Bill. The Joint Committee have re-defined it, making it more comprehensive and applicable to secretaries and treasurers also, and adding to the list relatives of individual managing agents and of partners of firms of managing agents or secretaries and treasurers, as well as holding companies and many other categories of persons. The Joint Committee have added an explanation to the effect that if A is the Associate of B, then B is the Associate of A. In so far as relatives are concerned we have suggested a modification in its definition under clause 6. The definition of associates is so wide that a person may become the associate of another even without his knowing it, or without he himself having anything to do with it, or without his having any business connection whatsoever with his co-associates. This may lead to many absurd or anomalous situations.

The circle of associates of a person will fluctuate with domestic events like births (including illegitimate births), adoptions, deaths and marriages; with changes in shareholdings and partnership shares; and with appointment or retirement of directors, managers and managing agents or secretaries and treasurers. The disabilities and liabilities of, and restrictions on, associates arise under about twenty clauses of the Bill, and many of them are of a serious nature. For instance, if a company is being investigated, the affairs of the managing agent's cousin's husband would be liable to be investigated even if he does not know the managing agent and has no business connection with him whatsoever, merely if the inspector thinks it necessary for the purpose of his investigation. Associates, no matter how remotely connected, cannot obtain loans from, or be appointed selling and buying agents on commission basis in India by, the companies managed by their co-associates. Moreover, persons who

are not associates to start with might become associates later on by virtue of marriages or other events mentioned above, and that would create embarrassing situations. We suggest that the implications due to this definition in regard to the situations that may arise under each of the twenty relevant clauses should be fully worked out with a view to eliminating unintended and anomalous consequences. We also suggest that the term should be so defined as to create the relationship of "associate" only if there is evidence of substantial business connection.

Clause 5.—According to this clause, officers who authorise wrongful acts or omissions would be punishable only if they do so knowingly and wilfully, but those who actually commit the wrongful acts or omissions would be punishable if they commit them knowingly, and even though they may not commit them wilfully. An officer might be required to do something against his will on the instructions of his superiors, who might regard such action as perfectly legal. Therefore, the words "knowingly and wilfully" should be substituted for the word "knowingly" to cover also those cases in which the officer himself does an act of omission or commission.

Clause 6.—This clause defines the word "relative" used in clause 2(2) and also in Schedule VII.

The definition is too wide and at least cousin and their spouses should be omitted. Accordingly sub-clause (v) should be deleted.

Clause 7.—This clause gives the interpretation of "persons in accordance with whose directions or instructions the directors are accustomed to act". The clauses affected are clause 294, relating to loans to directors; clause 369, relating to loans to managing agents; and clause 161, relating to penalty for non-compliance with provisions requiring submission of annual returns. This term is vague and capable of arbitrary interpretation. For instance, the managing director of a Government-owned company, such as, Sindri Fertilizers and Chemicals, Ltd., may be said to act in accordance with the directions or instructions of the Production Minister. Should the Minister be made liable under the abovementioned clauses? This vague term should not be used at all. Although in the U. K. Act this term is used, it is not necessary in the Indian law in view of the use of alternative terms such as "associate" and "relative", which are not used in the U.K. Act. The terms "associate" and "relative" are clearly defined, and are more comprehensive.

Clause 32.—This clause requires that along with the memorandum and articles, the proposed managing agency agreement or the proposed agreement with the secretaries and treasurers should also be presented for registration.

Such proposed agreements have no legal validity, nor are the parties concerned bound by their terms. Such practice may cause misunderstanding in case it becomes necessary to alter the terms when the final agreement is made and signed. Only the final agreement signed by the parties concerned should be required to be presented for registration.

Clause 43.—Under sub-clause 5(b), where the omission from a prospectus, or statement in lieu of prospectus, of a matter required

to be specified therein is calculated to mislead, such an omission will be deemed to be an untrue statement which will subject the promoters to civil and criminal liability under clauses 61 and 62.

An omission may be due to an oversight or a *bona fide* belief on the part of the promoters that it is not necessary or material or relevant. The onus of proving that the omission was *bona fide* lies on the promoters under clauses 61 and 62, and whereas the promoters would have an opportunity to prove that the assertions made in their statements are true or based on official reports or on expert opinion, such a defence would not be available to them in the case of omissions. Moreover, even if the omission is immaterial, or even if the omission gives an impression which is less favourable than that which the shareholders would have otherwise got, the promoters would still be liable. In the U.K. Act, there is no liability for omissions. Sub-clause 5(b) should be deleted, but if it is retained, provision should be made to exempt omissions of a *bona fide* nature, omissions which are not material, and omissions which give an impression to shareholders less favourable than that which they would have otherwise got. The same remarks apply to clauses 64(b) and 69(6) (b).

Clause 68.—This clause deals with prohibition of allotment of shares unless minimum subscription is received. Under sub-clause (5), if minimum subscription is not received within 120 days of the first issue of the prospectus, the money collected has to be returned.

In an underdeveloped country such as India, where the capital market is not highly developed, and where investors are scarce, promoters should be given adequate opportunity and provided a liberal margin of time to collect the minimum subscription. The going would be particularly difficult for small parties and for newcomers, especially in non-urban areas, unless the provisions are liberal in this matter. Therefore, either the present time limit of 180 days should be retained, or provision must be made to extend on application the proposed time limit of 120 days by further 60 days.

Clause 77.—This clause requires that premiums on shares should be shown in a separate account, and specifies the items against which such premium can be written off, or purposes for which it can be applied.

Sub-clause (2) is an example of unnecessary restrictions which lay down rigid provisions regarding minute details, which may best be left for the management to work out. There is no reason why premiums should not be allowed to be written off against revenue losses and other appropriate items.

Clause 79.—It provides that preference shares may be redeemed only out of profits of the company or out of the proceeds of a fresh issue of shares made for the purpose of redemption. In the Draft Bill, it had been provided that such shares could be redeemed also out of the sale proceeds of any property of the company.

What is wrong about a company disposing of unwanted property in order to redeem preference shares, especially if it has no reserves made up of accumulated profits or if a fresh issue of shares is not advisable? This is another instance of purposeless restriction

on the minute details regarding the working of a company, which should best be left for the management to work out. It would be in the company's interest to retain the provision in the Draft Bill.

Clause 87.—This clause lays down that after the commencement of this Act, no company shall issue equity shares with disproportionate rights in regard to voting, dividend, participation in the distribution of capital assets on liquidation or other matters.

This restriction has been imposed on the ground that persons holding minority share capital with disproportionate voting rights might be able to acquire control of the company, which would leave scope for malpractices on the part of managing agents. Whereas the objection against disproportionate rights may be justified on this ground, the objection against disproportionate voting rights in respect of dividend or participation in the assets of the company on dissolution is not altogether justifiable. A company whose shares are quoted at half the face value would not be able to attract fresh equity capital unless the new issue offers some additional advantage. It would, therefore, be advisable to allow all companies to issue shares carrying disproportionate rights other than voting rights. Besides, in order to encourage the director-controlled form of management, companies not having managing agents or secretaries and treasurers should be allowed to issue shares with differential rights in respect of voting, dividends and other matters.

Clause 88.—This clause provides that existing companies with equity shares having disproportionate voting rights shall bring the voting rights in conformity with this Act within three years of the Act coming into force; and, in respect of any resolution relating to appointment of managing agents or buying and selling agents or the grant of a loan to any managing agent, existing voting rights shall be so exercised as to be in conformity with this Act immediately on its taking effect.

A disturbance in this matter would unjustifiably lead to rise and fall in share values with disproportionate rights, and it would cause some shareholders to suffer losses and others to reap windfalls. This matter should be left to shareholders to be settled among themselves.

Clause 110.—Under this clause, where directors refuse to transfer shares, whether partly or fully paid up, the transferor or transferee has been given a right of appeal to the Central Government.

The Company Law Committee had recommended that such appeals should be heard by the Central Authority proposed by them. But under either clause 406 or any other clause, the Government are not required to refer such appeals to the Advisory Commission, although under clause 630 the Government are empowered to delegate such powers. As recommended by the Company Law Committee, the right of appeal against refusal of registration should be given to the transferor or transferee only in the case of fully paid-up shares. Further, instead of the Central Government, the High Court should be empowered to hear such appeals *in camera*

Clause 175.—According to this clause, the member of a company is entitled to appoint another person, whether member or not, as his proxy to attend and vote on a poll; and, in the case of a private company, also to speak at such meetings.

This would mean that outsiders having no genuine interest in the company, but bent upon mischief, would be enabled to cause trouble at meetings. This provision would encourage professional mischief-makers without affording a commensurate benefit to the company or its shareholders. This matter should not be prescribed by law, but left to be determined by the Articles of Association of a Company.

Clause 197.—Sub-clause (1) of this clause lays down that "the total remuneration (other than sitting fees) payable by the company to its directors, its managing agent or secretaries and treasurers, if any, and its manager, if any, shall not exceed 11 per cent. of the net profits of the company". Sub-clause (4) lays down a limit of Rs. 50,000 per annum, but it is not clear whether this limit applies to the remuneration of each such person or all of them put together. This sub-clause was added by the Joint Committee at the last minute, and bears the impress of inadequate consideration and imperfect drafting. Moreover, when read along with clause 308, the confusion becomes worse.

We suggest that the two clauses referred to above should be redrafted; the salaries payable to directors, and managers should be excluded in calculating the remuneration payable to directors; and an overall limit of 5 per cent. of net profits over and above the remuneration of managing agents or secretaries and treasurers, or a maximum limit of 11 per cent. of net profits where there are no managing agents or secretaries and treasurers, should be laid down for the remuneration of the directors and managers. The proposal of the Joint Committee is, in our opinion, not practical, and, moreover, it leads to discrimination between directors and managers of companies managed by managing agents and companies managed by secretaries and treasurers.

Clause 199.—This clause prohibits payment of remuneration free of taxes on income to any officer or employee of the company.

We are opposed to this provision which will amount to a discrimination against employees of Indian joint stock companies, as other employees, including those of foreign companies, proprietary firms, and co-operative societies will not be subject to this disability. It will impose on any body corporate registered in India an additional strain inasmuch as the cost of providing an officer or employee a certain post-tax income, say Rs. 5,000/- per month, will be greater in its case than in the case of a company registered elsewhere or a proprietary firm or other class of organisation.

Clause 219.—Under this clause even private limited companies are under an obligation to file with the Registrar three copies of the balance-sheet certified to be true copies by the company's auditors as also the auditors' report in so far as it relates to the balance-sheet.

Under the present Act, private limited companies are exempted from filing even balance sheets with the Registrar, in the interest of secrecy. The public have no interest in such concerns, and banks and others, who are interested in lending to them or having relations with them, can get such accounts by approaching them. The Cohen Committee went into this question, and recommended the creation of a special class of private companies known as exempt private companies, which *inter alia* should not be required to file their balance sheets with the Registrar. This recommendation has been implemented by the U. K. Government. The Millin Commission in the Union of South Africa had recommended that private companies should be required to file copies of balance sheets with the Registrar. On the strength of this, the Company Law Committee made the same recommendation, which has been incorporated in the Bill. It should, however, be noted that the recommendation of the Millin Commission was not adopted in the final text of the South African Companies Amendment Act of 1952. The importance of the private company in the industrialisation of the country should be recognised. In the U. K. there are over a quarter of a million companies on the registers, a great majority of which are private companies, and some 60 per cent. of the private companies are exempt private companies. Besides the number as well as the paid-up capital of private companies are increasing in the U.K. faster than the number and paid-up capital of public companies. In India also, in recent years, the same tendency is noticeable. This trend should be encouraged in the interest of decentralising industrialisation, and if the suggestion to exempt all private companies is not acceptable, a special class of exempt private companies as in the U.K. should be created and afforded this exemption.

Clause 225.—It provides that the audit of a company shall be by a registered accountant, and that an officer or servant of the company shall not be appointed as its auditor. This provision is applicable also to private companies.

Section 144 of the existing Companies Act exempts a private company from this provision. Under the U.K. law, an exempt private company, which is in the nature of a family partnership, is exempt from the obligation to have a qualified independent auditor. Most of the remarks made by us under clause 219 apply also to this clause.

Clause 238.—Under this clause an inspector appointed under clauses 234, 235 and 236 to investigate the affairs of a company has powers to investigate the affairs of its subsidiaries, managing agents or secretaries and treasurers, and associates, if he thinks it necessary for the purposes of his investigation.

This would lead to endless harassment of associates of managing agents, especially where the managing agents are individuals or firms, in which case relatives would be regarded as associates, and although they may have no business connections with the company or the managing agent, their affairs would be liable to investigation. To minimise the chances of needless harassment, it should be provided that before an inspector can go into the affairs of associates or

other persons, he should obtain written permission from the Government to do so, and that the Government should give such permission only if after hearing the explanation of the associates or others concerned they are satisfied that there are reasonable grounds and a *prima facie* case for extending the investigation to such associates or others.

Clauses 279-281.—These clauses prescribe a maximum age limit of 65 years for directors and require every director to draw the attention of the company when he reaches the age of 65 years. The age limit may be relaxed by an ordinary resolution of the company.

This is a needless restriction. It would be best to leave it to the company to lay down in its Articles a provision requiring every director to disclose when he reaches the age of 65 years, and prescribing an ordinary resolution in general meeting to approve the appointment of directors who have attained such age.

Clause 292.—This clause deals with certain restrictions on the powers of directors.

It may be pointed out that these restrictions have been proposed in the context, and against the background, of the managing agency system. These restrictions should be relaxed in the case of companies which have no managing agents. The same remarks would apply to companies which do not have secretaries and treasurers.

Clause 293.—This is a new clause introduced by the Joint Committee. It requires that the Board of Directors shall not appoint a sole selling agent for any area unless such appointment is approved in general meeting by the company within a period of six months of the appointment.

The appointment of a sole selling agent should best be left to directors, and not shareholders. The company law of no country includes such a restriction.

Clause 294.—This clause provides that except with the approval of the Central Government a company may not give a loan to its director, to a firm in which he is a partner, to a private company in which he is a member, to any body corporate in which the directors of the lending company control 25 per cent. or more of the voting power, or to a body corporate the management of which is accustomed to act in accordance with the directions or instructions of the Board of the lending company.

It is not reasonable to place restrictions on loans by one company to another merely because one or more of the directors of the lending company hold 25 per cent. of the shares in the borrowing company. The other directors of the lending company should be trusted to see to it that lending is permitted only if it is in the interest of the company. The Central Government may hesitate to approve proposals for loans to avoid assuming moral responsibility for the risk involved. Sub-clause 1(d) in respect of loans to bodies corporate in which the directors of the lending company control 25 per cent. of the voting powers should be deleted. Sub-clause (1)(e) is in respect of persons "accustomed to act in accordance with the directions of the directors". This expression, as pointed out under clause 7, is vague, and, accordingly, we suggest that this sub-clause be deleted.

Under sub-clause (3), inserted by the Joint Committee at the last moment, in respect of loans already made and coming under the bar of this provision, the lending company will have to get the approval of Government, failing which it will have to enforce the repayment of loans. This is an objectionable provision, and it should be deleted.

Clause 309.—According to this clause, an amendment of any provision for the increase in remuneration of a managing director or any other director would require the approval of the Central Government.

This is an anomalous provision in that no such approval is required when the remuneration is fixed for the first time. This is a matter of detail which should best be left to the company. Clause 197 fixes the overall limit for the total remuneration payable to directors, managing agents or secretaries and treasurers, and the manager of a company, in view of which this provision is redundant.

Clause 310.—Any increase in the remuneration of a managing director after the commencement of this Act requires Government sanction.

The remarks made under clause 309 apply also in the case of this clause.

Clause 323.—Under this clause, Central Government have power to declare by notification that in respect of companies engaged in any class or description of industry or business the managing agency system shall not operate. No company engaged in that industry can have a managing agent at the end of 3 years from the date of notification or 15th August 1960, whichever is later.

The provision would mean discrimination against the notified industries, and an impending danger to the other industries. Even a mixed or composite company, such as Delhi Cloth Mills, or Rohtas Industries, which engages in more than one industry, will not be allowed to have managing agents, if one of the industries it engages in is a notified industry. The trouble with this provision is that it is difficult to lay down criteria in this respect. The Government problably have in mind industries such as Jute, in the installed capacity of which they do not envisage any increase. It would be fallacious to say that the development of old established industries such as jute textiles is not necessary; even if there is no scope for expansion in their capacity, there is ample scope for rehabilitation of their machinery, diversification of their products, and introduction of more advanced processes. Such qualitative development (as against quantitative development) is essential for the survival of the industry against foreign competition, especially from the fast growing Pakistan industry that enjoys the advantages of superior raw jute and new machinery. The qualitative development of an industry requires managerial talent of superior order, which cannot be attracted without adequate incentives. Moreover, this provision will discourage management from developing to the full extent industries in which managing agency is allowed, for fear that on reaching maturity the industry will be notified. Last but not least, this power is too

fundamental to be left to be exercised by mere notification. This should be the subject of special legislation.

An objectionable feature of this clause is that the Government are not required to consult the Advisory Commission before taking action under this clause. Moreover, Parliamentary sanction will not be necessary before notifying any industry, and the Parliament will get an opportunity of considering it only after a notification is issued under this clause.

Clause 325.—A managing agent cannot be appointed or reappointed by the company except in general meeting and without the approval of the Government. Before Government accords its approval, it must be satisfied that the managing agent is a fit and proper person, and that he has fulfilled any conditions imposed by Government.

Our objections to this clause are that, firstly, Government should be required to give its approval in all cases except in those in which they are satisfied that the parties concerned are unfit or suffer from disqualifications; and, secondly, that the Government should not be empowered to lay down conditions at the time of giving its approval. It would be difficult to lay down criteria about fitness, and arbitrary decisions will be possible under this clause. In so far as the term and conditions of appointment are concerned, the shareholders and the company are the appropriate judges, and it would be undemocratic for Government to lay down additional conditions.

Clause 331.—Managing agents and certain categories of their associates cannot together have more than 10 companies in their group after the 15th of August, 1960.

The criterion of ten companies laid down is arbitrary. The management of ten companies each with a capital of 1 lakh of rupees does not carry the same burden or responsibility as the management of two companies each with a capital of many crores of rupees. Moreover, the managerial and financial resources of all managing agents are not the same, and the management of a certain group of companies that would be an impossible task for small parties would be an easy one for big parties. This clause should be deleted.

Clause 345.—This clause lays down that Government approval shall be necessary for all changes in the constitution of a managing agency including changes due to retirement or appointment of new partners or directors and managers, and changes in shareholding—with certain exceptions.

This will make even insignificant changes subject to Government approval. Original clauses 325 and 326 of the draft Bill should be adopted instead of this clause.

Clause 352.—See comments under clause 197.

Clause 356.—A managing agent or his associate cannot receive commission for the sale of the managed company's goods in India. For sale outside India he can be appointed as selling agent on commission basis by a special resolution for periods of not more than 5 years at a time, provided he maintain an office in the place concerned for other business.

This clause is too restrictive. Associates of managing agents should be allowed to become selling agents on commission basis by an ordinary resolution. For sales outside India, the conditions that the agents should have an office for their other business should be removed in the interest of encouraging exports. What objection could there be to an agent opening a special office for promoting exports of the company's products?

Clause 358.—Most of the remarks under clause 356 apply also to this clause.

Clause 369.—Under this clause, a company may not give a loan to its managing agent or its associate or to any other company in respect of which the Central Government declare that the management is accustomed to act in accordance with the directions or instructions of the managing agent or his associate.

While there is some justification for prohibiting loans to managing agents, it is not reasonable to prohibit loans by a company to those associates who may have remote connections with them. It may even be that on occasions loans may be granted to persons without knowing that they are associates, or persons may become associates after the loans have been made, in which cases the penal provisions would be attracted. We are against the use of the term "persons who are accustomed to act in accordance with the directions of the managing agents". Therefore, we feel that this clause should not apply to "associates" and "persons accustomed to act in accordance with the directions of the managing agents".

Clause 370.—The clause prohibits loans as between companies under the same management except with the consent of the lending company by special resolution.

The clause should be modified so that such loans are permitted by ordinary resolutions of the company. The clause exempts loans by a holding company to its subsidiary, but not *vice versa*. Sometimes the subsidiary may have surplus funds which may be lent to the parent company with advantage to both.

Therefore. loans by subsidiaries to their respective holding companies should not be prohibited.

Clause 373.—This clause provides that all investments made after 1st April 1952 which could not have been made if clause 372 had been in force have to be approved by ordinary resolution of the company and also by Government, and that if the requisite sanction is refused, the excess investments are to be sold within 2 years of the commencement of the Act.

If companies are forced to liquidate their excess investments, it might result in losses, especially if the shares do not have a ready market. Therefore, this clause should be deleted.

Clause 407.—This clause has been added by the Joint Committee. It stipulates that on the application of members of the company holding not less than one-tenth of the total voting power, Government may appoint not more than two of its shareholders as directors.

for a period not exceeding three years in order to prevent the affairs of the company from being conducted either in a manner oppressive to any members of the company or in a manner prejudicial to the interests of the company.

This proposal is fraught with grave danger. If company management is to run smoothly, it has to be run by a homogeneous Board of directors. Clauses 396 to 401 provide adequate remedies to minority shareholders and to Government. These arbitrary powers are not at all essential. This clause should, therefore, be dropped.

Clause 408.—This provision has been added by the Joint Committee. It stipulates that on a complaint made by the managing director, director, managing agent, or secretaries and treasurers, that, as a result of a change in the ownership of shares, a change in the Board of Directors is likely to take place, which would prejudicially affect the company, Government may after enquiry direct that no change shall take place in the directorate.

This proposal is inconsistent with the fundamental concept of democratic management. It is the inherent right of the shareholders to choose the company's directors. If at any time the shareholders lose confidence in the directors, they have every right to change the directorate. This clause should be deleted.

Clauses 611 *and* 614.—These clauses define a Government company as one in which the Central and State Governments, alone or together, hold at least 51 per cent. of share capital, and empower the Central Government to determine the applicability of the provisions of this Act to each such company by a notification a copy of which is required to be laid before each House of Parliament.

The reduction by the Joint Committee in Government's shareholding required to constitute a company a Government company from 80 per cent. as laid down in the draft Bill to 51 per cent. would bring into the defined category a large number of companies in which the public would have a substantial stake. In so far as the Government have power to exempt such companies from the operation of the Act, it would reduce the safeguards available to other shareholders.

In fact, the whole principle of exemption under this clause is unjustifiable. There is nothing to prevent the Government from running an enterprise as a Government department making it subject to the usual control which Parliament exercise over all departments. If, however, they adopt the course of registering the enterprise under the Act, thus putting it to that extent beyond the control of Parliament, it is reasonable to expect that such a concern should operate within the framework of the Act. The present provision may enable the Government to exempt such companies from the control of both the Parliament and the Act.

Clause 630.—This clause empowers the Central Government to delegate some powers exercisable under the Act by the Central Government to an authority or officer and subject to conditions to be laid down by notification. The Central Government is not allowed to delegate other powers similarly.

This clause must make it clear that powers should be delegated only to persons and authorities who are adequately equipped for the purpose. Where the powers are delegated to persons, such persons should be of ranks not below the rank of joint secretaries, and should have expert knowledge of company law and sufficient experience in administering such law. Where such powers are to be delegated to an authority, such an authority should be sufficiently high powered and staffed by top ranking experts in administration, profession or business. We believe that the great majority of malpractices in company management in the past would have been avoided if the administration of the law had been efficient and vigilant, that company management would work well in future if the restrictions under the Act are minimised as suggested, and the Finance Department maintains an adequately equipped and competent administrative machinery for company law administration and acts promptly and effectively whenever necessary.

Schedule VI, Part III, Clause 9(2).—Under this clause secret reserves are required to be shown in the accounts.

The practice of providing secret reserves is a healthy practice. The disclosure of secret reserves would result in demand from shareholders and others for more liberal distribution, and would thus lead to dissipation of retained profits. Moreover, showing of such secret reserves separately in the accounts would be confusing, and if, for the sake of consistency they were to be incorporated in the body of the accounts, it would amount to revaluation of assets and liabilities, which practice the Government do not seem to favour. No useful purpose is served by disclosure of reserves in published accounts. If the Government intend to check on such secret reserves, they may be empowered to ask for information relating to such reserves, and they should be under an obligation to treat such disclosures as secret and cofidential.

TULSIDAS KILACHAND.

G. D. SOMANI.

NEW DELHI;
The 29th April, 1955.

VI

We are called upon to amend the Company Law of our land. The Indian Companies Act, 1913, was conceived and enacted in a different set-up with radically different objectives in view. At that time, the interests of the imperialist economy prevailed and there was no question of formulating the company laws in our national interest. The Company Law naturally turned out to be a set of rules for regulating certain commercial and business relations, for ensuring the sanctity of unrestrained profits. The amendments to the law in 1936 did not alter this basic character.

Naturally, we are considering the amendments in an altogether different context, with certain definite socio-economic aims and objectives in view. We have in our Constitution a Directive

Principle which among others says that the State "shall direct its policies towards securing.....that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment". It will be admitted by all that the existing Company Laws have led precisely to what the Directive Principles pronounce against. So, in dealing with this question, what is, above all, imperative is a fundamental departure from the conventional ways. It has to be particularly borne in mind that we are not functioning today in an age of *laissez faire* but have embarked upon growing State activity in matters of industry and commerce. To give a democratic direction to such activity in conformity with the requirements of our national economy calls forth vigorous measures, to curb the powers and domination of the monopoly and big financial interests so well fortified under the present Company Law. Such measures are no less necessary to protect the interests of the common run of shareholders whose hard earned savings, under the provisions of the existing law, have been most grossly misused by those who lord it over the industrial and commercial life of the country. Equally urgent are such measures in the interests of small men in business and trade who have been systematically elbowed out and ruined.

In short, it means that the Company Law should, in the first instance, conform to the Directive Principles of the Constitution, and counter the concentration of economic power, and secondly, root out the breeding centre of corruption that has vitiated the working of the Companies Act so far.

We are sorry to say that in respect of the fundamental social objective and even in respect of the limited objective of guiding and controlling the private sector, specially the business house and the body corporate in the best interests of the country, the bill has miserably failed. It is a half-hearted measure. Of course, there have been some amendments which are an improvement on the existing law but there have been no basic changes. The directive principles have been flouted and ignored.

Then, as for the professed aim of the bill, namely, the elimination of corruption in the realm of business, the measures are inadequate. They can only make the evasion of law a bit more difficult, nevertheless, they can be circumvented by a greater exercise in ingenuity. The bill provides sufficient loopholes for that.

When large scale modifications in the Companies Act were made in 1936, hopes were conjured up that it would end, at least minimise, the corrupt practices in business. But it is common knowledge that corruption and malpractices have remained the same as before, and have rather, under the impact of the second World War and its after-effects, increased. It could happen because there was one fundamental defect with these amendments, namley, the sufferance of the Managing Agency system, on the rock of which all the reforms inevitably foundered.

In the new bill also, this system is being retained. That means, this system embodying the concentration of economic power will continue to squeeze out of existence the small units, will continue

to fleece the consumers, rob the raw material suppliers and the workers. Of course, we do believe that so long as the law of capitalism operates, it will lead to monopoly and that it cannot be eliminated by simply passing a company law or even an Anti-Trust law. Nevertheless, it is true that the elimination of monopoly arising out of the Managing Agency is perfectly within the scope of this law and the abolition of this system is of first-rate importance for any advance to be made in the sphere of industry and trade.

We regret that in spite of this fact the Government wants to retain the system that is peculiar to this country the product of the methods of imperialist finance.

The continuation of the Managing Agency system would not be justified by the facts supplied to us and also by the evidence that had been tendered before us. The tall claims of the Managing Agency system in helping the growth of our industry and commerce could not be established by the facts placed before us. Therefore we are unable to see the justification of continuing this system. We would have understood the position if the Government would have suggested a period after which there should be no Managing Agents, however much we wish its immediate abolition. No new managing agents should be allowed to be established. Moreover the remuneration provided for such agents seems to us to be rather too high.

In the bill, a new system of corporate management has been introduced. The concept of "secretaries and treasurers" modelled on the British fashion is a back-door of the continuation of the Managing Agents. The Government has an option to declare discontinuance of the Managing Agency system after five years, but the system of Secretaries and Treasurers which must necessarily be a firm or body corporate has been given a permanent lease of life. It serves the big business with wide tentacles in the matter of realising their objective through the back-door method. We strongly urge its deletion. When it has been the clarion call of the country to abolish the managing agents with a view to curb the influence and sinister power of the British and Indian monopoly capital, we do not find the justification of the inclusion of this provision which only helps to perpetuate their grip over our economy much to the detriment of our national interests. We further wish that the maximum remuneration payable to the Managing Agents and other forms of management should be reduced and that the minimum payable to them in case there is no profit should be reduced to Rs. 24,000.

We have pointed out earlier that the menace of interlocking continues to be there in spite of certain tightening of the provisions. We desire that there should be a limit to the number of subsidiaries, though we would have wished the total abolition of the system of subsidiary companies. This system leads to many corrupt practices and manipulation of profits and losses which go often against the interests of the Government as tax collector and also of the employees.

Issue of bonus share should have been stopped by now. Large sums of money running into crores on which no tax have been paid are distributed as bonus shares when even a month's bonus to the workers and staff are not conceded.

Clause 199 should have been further tightened up and no tax-free remuneration should have been allowed to be paid and also such payments should have been discontinued.

The provision regarding the filing of balance sheet which should be open for inspection should be the same for both the public and private companies. We find that there are quite a number of private limited companies whose power and influence are proportionately great, take advantage of the differential position and does not want to disclose the balance sheet and profit and loss account especially when the question of payment of bonus and higher wages arises. There are many family private limited companies and also managing agency firms who control a number of industries and concerns that may be public. Therefore, we are of opinion that the balance sheet should have to be made in such a way and with such material and supporting documents that it will be easy for the large number of lay shareholders to understand them. Therefore we wish clauses 208 to 222 to be modified.

Under the present law, there are corrupt practices which the auditors cannot often detect. And when he overlooks the defects, the shareholder has no remedy. This is specially applicable to branch audit. We suggest that the auditors should scrutinize all items and examine their justification, whether of the main office or of the branch offices. There should not be a different auditor for the branch office except with the Sanction of the Government. Clauses 226 and 227 should therefore be modified in that light.

It is quite well-known how under the present law, a dominating section with an influence on majority of 51 per cent. or over control the company and the rest of 49 per cent. are ruled out. Even the malpractices cannot be checked. Therefore, Clause 234 is a welcome measure. Unfortunately its provisions are not wide enough to root out all such corruptions or malpractices. Number of shareholders or the share of capital entitled to initiate an enquiry should have been further reduced because in our country the individual share-holders are not so conscious and it is difficult to get them together for any such move. Then it is also a fact that employees know more about such malpractices which often deprive the Government even of its dues in the form of taxes. This is specially true of foreign dominated concerns. Therefore we suggest Clauses 234 and 235 should be so modified as to allow the employees to initiate such investigation.

In Chapter II, dealing with appointment of Directors, we suggest that the provision should be made for the appointment of Directors from amongst the employees also. Often the Government are propagating that employers and employees are the joint participants of a common venture. Therefore only by giving them a share in the management we can generate the feeling among the workers and the staff that they are so. We further feel that as the managing agents have a definite quota of the Directors, they should not participate in the voting of other directors.

We are of opinion that no one should be appointed Director of more than six concerns. In our country, sleeping Directors are too many. It is time that we increase the responsibility and

liability of the Directors and thereby we get really working Directors.

In the case of winding up the claims of the workers for the unpaid wages, accrued remuneration, like bonus, holiday pay, leave pay and also the provident fund dues should be the first charge and paid in priority even to the Government claim for unpaid taxes which are often kept in arrears deliberately in league with the collecting authority. We have often the experience of the workers' contribution of the provident fund not being realised.

The provisions of Part XI should have been further tightened. They should be considered on a par with the company registered under the Indian Act in respect of the activities in India as through manipulation and many book adjustments of large sums of money are taken out of India which the law cannot prevent.

There are several sections for penalty for the non-compliance of our certain provisions of the law. In view of the peculiar nature of our country, where large number of ordinary credulous share-holders and the common citizens fall a prey to the ingenuity of the few sharks, it is absolutely necessary for the healthy growth of the corporate institution that more positive responsibility should be cast on the promoters and directors and they should be made liable for such negligence and non-compliance which they could have prevented in the normal course of work if only they are more vigilant.

Lastly, we feel that whatever improvement has been made in the existing bill can have effect only if the administration can be tuned to that extent. It is therefore absolutely incumbent that the administration of the company law should be organised in a new spirit which will not act as a machinery of oppression to the private sector (which has a role to play in our industrial development) but will work in such a manner as to help development of such undertaking in a proper and healthy way. We should have a new set of machinery for administering such law which will be quite flexible but subject to the control of the Parliament.

SATYAPRIYA BANERJEE
C. R. CHOWDARY
K. K. BASU

NEW DELHI;
The 29th April, 1955.

VII

I feel impelled to append this Minute of Dissent because of my differences with the general scheme of the Companies Bill as emerging from the Joint Committee are fundamental. It goes without saying that the main question that confronted Company Law administration in this country, for some years past, concerned

the necessity or desirability of any further continuance of the managing agency system. As the Company Law Committee rightly pointed out, over last quarter of a century, no other aspect of Company law provoked so much controversy as the managing agency system. It is not necessary to go into the history of the system here. It is well-known that evolved as the institutional pattern by means of which British capital investments operated in India and that it was perfected through decades as the principal economic instrument for the unbriddled colonial exploitation of this country. It represented a unique combination of trade capital and industrial capital and sought to bring all aspects economic activity, import and export, manufacture as well as all kinds of trading activity and market operations which precede and follow the manufacturing process under one integrated and centralised management. This unique pattern, which provides unlimited opportunities of profit making and mono-polistic control, was taken over by the Indian capitalists when they started operating on the Indian market and to venture into the field of industrial undertakings on their own account. In the absence of a properly organised and well-integrated capital market with specialised institutions like issue houses, under-writing firms and other investment syndicates—which absence persists to a certain extent uptil now—the managing agents, both European and Indian, have been able to entrench themselves an absolutely dominating position in the private sector of the country's economy, so much so that in certain cases this system has now made vital inroads in sizeable parts of the growing state-owned and state-controlled Sector since independence *e.g.* in the Hindustan Shipyards. It was small wonder that various abuses and malpractices crept into the system from the very beginning and these abuses, as well as the very system itself, became the subject matter of investigation of various authoritative commissions, Committees and expert bodies beginning from the days of Industrial Commission 1916 upto the most recent investigation by the Company Law Committee in 1952. The spectacular abuses of the system which came to light during and after Second World War gave a fresh spurt to the controversy about the desirability of further continuance of the system and apart from the company Law Committee the matter was also examined in recent times by the Fiscal Commission, the Income Tax Investigation Commission and the Planning Commission. The archives of the Income Tax Investigation Commission inaccessible to the public, perhaps, contain the most authoritative evidence about vast scale of abuses and malpractice indulged in, by some of the most eminent managing agency houses which dominate the economic scene not only at the cost of the defenceless small investors but also against the interests of the State and the Community at large.

2. Most of these investigations, that of the Company Law Committee included, were however, conducted only in the context of the accusations against these malpractices and abuses voiced from time to time by an outraged public conscience. It was however easy in that context for the defenders of the system and its protagonists also to point to the various positive contributions of the system towards the industrial development of the country during the past three quarters of a century, by providing technical, managerial and financial assistance and integrated control and to make out a case,

everytime, for a continued lease of life for the system by suggesting various measures of reform, instead of its total suppression and its replacement by some alternative system, a case in other words "for mending and not ending the system".

3. The abuses and malpractices including monopolistic control of important sectors of the national economy are in my opinion inherent in the system and cannot be put an end to by any measures of reform or by imposing legal restrictions upon the powers and functions of the managing agents. This might be held to be a matter of opinion and difference in assessment. One aspect of the entire question, however, seems to have escaped adequate attention of all investigating bodies *viz.* the question—to what extent the existence of the managing agency system has prevented the growth of an integrated and properly capital market on sound modern lines and has hampered industrial development by promoting speculative ventures and a craze for easy money by all sorts shady dealings on the market. The Company Law Committee's view on this point was inconclusive. As a matter of fact, they refused to enter into this question. But the views of Fiscal Commission were more emphatic on this point. In Chapter XV of their Report they dealt with the harmful effect of the abuses of the managing agency system upon capital formation and the quality and direction of industrial management. But even they did not go beyond suggesting improvements on the system.

4. In my view certain significant and quite large scale developments in the sphere of industrial management and finance have taken place since 1952, brought about by the impact of planning and the entry of the state in an active role initiating and sponsoring industrial development by providing large scale finance and various degrees of administrative control etc. have rendered the earlier investigation about the necessity of any further continuation of the managing agency system and the conclusions regarding it based on those investigations quite out of date. Even without entering into the controversy as to how far the managing agency system has been responsible for preventing the growth of an organised capital market in this country on sound lines, it may be said that with the entry of the state in an active role in industrial financing, pioneering and promotion in undertaking the training of a cadre of administrative and managerial personnel etc., there can be no further necessity or justification for the continued existence of the managing agency system. I am particularly referring to the following developments:

(i) the organisation of Industrial Finance Corporations, on the All-India as well as State levels which are extending their activities not only to providing medium and long term finance for industries, but are thinking of participating in risk capital or equity capital as well;

(ii) the formation of the Industrial Credit and Investment Corporation under direct sponsorship and aegis of the Union Government with a capital of Rs. 17½ crores (out of which Rs. 7½ crores interest free loans advanced by the Government of India and a loan of ten million dollars obtained from the world Bank which was guaranteed by the Government of India) for providing finance for

all kinds of development and renewal projects in the private sector or industries;

(iii) the setting up of the Government owned National Industrial Development Corporation for planning and formulation of projects for setting up new industries and developing new lines of production where private capital is not easily attracted. All financing incidental to pioneering promotion and development of these new lines would be undertaken by this Corporation;

(iv) the direct state financing of the expansion programmes of such private undertakings as the Tata Iron and Steel and the Indian Iron and Steel by advancing large scale loans and also guaranteeing loans obtained by them from the I.B.R.D. (World Bank);

(v) the gradual entry of the state in the extensive field of basic and key industries listed in the 1948—Industrial Policy Resolution of the Government of India and the steady expansion of the State sector.

It will be seen that the recommendations of the Company Law Committee and other Commissions and Committees with regard to the managing agency system were all formulated before these development took place and it was not possible for them to envisage an industrial set-up where the major responsibility for providing finance, organisation and risk-bearing would be taken up by the State. This has been a quite recent development occurring after the Company Law Committee Report was published in 1952. Apart from these developments, there is also the proposal about the formation of a consortium of banks and insurance companies for underwriting shares and debentures of joint-stock companies. This proposal has been under consideration of an expert Committee appointed by the Reserve Bank which has just concluded its deliberations and submitted its report. Although the Government have not come to any decision about this particular proposal, it suggests a fruitful line of development intended to fill up an important lacuna in the structure of the capital and investment market which provided an important justification for the continued existence of the managing agency system. Besides we have before us the proposed transformation of the Imperial Bank into the State Bank of India with expanded scope of activities not only with regard to rural credit but also with regard to discounting and acceptance facilities for various kinds of industrial securities. This measure is now passing through the legislative anvil.

5. It can be safely asserted that these developments would render the role of managing agents in the further industrial development of the country, even as a "potent instrument for tapping the springs of private enterprise"—as the Company Law Committee had put it—absolutely unnecessary and would even tend to make it a misfit in the new set-up. It should be remembered that the Company Law Committee's recommendations for 'mending' the system by tightening up the relevant provisions of the Companies Act so as to minimise the opportunities for current abuses and malpractices were

made in the concrete context of the pre-1952 economic structure of the country when the State had not stepped-in into the role that it is doing now. I would refer to the concluding section of Para. 114 and para. 115 of the Committee's Report on this subject (Chapter X—Management of Companies—managing Agents) which would go to prove this contention. The contours of the new industrial and financial set-up that would be brought about as a result of step-by-step following up the Industrial Policy Resolution in 1948 and of the launching by the Government into an active career of state industrial-capitalism and state finance-capitalism, as evidenced by the developments that have listed above, were as yet vague and indefinite in 1948—52 i.e. the period which the Company Law Committee had in their view specifically. I am not referring to the 'Socialistic Pattern' which has been enjoined upon us by the Parliament and the ruling party as the objective towards which we must move. Admittedly the 'socialistic pattern', whatever it might mean, is a distant goal as yet. But the phenomenon 'neo-etatisme', characteristic of the post-war industrial and economic development of all under-developed countries, including India and People's China, has already taken concrete shape before our eyes. The private-sector of industrial economy must function within this frame work under the aegis of a state sponsored Plan. I call it state-capitalism pure and simple, under which private-monopolistic capitalism of managing agency type has very little active part to play and the sooner it is ended, and sooner the private monopoly and private industrial and financial empire of the repacious Indo-British managing agency houses is broken, the better. Neo-etatisme can be inspired by genuine social purpose only when the hardened structure of selfish vested interests that has grown up on the basis of managing agency system are demolished. The type of predatory capitalism of the managing agency type has no place at all in the new scheme of things which we envisage. In other words, I am all for immediate abolition and liquidation of the managing agency system. Even granting that the private sector has to play an active role in the future economic and industrial set-up, it would be a complete mistake to identify the private sector with the fate the managing agency system. It is the private sector that must transform itself and fit in with the new set-up of 'estatisme' as best as it can. So far as the managing agency system is concerned, it can have no useful role to play-however, much we may intend to 'mend' it—under the new context of things, unless we seek really to handover the control of the entire state-sector to the Indo-British Agency Houses which stand as the greatest stumbling bloc in the way of a healthy industrial and economic development of this country, and have failed the country in every respect.

I, therefore, consider the entire Chapter XII dealing with Managing Agents in Part IV of the Bill providing for the continued existence of the managing agency under certain restrictions, entirely out of place in the context of economic developments since 1952 that I have described above. I am afraid the new Government amendments (new Clause 323 etc.) with regard to managing agency, adopted by the majority of the Committee, which vest the government with power to notify the class or description industry and business in which no managing agency would be permitted after

15th August, 1960 and which provide for continued existence of managing agency in other industries and business with prior approval of the government, and the subsequent clauses with regard to the limitations on the number of managing agencies that can be held by a person and their remuneration etc. (Clauses 324 to 331 and 347 *et al.*) neither "end" nor "mend" the system. In spite of the implied suggestion contained in the new clause 323 about ending the system in specified industries after 1960 at government discretion, the entire set of clauses 324 to new clause 387 envisage its continuance directly in certain lines, and indirectly in altered names in other lines, comprising the major portion of private sector. It will serve no purpose to go here into the detailed interpretation of all relevant clauses here. But the combined effect of the powers vested in the government and provisions for the continuation of managing agency with permission of the government would in my view bring about a result which was hardly envisaged by the Company Law Committee. The scheme proposed by the Company Law Committee, although one of reform, wanted to place the administration of Company under the hands of Central Statutory Authority which would be comparatively independent of any departmental organisation of the Government under direct day to day executive control of the Government. The scheme proposed by the Government and endorsed by the Select Committee, while vesting the government with large scale powers in every respect including continued lease of life for individual managing agencies their powers, remuneration etc. under certain conditions, as also in all matters of company management and administration, keeps the administration of all such matters directly in the hands of the government department concerned (at present the Department of Economic Affairs and Company Law under the Ministry of Finance). This, I am afraid, would in its sum total effect tend to create pressure-group politics in collusion with interested business group and departmental executives. The provisions for laying the relevant rules and orders made by the Department concerned before the Parliament is hardly any safe-guard. The Advisory Commission envisaged under new clause 409 and its duties and powers (Clauses 410 and 412) is hardly any substitute for the Central Statutory Authority envisaged by the Company Law Committee. Clause 630 in Part XIII vaguely indicate that a Central Authority might at any future date be brought into existence at the discretion of the Government and Powers may be delegated to it, as well as to other bodies and persons by the Government. But this is open to the same kind of objection as that relating to advisory Commission. All real power is taken in hands of the executive and would be liable to vagaries of executive discretion without any real control by Parliament.

7. The Parts of the Bill dealing with Accounts and Audit and Investigation and Inspection as emerging from the Select Committee (from Clauses 208 to 222, 223—232 and 233—250) leave much to be desired, with regard, particularly, to the powers of Auditors and fixity of their tenures. I think it is time that the Government should think in terms of a national audit service under the over-all control of the Auditor and Comptroller General of India and institution of a system of auditing by Government auditors and the setting up of an Audit Court on the model of France, for summoning Government Officials dealing with State expenditure to appear before it, and for

imposing penalties for all expenditure of public money unaccounted for, for which the officials concerned are responsible. The same pattern can be extended to India in the context of our Planned Economy with regard to matters of Company Finance as well. The least that the Government can do in this respect is to introduce a system of appointment of Auditors by Companies from a panel of Government approved auditors, as is the current practice in the case of co-operative Societies, and giving them some fixity tenure so that they may not have to depend on the sweet-will of the Board of Directors and Managing Agents for retaining their jobs. Only in this way we can start having a really independent auditing service which could provide the foundations for the eventual organisation of a full scale national auditing service. I am afraid, the provisions suggested by the majority of the Joint Committee in this regard, as well as in regard to general provisions dealing with Managing agency and departmental administration of Company Law, would leave ample scope for vested interests to retain their present struggle hold on the country's industrial economy in slightly altered forms; and what is worse, it would perhaps open the way for the worst form of capitalist-*cum*-state bureaucratic control of industries and business independent of any effective check by Parliament.

8. In conclusion, I beg to record my dissent to the change made in sub-clause (2) of original clause 1 of the Bill, which provided for the Bill coming into force by a specified date (1st day April, 1954). Now, as proposed by the Joint Committee, it shall come into force on such date as the government may appoint at their discretion. The reason given by the majority Report, that this has been done in order to give time to Government to frame rules etc. and time to the companies to order their affairs seem unconvincing to me, I suggest, that the Parliament might yet consider the fixing of a designated point of time by which the Bill would come into force, so that the restrictions imposed by the Bill, managing agency may have some meaning, may at least usher in a partial break with the old system. But if Company managements find time to adjust their affairs to new set-up, it will render whatever limited effectiveness the new law might have had in putting curb upon the predatory activities of some of the notorious managing agency houses completely nugatory.

TRIDIB KUMAR CHAUDHURI.

NEW DELHI;
The 29th April, 1955.

THE COMPANIES BILL, 1953

[AS AMENDED BY THE JOINT COMMITTEE]

(Words sidelined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.)

A

BILL

to consolidate and amend the law relating to companies and certain other associations.

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows :—

PART I

PRELIMINARY

1. Short title, commencement and extent.—(*1*) This Act may be called the Companies Act, 1955.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(*3*) It extends to the whole of India except the State of Jammu and Kashmir.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*1*) "alter" and "alteration" shall include the making of additions and omissions;

(*2*) "articles" means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act, including, so far as they apply to the company, the regulations contained, as the case may be, in Table B in the Schedule annexed to Act No. XIX of 1857 or in Table A in the First Schedule annexed to the Indian Companies Act, 1882 (VI of 1882), or in Table A in the First Schedule annexed to the Indian Companies Act, 1913 (VII of 1913), or in Table A in Schedule I annexed to this Act;

(*3*) "associate", in relation to a managing agent, means any of the following, and no others:—

(*a*) where the managing agent is an individual:

any partner of such individual;
any firm in which such individual is a partner;
any private company of which such individual or any such partner or firm is the

managing agent or secretaries and treasurers or a director or the manager; any body corporate at any general meeting of which not less than one-half of the total voting power in regard to any matter may be exercised or controlled by any one or more of the following, namely, such individual, any such partner or partners, and any such firm or firms; and any relative of such individual;

(b) where the managing agent is a firm:

any member of such firm, any partner of any such member, and any other firm in which any such member is a partner; any private company of which the firm first-mentioned, or any such member, partner or other firm is the managing agent, or secretaries and treasurers, or a director, or the manager; and any body corporate at any general meeting of which not less than one-half of the total voting power in regard to any matter may be exercised or controlled by any one or more of the following, namely, the firm first-mentioned, any such member or members, partner or partners, and other firm or firms; and any relative of any such member;

(c) where the managing agent is a body corporate:

any subsidiary or holding company of such body corporate; the managing agent or secretaries and treasurers, or a director, the manager or an officer of the body corporate or of any subsidiary or holding company thereof; and any other body corporate at any general meeting of which not less than one-half of the total voting power in regard to any matter may be exercised or controlled by any one or more of the following, namely, the body corporate, any subsidiary or subsidiaries thereof, and any holding company or holding companies thereof; and

(*d*) where the managing agent is a private company:

in addition to the persons mentioned in sub-clause (c), any member of the private company;

Explanation.—If one person is an associate in relation to another within the meaning of this clause, the latter shall also be deemed to be an associate in relation to the former within its meaning;

(4) "associate", in relation to any secretaries and treasurers, means any of the following, and no others:—

(*a*) where the secretaries and treasurers are a firm:

any member of such firm, any partner of any such member, and any other firm in which any such member is a partner; any private company of which the firm first-mentioned, or any such member, partner or other firm is the managing agent, or secretaries and treasurers, or a director, or the manager; and any body corporate at any general meeting of which not less than one-half of the total voting power in regard to any matter may be exercised or controlled by any one or more of the following, namely, the firm first-mentioned, any such member or members, partner or partners, and other firm or firms; and any relative of any such member;

(*b*) where the secretaries and treasurers are a body corporate:

any subsidiary or holding company of such body corporate; the managing agent or secretaries and treasurers, or a director, the manager or an officer of the body corporate or of any subsidiary or holding company thereof; and any other body corporate at any general meeting of which not less than one-half of the total voting power in regard to any matter may be exercised or controlled by any one or more of the following, namely, the body corporate, any subsidiary or subsidiaries thereof, and any holding company or holding companies thereof; and

(c) where the secretaries and treasurers are a private company:

in addition to the persons mentioned in sub-clause (b), any member of the private company;

Explanation.—If one person is an associate in relation to another within the meaning of this clause, the latter shall also be deemed to be an associate in relation to the former within its meaning;

(5) "banking company" has the same meaning as in the Banking Companies Act, 1949 (X of 1949);

(6) "Board of directors" "or Board", in relation to a company, means the Board of directors of the company;

(7) "body corporate" or "corporation" includes a company incorporated outside India but does not include a corporation sole;

(8) "book and paper" and "book or paper" include accounts, deeds, writings, and documents;

(9) "branch office" means any establishment described as a branch by the company, not being an establishment specified in an order passed by the Central Government in pursuance of section 8.

(10) "company" means a company as defined in section 3;

(11) "the Court" means, with respect to any matter relating to a company, the Court having jurisdiction under this Act with respect to that matter in relation to that company, as provided in section 10.

(12) "debenture" includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not;

(13) "director" includes any person occupying the position of director, by whatever name called;

(14) "District Court" means the principal Civil Court of original jurisdiction in a district, but does not include a High Court in the exercise of its ordinary original civil jurisdiction;

(15) "document" includes summons, notice, order and other legal process, and registers;

(16) "existing company" means an existing company as defined in section 3;

(17) "financial year" means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in annual general meeting is made up, whether that period is a year or not:

Provided that, in relation to an insurance company, "financial year" shall mean the calendar year referred to in sub-section (1) of section 11 of the Insurance Act, 1938 (IV of 1938);

(*18*) "Government company" means a Government company within the meaning of section 611;

(*19*) "holding company" means a holding company within the meaning of section 4;

(*20*) "India" means the territory of India excluding the State of Jammu and Kashmir;

(*21*) "insurance company" means a company which carries on the business of insurance either solely or in conjunction with any other business or businesses;

(*22*) "issued generally" means, in relation to a prospectus, issued to persons irrespective of their being existing members or debenture holders of the body corporate to which the prospectus relates;

(*23*) "limited company" means a company limited by shares or by guarantee;

(*24*) "manager" means an individual (not being the managing agent) who, subject to the superintendence, control and direction of the Board of directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not;

(*25*) "managing agent" means any individual, firm or body corporate entitled, subject to the provisions of this Act, to the management of the whole, or substantially the whole, of the affairs of a company by virtue of an agreement with the company, or by virtue of its memorandum or articles of association, and includes any individual, firm or body corporate occupying the position of a managing agent, by whatever name called;

(*26*) "managing director" means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors or by virtue of its memorandum or articles of association, is entrusted with any powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called;

(*27*) "member", in relation to a company, does not include a bearer of a share-warrant of the company issued in pursuance of section 113;

(*28*) "memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act;

(*29*) "modify" and "modification" shall include the making of additions and omissions;

(*30*) "officer" includes any director, managing agent, secretaries and treasurers, manager or secretary; * * where the

managing agent or the secretaries and treasurers are a firm * *, also includes any partner in the firm; and where the managing agent or the secretaries and treasurers are a body corporate, also includes any director, managing agent, secretaries and treasurers or manager of the body corporate; but, save in sections 474, 475, 536, 540, 542, 615, 616, 617, 618, 619 and 627 does not include an auditor;

(*31*) "officer who is in default", in relation to any provision referred to in section 5, has the meaning specified in that section;

(*32*) "paid-up capital" or "capital paid up" includes capital credited as paid up;

(*33*) "prescribed" means, as respects the provisions of this Act relating to the winding up of companies except sub-section (*3*) of section 546, prescribed by rules made by the Supreme Court in consultation with High Courts, and as respects the other provisions of this Act including sub-section (*3*) of section 546, prescribed by rules made by the Central Government;

(*34*) "previous companies law" means any of the laws specified in clause (*ii*) of sub-section (*1*) of section 3;

(*35*) "private company" means a private company as defined in section 3:

(*36*) "prospectus" means any prospectus, notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate;

(*37*) "public company" means a public company as defined in section 3;

(*38*) "public holiday" means a public holiday within the meaning of the Negotiable Instruments Act, 1881 (XXVI of 1881):

Provided that no day declared by the Central Government to be a public holiday shall be deemed to be such a holiday, in relation to any meeting, unless the declaration was notified before the issue of the notice convening such meeting;

(*39*) "recognised stock exchange" means, in relation to any provision of this Act in which it occurs, a stock exchange, whether in or outside India, which is notified by the Central Government in the Official Gazette as a recognised stock exchange for the purposes of that provision;

(*40*) "Registrar" means a Registrar or an Assistant Registrar having the duty of registering companies under this Act;

(*41*) "relative" means, with reference to any person, any one who is related to such person in any of the ways specified in section 6, and no others;

(42) "Schedule" means a Schedule annexed to this Act;

(43) "Scheduled Bank" has the same meaning as in the Reserve Bank of India Act, 1934 (II of 1934);

(44) "secretaries and treasurers" means any firm or body corporate (not being the managing agent) which, subject to the superintendence, control and direction of the Board of directors, has the management of the whole, or substantially the whole, of the affairs of a company; and includes any firm or body corporate occupying the position of secretaries and treasurers, by whatever name called, and whether under a contract of service or not;

(45) "Secretary" means the person, if any, who is appointed to perform the duties which may be performed by a secretary under this Act;

(46) "share" means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied;

(47) "subsidiary company" or "subsidiary" means a subsidiary company within the meaning of section 4;

(48) "total voting power", in regard to any matter relating to a body corporate, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of such body, if all the members thereof and all other persons, if any, having a right to vote on that matter are present at the meeting, and cast their votes;

(49) "trading corporation" means a trading corporation within the meaning of entries 43 and 44 in List I in the Seventh Schedule to the Constitution;

(50) "variation" shall include abrogation; and "vary" shall include abrogate.

3. **Definitions of "company", "existing company", "private company" and "public company".**—(1) In this Act, unless the context otherwise requires, the expressions "company", "existing company", "private company" and "public company" shall, subject to the provisions of sub-section (2), have the meanings specified below :—

(i) "company" means a company formed and registered under this Act or an existing company as defined in clause (ii);

(ii) "existing company" means a company formed and registered under any of the previous companies laws specified below:—

(a) Any Act or Acts relating to companies in force before the Indian Companies Act, 1866 (X of 1866) and repealed by that Act;

(b) The Indian Companies Act, 1866 (X of 1866) ;

(c) The Indian Companies Act, 1882 (VI of 1882) ;

(d) The Indian Companies Act, 1913 (VII of 1913);

(e) The Registration of Transferred Companies Ordinance, 1942 (LIV of 1942); and

(*f*) Any law corresponding to any of the Acts or the Ordinance aforesaid and in force in a Part B State at any time before the first day of April, 1951 ;

(*iii*) "private company" means a company which, by its articles,—

(*a*) restricts the right to transfer its shares, if any; * *

(*b*) limits the number of its members to fifty not including—

(*i*) persons who are in the employment of the company, and

(*ii*) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased ; and

(*c*) prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company :

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member ;

(*iv*) "public company" means a company which is not a private company.

(*2*) Unless the context otherwise requires, the following companies shall not be included within the scope of any of the expressions defined in clauses (*i*) to (*iv*) of sub-section (*1*), and such companies shall be deemed, for the purposes of this Act, to have been formed and registered outside India :—

(*a*) a company the registered office whereof is in Burma, Aden or Pakistan and which immediately before the separation of that country from India was a company as defined in clause (*i*) of sub-section (*1*);

(*b*) a company the registered office whereof is in the State of Jammu and Kashmir and which immediately before the 26th day of January, 1950, was a company as defined in clause (*i*) aforesaid.

4. Meaning of "holding company" and "subsidiary".—(*1*) For the purposes of this Act, a company shall, subject to the provisions of sub-section (*3*), be deemed to be a subsidiary of another if, but only if,—

(*a*) that other controls the composition of its Board of directors; or

(*b*) that other holds more than half in nominal value of its equity share capital; or

(c) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

Illustration

Company B is a subsidiary of Company A, and Company C is a subsidiary of Company B. Company C is a subsidiary of Company A, by virtue of clause (c) above. If Company D is a subsidiary of Company C, Company D will be a subsidiary of Company B and consequently also of Company A, by virtue of clause (c) above; and so on.

(2) For the purposes of sub-section (*1*), the composition of a company's Board of directors shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it at its discretion without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say—

(*a*) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid; * *;

(*b*) that a person's appointment thereto follows necessarily from his appointment as director, managing agent, secretaries and treasurers, or manager of, or to any other office or employment in, that other company; or

(c) that the directorship is held by that other company itself or by a subsidiary of it.

(*3*) In determining whether one company is a subsidiary of another—

(*a*) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it;

(*b*) subject to the provisions of clauses (c) and (*d*), any shares held or power exercisable—

(*i*) by any person as a nominee for that other company (except where that other is concerned only in a fiduciary capacity); or

(*ii*) by, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity;

shall be treated as held or exercisable by that other company;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;

(*d*) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary [not being held or exercisable as mentioned in clause (c)] shall be treated as not held or exercisable by that other, if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable

as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) For the purposes of this Act, a company shall be deemed to be the holding company of another if, but only if, that other is its subsidiary.

(5) In this section, the expression "company" includes any body corporate, and the expression "equity share capital" has the same meaning as in sub-section (2) of section 84.

5. Meaning of "officer who is in default".—For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means any officer of the company who is knowingly guilty of the default, non-compliance, failure, refusal or contravention mentioned in that provision, or who knowingly and wilfully authorises or permits such default, non-compliance, failure, refusal or contravention.

6. Meaning of 'relative'.—Two persons shall be deemed to be 'relatives' if, and only if, they are husband and wife, or the one or the spouse of the one is related to the other or the spouse of the other, whether by legitimate or illegitimate descent or by adoption and whether by full blood or by half blood, in any of the following ways, namely:—

(*i*) as parent and child;

(*ii*) as grand-parent and grand-child;

(*iii*) as brothers or sisters, or as brother and sister;

(*iv*) as uncle or aunt, and nephew or niece;

(*v*) as first cousins, that is to say, as persons having a common grand-parent.

7. Interpretation of "person in accordance with whose directions or instructions directors are accustomed to act".—Except where this Act expressly provides otherwise, a person shall not be deemed to be, within the meaning of any provision in this Act, a person in accordance with whose directions or instructions the Board of directors of a company is accustomed to act, by reason only that the Board acts on advice given by him in a professional capacity.

8. Power of Central Government to declare an establishment not to be a branch office.—The Central Government may, by order, declare that in the case of any company, not being a banking or an insurance company, any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company, or any production or manufacture, shall not be treated as a branch office of the company for all or any of the purposes of this Act.

9. Act to override memorandum, articles, etc.—Save as otherwise expressly provided in the Act—

(*a*) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of directors * * * *, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and

(*b*) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

10. Jurisdiction of Courts.—(*1*) The Court having jurisdiction under this Act shall be—

(*a*) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of sub-section (*2*); and

(*b*) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of companies having their registered offices in the district.

(*2*) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the Court, not being the jurisdiction conferred—

(*a*) in respect of companies generally, by sections 236, 391, 393, 394 and 396 to 406, both inclusive.

(*b*) in respect of companies with a paid-up share capital of not less than one lakh of rupees, by Part VII (sections 424 to 555) and the other provisions of this Act relating to the winding up of companies.

(*3*) For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

(*4*) Nothing in this section shall invalidate any proceeding by reason only of its having been taken in a wrong Court.

PART II

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

Certain companies, associations and partnerships to be registered as companies under Act

11. Prohibition of associations and partnerships exceeding certain number.—(*1*) No company, association or partnership consisting of

more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law.

(2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law.

(3) This section shall not apply to a joint family as such carrying on a business; and where a business is carried on by two or more joint families, in computing the number of persons for the purposes of sub-sections (1) and (2), minor members of such families shall be excluded.

(4) Every member of a company, association or partnership carrying on business in contravention of this section shall be personally liable for all liabilities incurred in such business.

(5) Every person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine which may extend to one thousand rupees.

Memorandum of Association

12. Mode of forming incorporated company.—(1) Any seven or more persons, or where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.

(2) Such a company may be either—

(a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed "a company limited by shares"); * *

(b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up (in this Act termed "a company limited by guarantee"); or

(c) a company not having any limit on the liability of its members (in this Act termed "an unlimited company").

13. Requirements with respect to memorandum.—(1) The memorandum of every company shall state—

(a) the name of the company with "Limited" as the last word of the name in the case of a public limited company and with "Private Limited", as the last words of the name in the case of a private limited company;

(b) the State in which the registered office of the company is to be situate; and

(c) the objects of the company, and, except in the case of trading corporations, the State or States to whose territories the objects extend.

(2) The memorandum of a company limited by shares or by guarantee shall also state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee shall also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company, or of such debts and liabilities of the company as may have been contracted before he ceases to be a member, as the case may be, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital—

(a) unless the company is an unlimited company, the memorandum shall also state the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount;

(b) no subscriber of the memorandum shall take less than one share; and

(c) each subscriber of the memorandum shall write opposite to his name the number of shares he takes.

14. Form of memorandum.—The memorandum of association of a company shall be in such one of the Forms in Tables B, C, D and E in Schedule I as may be applicable to the case of the company, or in a Form as near thereto as circumstances admit.

15. Printing and signature of memorandum.—The memorandum shall—

(a) be printed.

(b) be divided into paragraphs numbered consecutively, and

(c) be signed by each subscriber (who shall add his address, description and occupation, if any,) in the presence of at least one witness who shall attest the signature.

16. Alteration of memorandum.—(1) A company shall not alter the conditions contained in its memorandum except in the cases, in the mode, and to the extent, for which express provision is made m this Act.

(2) Only those provisions which are required by section 13 or by any other specific provision contained in this Act, to be stated in the memorandum of the company concerned shall be deemed to be conditions contained in its memorandum.

(3) Other provisions contained in the memorandum, including those relating to the appointment of a managing director, managing agent, secretaries and treasurers or manager, may be altered in the

same manner as the articles of the company, but if there is any express provision in this Act permitting of the alteration of such provisions in any other manner, they may also be altered in such other manner.

(4) All references to the articles of a company in this Act shall be construed as including references to the other provisions aforesaid contained in its memorandum.

17. Procedure for alteration of memorandum in certain respects * * * * * *.—(*1*) A company may, by special resolution, alter the provisions of its memorandum so as to change the place of its registered office from one State to another, or with respect to the objects of the company so far as may be required to enable it—

(*a*) to carry on its business more economically or more efficiently; * *

(*b*) to attain its main purpose by new or improved means, * *

(c) to enlarge or change the local area of its operations; * *

(*d*) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; * *

(*e*) to restrict or abandon any of the objects specified in the memorandum; * *

(*f*) to sell or dispose of the whole, or any part, of the undertaking, or of any of the undertakings, of the company ; or

(*g*) to amalgamate with any other company or body of persons.

(*2*) The alteration shall not take effect until, and except in so far as, it is confirmed by the Court on petition.

(*3*) Before confirming the alteration, the Court must be satisfied—

(*a*) that sufficient notice has been given to every holder of the debentures of the company, and to every other person or class of persons whose interests will, in the opinion of the Court, be affected by the alteration ; and

(*b*) that, with respect to every creditor who, in the opinion of the Court, is entitled to object to the alteration, and who signifies his objection in the manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court:

Provided that the Court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by clause (*a*).

(*4*) Notice of the alteration shall also be given to the Registrar and he shall be given a reasonable opportunity to appear before the Court and state his objections and suggestions, if any, with respect to the confirmation of the alteration.

(5) The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions, if any, as it thinks fit, and may make such order as to costs as it thinks proper

(6) The Court shall, in exercising its powers under this section, have regard to the rights and interests of the members of the company and of every class of them, as well as to the rights and interests of the creditors of the company and of every class of them.

(7) The Court may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it thinks fit for facilitating, or carrying into effect any such arrangement:

Provided that no part of the capital of the company may be expended in any such purchase.

18. Procedure on confirmation of the alteration.—(*1*) A certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within three months from the date of the order, be filed by the company with the Registrar, and he shall register the same, and shall certify the registration under his hand.

(2) The certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum as so altered shall be the memorandum of the company.

(3) Where the alteration involves a transfer of the registered office from one State to another, a certified copy of the order confirming the alteration shall be filed by the company with the Registrar of each of the States, and the Registrar of each such State shall register the same, and shall certify under his hand the registration thereof; and the Registrar of the State from which such office is transferred shall send to the Registrar of the other State all documents relating to the company registered, recorded or filed in his office.

(4) The Court may, at any time, by order, extend the time for the filing of documents under this section by such period as it thinks proper.

19. Effect of failure to register within three months.—(*1*) No such alteration as is referred to in section 17 shall have any effect until it has been duly registered in accordance with the provisions of section 18.

(2) If the registration is not effected within three months next after the date of the order of the Court confirming the alteration, or within such further time as may be allowed by the Court under subsection (4) of section 18, such alteration and order and all proceedings connected therewith shall, at the expiry of such period of three months or of such further time, as the case may be, become void:

Provided that the Court may, on sufficient cause shown, revive the order on application made within a further period of one month.

Provisions with respect to names of companies.

20. Prohibition of registration of companies by undesirable names.—(*1*) No company shall be registered by a name which, in the opinion of the Central Government, is undesirable.

(*2*) Without prejudice to the generality of the foregoing power, a name which is identical with, or too nearly resembles, the name by which a company in existence has been previously registered, may be deemed to be undesirable by the Central Government within the meaning of sub-section (*1*).

21. Change of name by company.—A company may, by special resolution and with the approval of the Central Government signified in writing, change its name.

22. Rectification of name of company.—(*1*) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which, in the opinion of the Central Government, is identical with, or too nearly resembles, the name by which a company in existence has been previously registered, whether under this Act or any previous companies law, the first-mentioned company—

(*a*) may, by ordinary resolution and with the previous approval of the Central Government signified in writing, change its name of new name; and

(*b*) shall, if the Central Government so directs within twelve months of its first registration or registration by its new name, as the case may be, or within twelve months of the commencement of this Act, whichever is later, by ordinary resolution and with the previous approval of the Central Government signified in writing, change its name or new name within a period of three months from the date of the direction or such longer period as the Central Government may think fit to allow.

(*2*) If a company makes default in complying with any direction given under clause (*b*) of sub-section (*1*), it shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.

23. Registration of change of name and effect thereof.—(*1*) Where a company changes its name in pursuance of section 21 or 22, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein; and the change of name shall be complete and effective only on the issue of such a certificate.

(*2*) The Registrar shall also make the necessary alteration in the memorandum of association of the company.

(*3*) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name.

24. Power to dispense with "Limited" in name of charitable or other company.—(*1*) Where it is proved to the satisfaction of the Central Government that an association—

(*a*) is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object, and

(*b*) intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members,

the Central Government may, by licence, direct that the association may be registered as a company with limited liability, without the addition to its name of the word "Limited" or the words "Private Limited".

(*2*) The association may thereupon be registered accordingly; and on registration shall enjoy all the privileges and (subject to the provisions of this section) be subject to all the obligations of limited companies.

(*3*) Where it is proved to the satisfaction of the Central Government—

(*a*) that the objects of a company registered under this Act as a limited company are restricted to those specified in clause (*a*) of sub-section (*1*); and

(*b*) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members;

the Central Government may, by licence, authorise the company * * by a special resolution to change * * its name, including or consisting of the omission of the word "Limited" or the words "Private Limited"; and section 23 shall apply to a change of name under this sub-section as it applies to a change of name under section 21.

(*4*) A firm may be a member of any association or company licensed under this section, but on the dissolution of the firm, its membership of the association or company shall cease.

(*5*) A licence may be granted by the Central Government under this section on such conditions and subject to such regulations as it thinks fit, and those conditions and regulations shall be binding on the body to which the licence is granted, and where the grant is under sub-section (*1*) shall, if the Central Government so directs, be inserted in the memorandum, or in the articles, or partly in the one and partly in the other.

(*6*) The body to which a licence is so granted shall be exempt from the provisions of this Act relating to—

(*a*) the use of the word "Limited" or the words "Private Limited" as any part of its name,

(*b*) the publishing of its name,

(*c*) if the Central Government so directs and to the extent specified in the direction, the obligation laid on the company to send lists of its members to the Registrar, and

(d) if the Central Government so directs and to the extent specified in the direction, the obligations laid on the company by section 302.

(7) The licence may at any time be revoked by the Central Government, and upon revocation, the Registrar shall enter the word "Limited" or the words "Private Limited" at the end of the name upon the register of the body to which it was granted; and the body shall cease to enjoy the exemption * * * * * * * * * * granted by this section:

Provided that, before a licence is so revoked, the Central Government shall give notice in writing of its intention to the body, and shall afford it an opportunity of being heard in opposition to the revocation.

(8) Where a body in respect of which a licence under this section is in force alters the provisions of its memorandum with respect to its objects, the Central Government may—

(a) revoke the licence if it sees fit to do so, or

(b) vary the licence by making it subject to such conditions and regulations as the Central Government thinks fit, in lieu of, or in addition to, the conditions and regulations, if any, to which the licence was formerly subject.

(9) Upon the revocation of a licence granted under this section to a body the name of which contains the words "Chamber of Commerce", that body shall, within a period of three months from the date of revocation or such longer period as the Central Government may think fit to allow, change its name to a name which does not contain those words; and—

(a) the notice to be given under the proviso to sub-section (7) to that body shall include a statement of the effect of the foregoing provisions of this sub-section; and

(b) section 23 shall apply to a change of name under this sub-section as it applies to a change of name under section 21.

(10) If the body makes default in complying with the requirements of sub-section (9), it shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

* * * * * *

Articles of Association

25. Articles prescribing regulations.—There may in the case of a public company limited by shares, and there shall in the case of an unlimited company or a company limited by guarantee or a private company limited by shares, be registered with the memorandum, articles of association signed by the subscribers of the memorandum, prescribing regulations for the company.

26. Regulations required in case of unlimited company, company limited by guarantee or private company limited by shares.—(1) In the case of an unlimited company, the articles shall state the number,

of members with which the company is to be registered and, if the company has a share capital, the amount of share capital with which the company is to be registered.

(*2*) In the case of a company limited by guarantee, the articles shall state the number of members with which the company is to be registered.

(*3*) In the case of a private company having a share capital, the articles shall contain provisions relating to the matters specified in sub-clauses (*a*), (*b*) and (c) of clause (*iii*) of sub-section (*1*) of section 3; and in the case of any other private company, the articles shall contain provisions relating to the matters specified in the said sub-clauses (*b*) and (c).

27. Adoption and application of Table A in the case of companies limited by shares.—(*1*) The articles of association of a company limited by shares may adopt all or any of the regulations contained in Table A in Schedule I.

(*2*) In the case of any such company which is registered after the commencement of this Act, if articles are not registered, or if articles are registered, in so far as the articles do not exclude or modify the regulations contained in Table A aforesaid, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

28. Form of articles in the case of other companies.—The articles of association of any company, not being a company limited by shares, shall be in such one of the Forms in Tables C, D, and E in Schedule I as may be applicable, or in a Form as near thereto as circumstances admit.

29. Form and signature of articles.—Articles shall—

(*a*) be printed;

(*b*) be divided into paragraphs numbered consecutively; and

(c) be signed by each subscriber of the memorandum of association (who shall add his address, description and occupation, if any,) in the presence of at least one witness who shall attest the signature.

30. Alteration of articles by special resolution.—(*1*) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may, by special resolution, alter * * * its articles.

(*2*) Any alteration * * so made * * * shall, subject to the provisions of this Act, be as valid as if originally contained in the articles and be subject in like manner to alteration by special resolution.

(*3*) The power of altering articles under this section shall, in the case of any company formed and registered under Act No. XIX of 1857 and Act No. VII of 1860 or either of them, extend to altering any provisions in Table B annexed to Act XIX of 1857, and shall also, in the case of an unlimited company formed and registered under the said Acts or either of them, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that those regulations are contained in the memorandum.

Change of registration of companies

31. Registration of unlimited company as limited, etc.—(*1*) Subject to the provisions of this section,—

(*a*) a company registered as unlimited * * * * * * * * * may * * register under this Act * * * as a limited company; and

(*b*) a company already registered as a limited company * * * * * may re-register * * under this Act * * * * * * * *.

(*2*) On * * registration in pursuance of this section, the Registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company; but, save as aforesaid, the * * * registration shall take place in the same manner and shall have effect, as if it were the first registration of the company under this Act.

(*3*) The * * registration of an unlimited company as a limited company under this section * * * * shall not affect any debts, liabilities, obligations or contracts incurred or entered into by, to, with or on behalf of, the company before the * * registration, and those debts, liabilities, obligations and contracts may be enforced in the manner provided by Part IX of this Act in the case of a company registered in pursuance of that Part.

General provisions with respect to memorandum and articles.

32. Registration of memorandum and articles.—(*1*) There shall be presented for registration, to the Registrar of the State in which the registered office of the company is stated by the memorandum to be situate—

(*a*) the memorandum of the company;

(*b*) its articles, if any; and

(*c*) the agreement, if any, which the company proposes to enter into with any individual, firm or body corporate to be appointed as its managing agent, or with any firm or body corporate to be appointed as its secretaries and treasurers.

(*2*) A declaration by an advocate of the Supreme Court or of a High Court, an attorney or a pleader entitled to appear before a High Court, or a chartered accountant practising in India, who is engaged in the formation of a company, or by a person named in the articles as a director, managing agent, secretaries and treasurers, manager or secretary of the company, that all the requirements of this Act and the rules thereunder have been complied with in respect of registration and matters precedent and incidental thereto, shall be filed with the Registrar; and the Registrar may accept such a declaration as sufficient evidence of such compliance.

(*3*) If the Registrar is satisfied that all the requirements aforesaid have been complied with by the company and that it is authorised to be registered under this Act, he shall retain and register the memorandum, the articles, if any, and the agreement referred to in clause (*c*) of sub-section (*1*), if any.

33. Effect of registration.—(*1*) On the registration of the memorandum of a company, the Registrar shall certify under his hand that the company is incorporated and in the case of a limited company, that the company is limited.

(*2*) From the date of incorporation mentioned in the certificate of incorporation, such of the subscribers of the memorandum and other persons, as may from time to time be members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

34. Conclusiveness of certificate of incorporation.—* * A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorised to be registered and duly registered under this Act.

* * * * * * * * * * * * * * *

35. Effect of memorandum and articles.—(*1*) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.

(*2*) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

36. Provision as to companies limited by guarantee.—(*1*) In the case of a company limited by guarantee and not having a share capital, and registered on or after the first day of April, 1914, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(*2*) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered on or after the first day of April, 1914, purporting to divide the undertaking of the company into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

37. Effect of alteration in memorandum or articles.—Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as

at that date, * * * * to contribute to the share capital of, or otherwise to pay money to, the company:

Provided that this section shall not apply in any case where the member agrees in writing, either before or after a particular alteration is made, to be bound by the alteration.

38. Copies of memorandum and articles etc. to be given to members.—(*1*) A company shall, on being so required by a member, send to him within seven days of the requirement and subject to the payment of a fee of one rupee, a copy each of the following documents, as in force for the time being—

(*a*) the memorandum;

(*b*) the articles, if any;

(c) the agreement, if any, entered into or proposed to be entered into, by the company with any person appointed or to be appointed as its managing agent or as its secretaries and treasurers; and

(*d*) every other agreement and every resolution referred to in section 191, if and in so far as they have not been embodied in the memorandum or articles.

(*2*) If a company makes default in complying with the requirements of this section, the company, and every officer of the company who is in default, shall be punishable, for each offence, with fine which may extend to fifty rupees.

39. Alteration of memorandum or articles etc. to be noted in every copy.—(*1*) Where an alteration is made in the memorandum or articles of a company, in the agreement referred to in clause (c) of sub-section (*1*) of section 38 or in any other agreement or resolution referred to in section 191, every copy of the memorandum, articles, agreement or resolution issued after the date of the alteration shall be in accordance with the alteration.

(*2*) If, at any time, the company issues any copies of the memorandum, articles, resolution or agreement, which are not in accordance with the alteration or alterations made therein before that time, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ten rupees for each copy so issued.

Membership of company

40. Definition of "member".—(*1*) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration, shall be entered as members in its register of members.

(*2*) Every other person who agrees to become a member of a company and whose name is entered in its register of members, shall be a member of the company.

41. Membership of holding company.—(*1*) Except in the cases mentioned in this section, a body corporate cannot be a member of a company which is its holding company and any allotment or transfer of shares in a company to its subsidiary shall be void.

(*2*) Nothing in this section shall apply—

(*a*) where the subsidiary is concerned as the legal representative of a deceased member of the holding company; or

(*b*) where the subsidiary is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(*3*) This section shall not prevent a subsidiary from continuing to be a member of its holding company if it was a member thereof either at the commencement of this Act or before becoming a subsidiary of the holding company, but, except in the cases referred to in sub-section (*2*), the subsidiary shall have no right to vote at meetings of the holding company or of any class of members thereof.

(*4*) Subject to sub-section (*2*), sub-sections (*1*) and (*3*) shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in the said sub-sections (*1*) and (*3*) to such a body corporate included references to a nominee for it.

(*5*) In relation to a holding company which is either a company limited by guarantee or an unlimited company, the reference in this section to shares shall, whether or not the company has a share capital, be construed as including a reference to the interest of its members as such, whatever the form of that interest.

Private companies

42. Consequences of default in complying with conditions constituting a company a private company.—Where the articles of a company include the provisions which, under clause (*iii*) of sub-section (*1*) of section 3, are required to be included in the articles of a company in order to constitute it a private company, but default is made in complying with any of those provisions, the company shall cease to be entitled to the privileges and exemptions conferred on private companies by or under **** this Act, and *** this Act shall apply to the company as if it were not a private company:

Provided that the Court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid.

43. Prospectus or statement in lieu of prospectus to be filed by private company on ceasing to be private company.—(*1*) If a company, being a private company, alters its articles in such a manner that they no longer include the provisions which, under clause (*iii*) of sub-section (*1*) of section 3, are required to be included in the articles of a company in order to constitute it a private company, the company—

(*a*) shall, as on the date of the alteration, cease to be a private company; and

(*b*) shall, within a period of fourteen days after the said date, file with the Registrar either a prospectus or a statement in lieu of prospectus, as specified in sub-section (*2*).

(*2*) (*a*) Every prospectus filed under sub-section (*1*) shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(*b*) Every statement in lieu of prospectus filed under sub-section (*1*) shall be in the form and contain the particulars set out in Part I of Schedule IV, and in the cases mentioned in Part II of that Schedule, shall set out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(*c*) Where the persons making any such report as is referred to in clause (*a*) or (*b*) have made therein, or have, without giving the reasons indicated therein, any such adjustments as are mentioned in clause 32 of Schedule II or clause 5 of Schedule IV, as the case may be, the prospectus or statement in lieu of prospectus filed as aforesaid, shall have endorsed thereon or attached thereto, a written statement signed by those persons, setting out the adjustments and giving the reasons therefor.

(*3*) If default is made in complying with sub-section (*1*) or (*2*), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

(*4*) Where any prospectus or statement in lieu of prospectus filed under this section includes any untrue statement, any person who authorised the filing of such prospectus or statement shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe, and did up to the time of the filing of the prospectus or statement believe, that the untrue statement was true.

(*5*) For the purposes of this section—

(*a*) a statement included in a prospectus or a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

* * * *

(*b*) where the omission from a prospectus or a statement in lieu of prospectus of any matter which is required to be stated therein under the provisions of Schedule II or IV, as the case may be, is calculated to mislead, the prospectus or statement in lieu of prospectus shall be deemed, in respect of such omission, to be a prospectus or a statement in lieu of prospectus in which an untrue statement is included.

(*6*) For the purposes of sub-section (*4*) and clause (*a*) of sub-section (*5*), the expression "included" when used with reference to a prospectus or statement in lieu of prospectus, means included in the prospectus or statement in lieu of prospectus itself or contained

in any report or memorandum appearing on the face thereof, or by reference incorporated therein.

Reduction of Number of Members below Legal Minimum.

44. Members severally liable for debts where business carried on with fewer than seven, or in the case of a private company, two members.—If at any time the number of members of a company is reduced, in the case of a public company, below seven, or in the case of a private company, below two, and the company carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

Contracts and deeds, investments, seal etc.

45. Form of contracts.—(*1*) Contracts on behalf of a company may be made as follows:—

(*a*) a contract which, if made between private persons, would by law be required to be in writing signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged;

(*b*) a contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(*2*) A contract made according to this section shall * * bind the company * *

46. Bills of exchange and promissory notes.—A bill of exchange, hundi or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of a company if drawn, accepted, made, or endorsed in the name of, or on behalf or on account of, the company by any person acting under its authority, express or implied.

47. Execution of deeds.—(*1*) A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place either in or outside India.

(*2*) A deed signed by such an attorney on behalf of the company and under his seal where sealing is required, shall bind the company and have the same effect as if it were under its common seal.

48. Investments of company to be held in its own name.—(*1*) Save as otherwise provided in sub-sections (*2*) to (*5*) and subject to the provisions of sub-sections (*6*) to (*8*).—

(*a*) all investments made by a company on its own behalf shall be made and held by it in its own name; and

(*b*) where any such investments are not so held at the commencement of this Act, the company shall, within a period

of one year from such commencement, either cause them to be transferred to, and hold them in, its own name, or dispose of them.

(2) Where the company has a right to appoint any person or persons, or where any nominee or nominees of the company has or have been appointed, as a director or directors of any other body corporate, shares in such other body corporate to an amount not exceeding the nominal value of the qualification shares which are required to be held by a director thereof, may be registered or held by such company jointly in the names of itself and of each such person or nominee or in the name of each such person or nominee expressly described as a nominee of the company.

(3) A company may hold any shares in its subsidiary in the name or names of any nominee or nominees of the company, if and in so far as it is necessary so to do, to ensure that the number of members of the subsidiary is not reduced, where it is a public company, below seven, and where it is a private company, below two.

(4) Sub-section (1) shall not apply to investments made by a company whose principal business consists of the buying and selling of shares or other securities.

(5) Nothing in this section shall be deemed to prevent a company—

(a) from depositing with a bank, being the bankers of the company, any shares or securities for the collection of any dividend or interest payable thereon; or

(b) from depositing with, or transferring to, any person any shares or securities, by way of security for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it.

(6) The certificate or letter of allotment relating to the shares or securities in which investments have been made by a company shall, except in the cases referred to in sub-sections (4) and (5), be in the custody of such company or with a Scheduled Bank, being the bankers of the company.

(7) Where, in pursuance of sub-section (2), (3), (4) or (5), any shares or securities in which investments have been made by a company are not held by it in its own name, the company shall forthwith enter in a register maintained by it for the purpose—

(a) the nature, value, and such other particulars as may be necessary fully to identify the shares or securities in question; and

(b) the bank or person in whose name or custody the shares or securities are held.

(8) The register kept under sub-section (7) shall be open to the inspection of any member or debenture holder of the company without charge, during business hours, subject to such reasonable restrictions as the company may, by its articles or in general meeting, impose, so that not less than two hours in each day are allowed for inspection.

(9) If default is made in complying with any of the requirements of sub-sections (1) to (8), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

(*10*) If any inspection required under sub-section (*8*) is refused, the Court may, by order, direct an immediate inspection of the register.

Nothing in this sub-section shall be construed as prejudicing in any way the operation of sub-section (*9*).

(*11*) In this section, "securities" includes stock and debentures.

49. Power for company to have official seal for use outside India.—(*1*) A company whose objects require or comprise the transaction of business outside India may, if authorised by its articles, have for use in any territory, district or place not situate in India an official seal which shall be a *facsimile* of the common seal of the company, with the addition on its face of the name of the territory, district or place where it is to be used.

(*2*) A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorise any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is a party in that territory, district or place.

(*3*) The authority of any agent authorised under sub-section (*2*) shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, * * until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(*4*) The person affixing any such official seal shall, by writing under his hand, certify on the deed or other document to which the seal is affixed, the date on which and the place at which it is affixed.

(*5*) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

Service of Notices, etc.

50. Service of documents on company.—A document may be served on a company * * by sending it to its registered office * * by * * post under a * * certificate of posting or by registered post, or by leaving it at its registered office * * *.

51. Service of documents on Registrar.—A document may be served on the Registrar by sending it to him at his office by * * post under a * * certificate of posting or by registered post, or by delivering it to him or leaving it for him at his office.

52. Service of notice on members by company.—(*1*) A notice may be given by the company to any member either personally, or by sending it by post to him to his registered address, or if he has no registered address in India, to the address, if any, within India supplied by him to the company for the giving of notices to him.

(*2*) Where a notice is sent by post,—

(*a*) service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice; and

(b) unless the contrary is proved, such service shall be deemed to have been effected—

(i) in the case of a notice of a meeting, at the expiration of forty-eight hours after the letter containing the same is posted, and

(ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.

(3) A notice advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given on the day on which the advertisement appears to every member of the company who has no registered address in India and has not supplied to the company an address within India for the giving of notices to him.

(4) A notice may be given by the company to the joint-holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.

(5) A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignees of the insolvent, or by any like description, at the address, if any, in India supplied for the purpose by the persons claiming to be so entitled, or until such an address has been so supplied, by giving the notice in any manner in which it might have been given if the death or insolvency had not occurred.

Authentication of Documents

53. Authentication of documents.—Save as otherwise expressly provided in this Act, a document or proceeding requiring authentication by a company may be signed by a director, the managing agent, the secretaries and treasurers, the manager, the secretary or other authorised officer of the company, and need not be under its common seal.

PART III

PROSPECTUS AND ALLOTMENT, AND OTHER MATTERS RELATING TO ISSUE OF SHARES OR DEBENTURES

Prospectus

54. Dating of prospectus.—A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

55. Matters to be stated and reports to be set out in prospectus.—(1) Every prospectus issued—

(a) by or on behalf of a company, or

(b) by or on behalf of any person who is or has been engaged or interested in the formation of a company,

shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule; and the said Parts

I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any of the requirements of this section, or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) No one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by a prospectus which complies with the requirements of this section:

Provided that this sub-section shall not apply if it is shown that the form of application was issued either—

(a) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(b) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to five thousand rupees.

(4) A director or other person responsible for the prospectus shall not incur any liability by reason of any non-compliance with, or contravention of, any of the requirements of this section, if—

(a) as regards any matter not disclosed, he proves that he had no knowledge thereof; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, was immaterial, or was otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that no director or other person shall incur any liability in respect of the failure to include in a prospectus a statement with respect to the matters specified in clause 18 of Schedule II, unless it is proved that he had knowledge of the matters not disclosed.

(5) This section shall not apply—

(a) to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; or

(b) to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange

* * * * * *;

but, subject as aforesaid, this section shall apply to a prospectus or a

form of application, whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or under this Act apart from this section.

56. Expert to be a person unconnected with the formation or management of the company.—A prospectus inviting persons to subscribe for shares in or debentures of a company shall not include a statement purporting to be made by an expert, unless the expert is a person who is not, or has not been, engaged or interested in the formation or promotion, or in the management, of the company.

57. Expert's consent to issue of prospectus containing statement by him.—A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert shall not be issued, unless—

(a) he has given his written consent to the issue thereof with the statement included in the form and context in which it is included, and has not withdrawn such consent before the delivery of a copy of the prospectus for registration; and

(b) a statement that he has given and has not withdrawn his consent as aforesaid appears ih the prospectus.

58. Penalty and interpretation.—(1) If any prospectus is issued in contravention of section 56 or 57, the company, and every person who is knowingly a party to the issue thereof, shall be punishable with fine which may extend to five thousand rupees.

(2) In sections 56 and 57, the expression "expert" includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him.

59. Registration of prospectus.—(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto—

(a) any consent to the issue of the prospectus required by section 57 from any person as an expert; and

(b) in the case of a prospectus issued generally, also—

(i) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) Every prospectus to which sub-section (1) applies shall, on the face of it,—

(*a*) state that a copy has been delivered for registration as required by this section; and

(*b*) specify any documents required by this section to be endorsed on or attached to the copy so delivered, or refer to statements included in the prospectus which specify those documents.

(*3*) The Registrar shall not register a prospectus,—

(*a*) unless it is dated and the copy thereof signed in the manner required by this section and unless further it has endorsed thereon or attached thereto the documents (if any) specified as aforesaid; and

(*b*) in case the prospectus names any person as the auditor, legal adviser, attorney, solicitor, banker or broker of the company or proposed company, unless also it is accompanied by the consent in writing of the person so named, to act in the capacity stated.

(*4*) No prospectus shall be issued more than ninety days after the date on which a copy thereof is delivered for registration; and if a prospectus is so issued, it shall be deemed to be a prospectus a copy of which has not been delivered under this section to the Registrar.

(*5*) If a prospectus is issued without a copy thereof being delivered under this section to the Registrar or without the copy so delivered having endorsed thereon or attached thereto the required consent or documents, the company, and every person who is knowingly a party to the issue of the prospectus, shall be punishable with fine which may extend to five thousand rupees.

60. Terms of contract mentioned in prospectus or statement in lieu of prospectus, not to be varied.—A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of, or except on authority given by, the company in general meeting.

61. Civil liability for mis-statements in prospectus.—(*1*) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein, that is to say,—

(*a*) every person who is a director of the company at the time of the issue of the prospectus;

(*b*) every person who has authorised himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of time;

(c) every person who is a promoter of the company; and

(*d*) every person who has authorised the issue of the prospectus:

Provided that where, under section 57, the consent of a person is required to the issue of a prospectus and he has given that consent, or where, under clause (*b*) of sub-section (*3*) of section 59, the consent of a person named in a prospectus is required and he has given

that consent, he shall not, by reason of having given such consent, be liable under this sub-section as a person who has authorised the issue of the prospectus except in respect of an untrue statement, if any, purporting to be made by him as an expert.

(2) No person shall be liable under sub-section (1), if he proves—

(a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; * *

(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(c) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent to * * * the prospectus and gave reasonable public notice of the withdrawal and of the reason therefor; or

(d) that—

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that that person had given the consent required by section 57 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the document:

Provided that this sub-section shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 57, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert.

(3) A person who, apart from this sub-section, would, under sub-section (1), be liable by reason of his having given a consent required of him by section 57, as a person who has authorised the issue

of a prospectus in respect of an untrue statement purporting to be made by him as an expert, shall not be so liable, if he proves—

(*a*) that, having given his consent under section 57 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or

(*b*) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal, and of the reason therefor; or

(c) that he was competent to make the statement and that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, believe, that the statement was true.

(4) Where—

(*a*) the prospectus specifies the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or

(*b*) the consent of a person is required under section 57 to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus;

the directors of the company excluding those without whose knowledge or consent the prospectus was issued, and every other person who authorised the issue thereof, shall be liable to indemnify the person referred to in clause (*a*) or clause (*b*), as the case may be, against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any suit or legal proceeding brought against him in respect thereof:

Provided that a person shall not be deemed for the purposes of this sub-section to have authorised the issue of a prospectus by reason only of his having given the consent required by section 57 to the inclusion therein of a statement purporting to be made by him as an expert.

(5) Every person who, * * * * * * * * becomes liable to make any payment by virtue of this section, may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the former person * * * * * was, and the latter person was not, guilty of fraudulent misrepresentation.

(6) For the purposes of this section—

(*a*) the expression "promoter" means a promoter who was a party to the preparation of the prospectus or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; and

(*b*) the expression "expert" has the same meaning as in section 57.

62. Criminal liability for mis-statements in prospectus.—(*1*) Where a prospectus issued after the commencement of this Act includes any untrue statement, every person who authorised the issue of the prospectus, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did, up to the time of the issue of the prospectus, believe, that the statement was true.

(*2*) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given—

(*a*) the consent required by section 57 to the inclusion therein of a statement purporting to be made by him as an expert, or

(*b*) the consent required by clause (*b*) of sub-section (*3*) of section 59.

63. Document containing offer of shares or debentures for sale to be deemed prospectus.—(*1*) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of prospectuses and as to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply with the modifications specified in sub-sections (*3*), (*4*) and (*5*), and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

(*2*) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

(*a*) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(*b*) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been * * received by it.

(*3*) Section 55 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

(*a*) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and

(*b*) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected.

(*4*) Section 59 as applied by this section shall have effect as if the persons making the offer were persons named in a prospectus as directors of a company.

(*5*) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to in sub-section (*1*) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be; and any such director or partner may sign by his agent authorised in writing.

64. **Interpretation of provisions relating to prospectuses.**—(*1*) For the purposes of the foregoing provisions of this Part—

(*a*) a statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included; and

* * * * * * * *

(*b*) where the omission from a prospectus of any matter * * * * * * is calculated to mislead, the prospectus shall be deemed, in respect of such omission, to be a prospectus in which an untrue statement is included.

(*2*) For the purposes of sections 60, 61 and 62 and clause (*a*) of sub-section (*1*) of this section, the expression "included" when used with reference to a prospectus, means included in the prospectus itself or contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

65. **Newspaper advertisements of prospectus.**—Where any prospectus is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum or the signatories thereto, or the number of shares subscribed for by them.

* * * * * *

66. **Construction of references to offering shares or debentures to the public etc.**—(*1*) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (*3*) and (*4*), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances—

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation.

(4) Without prejudice to the generality of sub-section (3), a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded in the manner set forth in that sub-section.

(5) The provisions of this Act relating to private companies shall be construed in accordance with the provisions contained in sub-sections (1) to (4).

67. Penalty for fraudulently inducing persons to invest money.—Any person who, either by knowingly or recklessly making any statement, promise or forecast which is false, deceptive or misleading, or by any dishonest concealment of material facts, induces or attempts to induce another person to enter into, or to offer to enter into—

(a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting shares or debentures; or

(b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of shares or debentures, or by reference to fluctuations in the value of shares or debentures;

shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to ten thousand rupees, or with both.

* * * * * *

Allotment

68. Prohibition of allotment unless minimum subscription received.—(1) No allotment shall be made of any share capital of

a company offered to the public for subscription, unless the amount stated in the prospectus as the minimum amount which, in the opinion of the Board of directors, must be raised by the issue of share capital in order to provide for the matters specified in clause 5 of Schedule II has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company whether in cash or by a cheque or other instrument which has been paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in money and is in this Act referred to as "the minimum subscription".

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) All moneys received from applicants for shares shall be deposited and kept deposited in a Scheduled Bank until they are returned in accordance with the provisions of sub-section (5) or until the certificate to commence business is obtained under section 148.

In the event of any contravention of the provisions of this sub-section, every promoter, director or other person who is knowingly responsible for such contravention shall be punishable with fine which may extend to five thousand rupees.

(5) If the conditions aforesaid have not been complied with on the expiry of one hundred and twenty days after the first issue of the prospectus, all moneys received from applicants for shares shall be forthwith repaid to them without interest; and if any such money is not so repaid within one hundred and thirty days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of six per cent. per annum from the expiry of the one hundred and thirtieth day:

Provided that a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(6) Any condition purporting to require or bind any applicant for shares to waive compliance with any requirement of this section shall be void.

(7) This section, except sub-section (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

69. Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar.—(1) A company having a share capital, which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for

subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures, there has been delivered to the Registrar for registration a statement in lieu of prospectus signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in Part I of Schedule III and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) Every statement in lieu of prospectus delivered under sub-section (1) shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in clause 5 of Schedule III, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(3) This section shall not apply to a private company.

(4) If a company acts in contravention of sub-section (1) or (2), the company, and every director of the company who wilfully authorises or permits the contravention shall be punishable with fine which may extend to one thousand rupees.

(5) Where a statement in lieu of prospectus delivered to the Registrar under sub-section (1) includes any untrue statement, any person who authorises the delivery of the statement in lieu of prospectus for registration shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both, unless he proves either that the untrue statement was immaterial or that he had reasonable ground to believe, and did up to the time of the delivery for registration of the statement in lieu of prospectus believe, that the untrue statement was true.

(6) For the purposes of this section—

(a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

* * * * * * * * * * * *

(b) where the omission from a statement in lieu of prospectus of any matter which is required to be stated or set out therein under the provisions of Schedule III is calculated to mislead, the statement in lieu of prospectus shall be deemed, in respect of such omission, to be a statement in lieu of prospectus in which an untrue statement is included.

(7) For the purposes of sub-section (5) and clause (a) of sub-section (6), the expression "included", when used with reference

to a statement in lieu of prospectus, means included in the statement in lieu of prospectus itself or contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

70. Effect of irregular allotment.—(*1*) An allotment made by a company to an applicant in contravention of the provisions of section 68 or 69 shall be voidable at the instance of the applicant—

(*a*) within two months after the holding of the statutory meeting of the company, and not later, or

(*b*) in any case where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting, within two months after the date of the allotment, and not later.

(*2*) The allotment shall be voidable as aforesaid, notwithstanding that the company is in course of being wound up.

(*3*) If any director of a company knowingly contravenes, or wilfully authorises or permits the contravention of any of the provisions of section 68 or 69 with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

71. Applications for, and allotment of, shares and debentures.—(*1*) (*a*) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally, and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the fifth day after that on which the prospectus is first so issued or such later time, if any, as may be specified in the prospectus:

Provided that where, after a prospectus is first issued generally, a public notice is given by some person responsible under section 61 for the prospectus which has the effect of excluding, limiting or diminishing his responsibility, no allotment shall be made until the beginning of the fifth day after that on which such public notice is first given.

(*b*) Nothing in the foregoing proviso shall be deemed to exclude, limit or diminish any liability that might be incurred in the case referred to therein under the general law or this Act.

(c) The beginning of the fifth day or such later time as is mentioned in the first paragraph of clause (*a*), or the beginning of the fifth day mentioned in the second paragraph of that clause, as the case may be, is hereinafter in this Act referred to as "the time of the opening of the subscription lists".

(*2*) In sub-section (*1*), the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first so issued as a newspaper advertisement:

Provided that, if it is not so issued as a newspaper advertisement before the fifth day after that on which it is first so issued in any

other manner, the said reference shall be construed as referring to the day on which it is first so issued in any manner.

(3) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section; but, in the event of any such contravention, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

(4) In the application of this section to a prospectus offering shares or debentures for sale, sub-sections (1) to (3) shall have effect with the substitution of references to sale for references to allotment, and with the substitution for the reference to the company and every officer of the company who is in default of a reference to any person by or through whom the offer is made and who is knowingly guilty of, or wilfully authorises or permits, the contravention.

(5) An application for shares in, or debentures of, a company, which is made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the fifth day after the time of the opening of the subscription lists, or the giving, before the expiry of the said fifth day by some person responsible under section 61 for the prospectus, of a public notice having the effect under that section of excluding, limiting or diminishing the responsibility of the person giving it.

* * * * *

72. Allotment of shares and debentures to be dealt in on stock exchange.—(1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the shares or debentures offered thereby to be dealt in on a recognised stock exchange, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void, if the permission has not been applied for before the tenth day after the first issue of the prospectus or, if the permission has not been granted before the expiry of three weeks from the date of the closing of the subscription lists or such longer period not exceeding six weeks as may, within the said three weeks, be notified to the applicant for permission by or on behalf of the stock exchange.

(2) Where the permission has not been applied for as aforesaid, or has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per cent. per annum from the expiry of the eighth day:

Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank so long as the company may become liable to rapay it under sub-section (2); and if default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

(4) Any condition purporting to require or bind any applicant for shares or debentures to waive compliance with any of the requirements of this section shall be void.

(5) For the purpose of this section, permission shall not be deemed to be refused if it is intimated that the application for permission though not at present granted, will be given further consideration.

(6) This section shall have effect—

(a) in relation to any shares or debentures agreed to be taken by a person underwriting an offer thereof by a prospectus, as if he had applied therefor in pursuance of the prospectus; and

(b) in relation to a prospectus offering shares for sale, with the following modifications, namely,—

(i) references to sale shall be substituted for references to allotment;

(ii) the persons by whom the offer is made, and not the company, shall be liable under sub-section (2) to repay money received from applicants, and references to the company's liability under that sub-section shall be construed accordingly; and

(iii) for the reference in sub-section (3) to the company and every officer of the company who is in default, there shall be substituted a reference to any person by or through whom the offer is made and who is knowingly guilty of, or wilfully authorises or permits, the default.

(7) No prospectus shall state that application has been made for permission for the shares or debentures offered thereby to be dealt in on any stock exchange, unless it is a recognised stock exchange.

73. Manner of reckoning fifth, eighth and tenth days in sections 71 and 72.—In reckoning for the purposes of sections 71 and 72, the fifth day, the eighth day, or the tenth day after another day, any intervening day which is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), shall be disregarded, and if the fifth, eighth, or tenth day (as so reckoned) is itself such a public holiday, there shall for the said purposes be substituted the first day thereafter which is not such a holiday.

74. Return as to allotments.—(1) Whenever a company having a share capital makes any allotment of its shares, the company shall, within one month thereafter,—

(a) file with the Registrar a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and occupations of the allottees, and the amount, if any, paid or due and payable on each share;

(b) in the case of shares (not being bonus shares) allotted as fully or partly paid up otherwise than in cash, produce for the inspection and examination of the Registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or a contract for services or other consideration in respect of which that allotment was made, such contracts

being duly stamped, and file with the Registrar copies verified in the prescribed manner of all such contracts and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted;

(c) in the case of bonus shares, ********** file with the Registrar a return stating the number and nominal amount of the bonus shares so allotted * * * * * * * * * * * * * *.

(2) Where a contract such as is mentioned in clause (b) of sub-section (1), is not reduced to writing, the company shall, within one month after the allotment, file with the Registrar the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing, and those particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899 (II of 1899), and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 31 of that Act.

(3) If the Registrar is satisfied that in the circumstances of any particular case the period of one month specified in sub-sections (1) and (2) for compliance with the requirements of this section is inadequate, he may extend that period as he thinks fit; and if he does so, the provisions of sub-sections (1) and (2) shall have effect in that particular case as if for the said period of one month the extended period allowed by the Registrar were substituted.

(4) If default is made in complying with this section, every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues:

Provided that, in case of default in filing with the Registrar any document required to be filed by this section within the time specified therein, the company, or any officer who is in default, may apply to the Court for relief, and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence or that on other grounds it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the Court may think proper.

(5) Nothing in this section shall apply to the issue and allotment by a company of shares which under the provisions of its articles were forfeited for non-payment of calls.

Commissions and Discounts

75. Power to pay certain commissions and prohibition of payment of all other commissions, discounts, etc.—(1) A company may pay a commission to any person in consideration of—

(a) his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or

(b) his procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company.

if the following conditions are fulfilled, namely:—

(i) the payment of the commission is authorised by the articles;

(*ii*) the commission paid or agreed to be paid does not exceed five per cent. of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is less;

(*iii*) the amount or rate per cent of the commission paid or agreed to be paid is—

in the case of shares offered to the public for subscription, disclosed in the prospectus; and

in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed before the payment of the commission with the Registrar and, where a circular or notice, not being a prospectus inviting subscription for the shares, is issued, also disclosed in that circular or notice; and

(*iv*) the number of shares which persons have agreed for a commission to subscribe absolutely or conditionally is disclosed in the manner aforesaid.

(*2*) Save as aforesaid and save as provided in section 78, no company shall allot any of its shares or apply any of its capital moneys, either directly or indirectly, in payment of any commission, discount or allowance, to any person in consideration of—

(*a*) his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or

(*b*) his procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so allotted or applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(*3*) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

(*4*) A vendor to, promoter of, or other person who receives payment in shares or money from, a company shall have and shall be deemed always to have had power to apply any part of the shares or money so received in payment of any commission the payment of which, if made directly by the company, would have been legal under this section.

(*5*) If default is made in complying with the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

76. Restrictions on purchase by company, or loans by company for purchase, of its own or its holding company's shares.—(*1*) No company limited by shares, and no company limited by guarantee and having a share capital, shall have power to buy its own shares, * * * * * unless the consequent reduction of capital is effected and sanctioned in pursuance of sections 99 to 103 or of section 401.

(2) No public company, and no private company which is a subsidiary of a public company, shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company:

Provided that nothing in this sub-section shall be taken to prohibit—

(a) the lending of money by a banking company in the ordinary course of its business; or

(b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully-paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried office or employment in the company; or

(c) the making by a company of loans, within the limit laid down in sub-section (3), to persons (other than directors, managing agents, secretaries and treasurers or managers) *bona fide* in the employment of the company, with a view to enabling those persons to purchase or subscribe for fully paid shares in the company or its holding company to be held by themselves by way of beneficial ownership.

(3) No loan made to any person in pursuance of clause (c) of the foregoing proviso shall exceed in amount his salary or wages at that time for a period of six months.

(4) If a company acts in contravention of sub-sections (1) to (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one thousand rupees.

(5) Nothing in this section shall affect the right of a company to redeem any shares issued under section 79 or under any corresponding provision in any previous companies law.

Issue of Shares at Premium and Discount

77. Application of premiums received on issue of shares.—(1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account, to be called "the share premium account"; and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.

(2) The share premium account may, notwithstanding anything in sub-section (1), be applied by the company—

(a) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares;

(b) in writing off the preliminary expenses of the company;

(c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company; or

(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company.

(3) Where a company has, before the commencement of this Act, issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this Act:

Provided that any part of the premiums which has been so applied that it does not at the commencement of this Act form an identifiable part of the company's reserves within the meaning of Schedule VI, shall be disregarded in determining the sum to be included in the share premium account.

78. **Power to issue shares at a discount.**—(1) A company shall not issue shares at a discount except as provided in this section.

(2) A company may issue at a discount shares in the company of a class already issued, if the following conditions are fulfilled, namely:—

(i) the issue of the shares at a discount is authorised by a resolution passed by the company in general meeting, and sanctioned by the Court;

(ii) the resolution specifies the maximum rate of discount (not exceeding ten per cent. or such higher percentage as the Central Government may permit in any special case) at which the shares are to be issued;

(iii) not less than one year has at the date of the issue elapsed since the date on which the company was entitled to commence business; and

(iv) the shares to be issued at a discount are issued within two months after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

(3) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the Court for an order sanctioning the issue; and on any such application, the Court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(4) Every prospectus relating to the issue of the shares shall contain particulars of the discount allowed on the issue of the shares or

of so much of that discount as has not been written off at the date of the issue of the prospectus.

If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

Redeemable Preference Shares

79. Power to issue redeemable preference shares.—(*1*) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed:

Provided that—

(*a*) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption * * *;

(*b*) no such shares shall be redeemed unless they are fully paid;

(*c*) the premium, if any, payable on redemption shall have been provided for out of the profits of the company or out of the company's share premium account, before the shares are redeemed;

(*d*) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed; and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.

(*2*) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(*3*) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of its authorised share capital.

(*4*) Where in pursuance of this section, a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued; and accordingly the share capital of the company shall not, for the purpose of calculating the fees payable under section 596, be deemed to be increased by the issue of shares in pursuance of this sub-section:

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this sub-section unless the old shares are redeemed within one month after the issue of the new shares.

(5) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

(6) If a company fails to comply with the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one thousand rupees.

Further issue of Capital

80. Further issue of capital.—(1) Where at any time subsequent to the first allotment of shares in a company, it is proposed to increase the subscribed capital of the company by the issue of new shares, then, subject to any directions to the contrary which may be given by the company in general meeting, and subject only to those directions—

(a) such new shares shall be offered to the persons who, at the date of the offer, are holders of the equity shares of the company, in proportion, as nearly as circumstances admit, to the capital paid up on those shares at that date;

(b) the offer aforesaid shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days from the date of the offer within which the offer, if not accepted, will be deemed to have been declined;

(c) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (b) shall contain a statement of this right;

(d) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of directors may dispose of them in such manner as they think most beneficial to the company.

* * * * * * * * *

Explanation.—In this sub-section, "equity share capital" and "equity shares" have the same meaning as in section 84.

(2) Nothing in clause (c) of sub-section (1) shall be deemed—

(a) to extend the time within which the offer should be accepted, or

(b) to authorise any person to exercise the right of renunciation for a second time, on the ground that the person in whose favour the renunciation was first made has declined to take the shares comprised in the renunciation.

(3) This section shall not apply to a private company.

PART IV

SHARE CAPITAL AND DEBENTURES

Nature, Numbering and Certificate of Shares

81. Nature of shares.—The shares or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.

82. Numbering of shares.—Each share in a company having a share capital shall be distinguished by its appropriate number.

* * * * * * * *

83. Certificate of shares.—A certificate under the common seal of the company, specifying any shares held by any member, shall be *prima facie* evidence of the title of the member to such shares.

Kinds of share capital

84. Two kinds of share capital.—(*1*) "preference share capital" means, with reference to any company limited by shares, whether formed before or after the commencement of this Act, that part of the share capital of the company which fulfils both the following requirements, namely:—

(*a*) that as respects dividends, it carries or will carry a preferential right to be paid a fixed amount or an amount calculated at a fixed rate, which may be either free of or subject to income-tax; and

(*b*) that as respects capital, it carries or will carry, on a winding up, a preferential right to be repaid the amount of the capital paid up or deemed to have been paid up, whether or not there is a preferential right to the payment of either or both of the following amounts, namely:—

(*i*) any money remaining unpaid, in respect of the amounts specified in clause (*a*), up to the date of the winding up; and

(*ii*) any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company.

Explanation.—Capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:—

(*i*) that, as respects dividends, in addition to the preferential right to the amount specified in clause (*a*), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

(*ii*) that, as respects capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in clause (*b*), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential

right in any surplus which may remain after the entire capital has been repaid.

(2) "equity share capital" means, with reference to any such company, all share capital which is not preference share capital.

(3) The expressions "preference share" and "equity share" shall be construed accordingly.

85. New issues of share capital to be only of two kinds.—The share capital of a company limited by shares formed after the commencement of this Act, or issued after such commencement, shall be of two kinds only, namely:—

(*a*) equity share capital; and

(*b*) preference share capital.

86. Voting rights.—(*1*) Subject to the provisions of sections 87 and 88 and sub-section (*2*) of section 91—

(*a*) every member of a company limited by shares and holding any equity share capital therein shall have a right to vote, in respect of such capital, on every resolution placed before the company; and

(*b*) his voting right on a poll shall be in proportion to his share of the paid up equity capital of the company.

(*2*) (*a*) Subject as aforesaid and save as provided in clause (*b*) of this sub-section, every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, have a right to vote only on resolutions placed before the company which directly affect the rights attached to his preference shares.

Explanation.—Any resolution for winding up the company or for the reduction of its share capital shall be deemed directly to affect the rights attached to preference shares within the meaning of this clause.

(*b*) Subject as aforesaid, every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, be entitled to vote on every resolution placed before the company at any meeting, if the dividend due on such capital or any part of such dividend has remained unpaid—

(*i*) in the case of cumulative preference shares, in respect of an aggregate period of not less than two years preceding the date of commencement of the meeting; and

(*ii*) in the case of non-cumulative preference shares, *either* in respect of a period of not less than two years ending with the expiry of the financial year immediately preceding the commencement of the meeting *or* in respect of an aggregate period of not less than three years comprised in the six years ending with the expiry of the financial year aforesaid.

Explanation I.—For the purposes of this clause, dividend shall be deemed to be due on preference shares on the last day specified for

the payment of such dividend in the articles or other instrument executed by the company, even though no dividend has been declared by the company on such capital.

Explanation II.—"Cumulative preference share" means a preference share in respect of which any amount agreed to be paid, whether conditionally or unconditionally, by way of dividend, or any part of such amount, which remains unpaid during any year, half-year or other period remains due and is payable in priority to the dividend payable on all or any of the other shares, in the next or in any succeeding year, half-year, or other period; and "non-cumulative preference share" means any other preference share.

(c) Where the holder of any preference share has a right to vote on any resolution in accordance with the provisions of this sub-section, his voting right on a poll, as the holder of such share, shall, subject to the provisions of sections 87 and 88 and sub-section (2) of section 91, be in the same proportion as the capital paid up in respect of the preference share bears to the total paid up equity capital of the company.

87. Prohibition of issue of shares with disproportionate rights.—No company formed after the commencement of this Act, or issuing any share capital after such commencement, shall issue any shares (not being preference shares) which carry voting rights or rights in the company as to dividend, capital or otherwise which are disproportionate to the rights attaching to the holders of other shares (not being preference shares).

88. Termination of disproportionately excessive voting rights in existing companies.—(1) If at the commencement of this Act any shares, by whatever name called, of any existing company limited by shares carry voting rights in excess of the voting rights attaching under sub-section (1) of section 86 to equity shares in respect of which the same amount of capital has been paid up, the company shall, within a period of three years from the commencement of this Act, reduce the voting rights in respect of the shares first mentioned so as to bring them into conformity with the voting rights attached to such equity shares under sub-section (1) of section 86.

(2) Before the voting rights are brought into such conformity, the holders of the shares in question shall not exercise in respect thereof voting rights in excess of what would have been exercisable by them if the capital paid up on their shares had been equity share capital, in respect of the following resolutions placed before the company, namely:—

(a) any resolution relating to the appointment or re-appointment of a managing agent or secretaries and treasurers, or to any variation in the terms of an agreement between the company and its managing agent or secretaries and treasurers;

(b) any resolution relating to the appointment of buying or selling agents;

(c) any resolution relating to the grant of a loan or to the giving of a guarantee or any other financial assistance, to any

other body corporate having any person as managing agent or secretaries and treasurers who is also either the managing agent or the secretaries and treasurers of the company or an associate of such managing agent or secretaries and treasurers.

(3) If, by reason of the failure of the requisite proportion of any class of members to agree, it is not found possible to comply with the provisions of sub-section (1), the company shall, within one month of the expiry of the period of three years mentioned in that sub-section, apply to the Court for an order specifying the manner in which the provisions of that sub-section shall be complied with; and any order made by the Court in this behalf shall bind the company and all its shareholders.

If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one thousand rupees.

(4) The Central Government may, in respect of any shares issued by a company before the 1st day of December, 1949, exempt the company from the requirements of sub-sections (1), (2) and (3), wholly or in part, if in the opinion of the Central Government the exemption is required either in the public interest or in the interests of the company or of any class of shareholders therein or of the creditors or any class of creditors thereof.

Every order of exemption made by the Central Government under this sub-section shall be laid before both Houses of Parliament as soon as may be after it is made.

89. Savings.—Nothing in sections 84 to 88 shall,—

(*a*) in the case of any shares issued before the commencement of this Act, affect any voting rights attached to the shares save as otherwise provided in section 88, or any right attached to the shares as to dividend, capital or otherwise, or

(*b*) apply to a private company, unless it is a subsidiary of a public company.

Miscellaneous provisions as to share capital

90. Calls on shares of same class to be made on uniform basis.—Where after the commencement of this Act, any calls for further share capital are made on shares, such calls shall be made on a uniform basis on all shares falling under the same class.

Explanation.—For the purposes of this section, shares of the same nominal value on which different amounts have been paid up shall not be deemed to fall under the same class.

91. Power of company to accept unpaid share capital, although not called up.—(1) A company may, if so authorised by its articles, accept from any member the whole or a part of the amount remaining unpaid on any shares held by him although no part of that amount has been called up.

(2) The member shall not however be entitled, where the company is one limited by shares, to any voting rights in respect of the moneys so paid by him until the same would, but for such payment, become presently payable.

92. Payment of dividend in proportion to amount paid up.—A company may, if so authorised by its articles, pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

93. Power of limited company to alter its share capital.—(1) A limited company having a share capital, may, if so authorised by its articles, alter the conditions of its memorandum as follows, that is to say, it may—

(a) increase its share capital by such amount as it thinks expedient * * by issuing new shares; * * * *

(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(c) convert all or any of its fully paid up shares into stock, and reconvert that stock into fully paid up shares of any denomination;

(d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section shall be exercised by the company in general meeting and shall not require to be confirmed by the Court.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

94. Notice to Registrar of consolidation of share capital, conversion of shares into stocks, etc.—(1) If a company having a share capital has—

(a) consolidated and divided its share capital into shares of larger amount than its existing shares; * *

(b) converted any shares into stock; * *

(c) re-converted any stock into shares; * *

(*d*) sub-divided its shares or any of them; * *

(*e*) redeemed any redeemable preference shares; or

(*f*) cancelled any shares, otherwise than in connection with a reduction of share capital under sections 99 to 103;

the company shall within one month after doing so, give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, sub-divided, redeemed or cancelled, or the stock reconverted.

(*2*) The Registrar shall thereupon record the notice, and make any alterations which may be necessary in the company's memorandum or articles or both.

(*3*) If default is made in complying with sub-section (*1*), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

95. Effect of conversion of shares into stock.—Where a company having a share capital has converted any of its shares into stock, and given notice of the conversion to the Registrar, all the provisions of this Act which are applicable to shares only, shall cease to apply as to so much of the share capital as is converted into stock.

* * * * * * * * * * *

96. Notice of increase of share capital or of members.—(*1*) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the authorised capital, and where a company, not being a company limited by shares, has increased the number of its members beyond the registered number, it shall file with the Registrar, notice of the increase of capital or of members within fifteen days after the passing of the resolution authorising the increase; and the Registrar shall record the increase and also make any alterations which may be necessary in the company's memorandum or articles or both.

(*2*) The notice to be given as aforesaid shall include particulars of the classes of shares affected and the conditions, if any, subject to which the new shares have been or are to be issued.

(*3*) If default is made in complying with this section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

97. Power of unlimited company to provide for reserve share capital on re-registration.—An unlimited company having a share capital may, by its resolution for registration as a limited company in pursuance of this Act, do either or both of the following things, namely:—

(*a*) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to

the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;

(*b*) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

98. Reserve liability of limited company.—A limited company may, by special resolution, determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in that event and for those purposes.

Reduction of Share Capital

99. Special resolution for reduction of share capital.—(*1*) Subject to confirmation by the Court, a company limited by shares or a company limited by guarantee and having a share capital, may, if so authorised by its articles, by special resolution, reduce its share capital in any way; and in particular and without prejudice to the generality of the foregoing power, may—

(*a*) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; * *

(*b*) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost, or is unrepresented by available assets; or

(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company;

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(*2*) A special resolution under this section is in this Act referred to as "a resolution for reducing share capital".

100. Application to Court for confirming order, objections by creditors, and settlement of list of objecting creditors.—(*1*) Where a company has passed a resolution for reducing share capital, it may apply, by petition, to the Court for an order confirming the reduction.

(*2*) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, the following provisions shall have effect, subject to the provisions of sub-section (*3*):—

(*a*) every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;

(*b*) the Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;

(c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount:—

(*i*) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then, the full amount of the debt or claim;

(*ii*) if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, then, an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

(*3*) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if, having regard to any special circumstances of the case, it thinks proper so to do, direct that the provisions of sub-section (*2*) shall not apply as regards any class or any classes of creditors.

101. Order confirming reduction and powers of Court on making such order.—(*1*) The Court, if satisfied with respect to every creditor of the company who under section 100 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged, or has determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(*2*) Where the Court makes any such order, it may—

(*a*) if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words "and reduced"; and

(*b*) make an order requiring the company to publish as the Court directs the reasons for reduction or such other information in regard thereto as the Court may think expedient with a view to giving proper information to the public, and, if the Court thinks fit, the causes which led to the reduction.

(*3*) Where a company is ordered to add to its name the words "and reduced", those words shall, until the expiration of the period

specified in the order, be deemed to be part of the name of the company.

102. Registration of order and minute of reduction.—(*1*) The Registrar—

(*a*) on production to him of an order of the Court confirming the reduction of the share capital of a company; and

(*b*) on the delivery to him of a certified copy of the order and of a minute approved by the Court showing, with respect to the share capital of the company as altered by the order, (*i*) the amount of the share capital, (*ii*) the number of shares into which it is to be divided, (*iii*) the amount of each share, and (*iv*) the amount, if any, at the date of the registration deemed to be paid up on each share;

shall register the order and minute.

(*2*) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order shall take effect.

(*3*) Notice of the registration shall be published in such manner as the Court may direct.

(*4*) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(*5*) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein.

(*6*) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning and for the purposes of section 39.

103. Liability of members in respect of reduced shares.—(*1*) * * * * * A member of the company, past or present, shall not be liable, in respect of any share, to any call or contribution exceeding in amount the difference, if any, between * * the amount paid on the share, or the reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and * * the amount of the share as fixed by the minute of reduction:

Provided that, if any creditor entitled in respect of any debt or claim to object to the reduction of share capital is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, not entered on the list of creditors

and after the reduction, the company is unable, within the meaning of section 432, to pay the amount of his debt or claim, then—

(*a*) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day immediately before the said date; and

(*b*) if the company is wound up, the Court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(*2*) Nothing in this section shall affect the rights of the contributories among themselves.

104. Penalty for concealing name of creditor, etc.—If any officer of the company—

(*a*) knowingly conceals the name of any creditor entitled to object to the reduction; * *

(*b*) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or

(*c*) abets or is privy to any such concealment or misrepresentation as aforesaid;

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Variation of Shareholders' Rights

105. Alteration of rights of holders of special classes of shares.—(*1*) In the case of a company the share capital of which is divided into different classes of shares, provision may be made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to—

(*a*) the consent of the holders of any specified proportion, not being less than three-fourths, of the issued shares of that class, or

(*b*) the sanction of a resolution passed at a separate meeting of the holders of those shares, and supported by the votes of the holders of any specified proportion, not being less than three-fourths, of those shares.

(*2*) Any provision in the memorandum or articles of a company in force immediately before the commencement of this Act which specifies for the purpose aforesaid any proportion which is less than three-fourths of the shareholders of the class concerned shall, after such commencement, have effect as if a proportion of three-fourths had been specified therein instead.

106. Rights of dissentient share holders.—(*1*) If, in pursuance of any provision such as is referred to in section 105, the rights attached to any such class of shares are at any time varied the holders of not less in the aggregate than ten per cent. of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Court to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Court.

(*2*) An application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(*3*) On any such application, the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation; and shall, if not so satisfied, confirm the variation.

(4) The decision of the Court on any such application shall be final.

(5) The company shall, within fifteen days after the service on the company of any order made on any such application, forward a copy of the order to the Registrar; and if default is made in complying with this provision the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

* * * * *

Transfer of shares and debentures

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107. Transfer not to be registered except on production of instrument of transfer.—(*1*) A company shall not register a transfer of shares in, or debentures of, the company, unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee, has been delivered to the company along with the certificate

relating to the shares or debentures, or if no such certificate is in existence, along with the letter of allotment of the shares or debentures * * * * * * :

Provided that where, on an application in writing made to the company by the transferee and bearing the stamp required for an instrument of transfer, it is proved to the satisfaction of the Board of directors * * * that the instrument of transfer signed by or on behalf of the transferor and by or on behalf of the transferee has been lost, the company may register the transfer on such terms as to indemnity as the Board may think fit:

Provided further that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in, or debentures of, the company has been transmitted by operation of law.

(2) In the case of a company having no share capital, sub-section (1) shall apply as if the references therein to shares were references instead to the interest of the member in the company.

108. Transfer by legal representative.—A transfer of the share or other interest in a company of a deceased member thereof made by his legal representative shall, although the legal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

109. Application for transfer.—(1) An application for the registration of a transfer of the shares or other interest of a member in a company may be made either by the transferor or by the transferee.

(2) Where the application is made by the transferor and relates to partly paid shares, the transfer shall not be registered, unless the company gives notice of the application to the transferee and the transferee makes no objection to the transfer within two weeks from the receipt of the notice.

(3) For the purposes of sub-section (2), notice to the transferee shall be deemed to have been duly given if it is despatched by prepaid registered post to the transferee at the address given in the instrument of transfer, and shall be deemed to have been duly delivered at the time at which it would have been delivered in the ordinary course of post.

110. Power to refuse registration and appeal against refusals.—(1) Nothing in sections 107 and 109 shall prejudice any power of the company under its articles to refuse to register the transfer of any shares or interest of a member in, or debentures of, the company.

(2) If, in pursuance of any such power, a company refuses to register any such transfer, it shall, within two months from the date on which the instrument of transfer was delivered to the company, send notice of the refusal to the transferee and the transferor.

If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(3) The transferor or transferee may, where the company is a public company or a private company which is a subsidiary of a public company, appeal to the Central Government against any refusal of the company to register the transfer, or against any failure on its part, within the period referred to in sub-section (2), either to register the transfer or to send notice of its refusal to register the same.

(4) An appeal by the transferor or transferee to the Central Government under sub-section (3) shall be made—

(a) in case the appeal is against the refusal to register a transfer, within two months of the receipt by him of the notice of refusal; and

(b) in case the appeal is against the failure referred to in sub-section (3), within two months from the expiry of the period referred to in sub-section (2).

(5) The Central Government shall, after causing reasonable notice to be given to the company, the transferor and the transferee and giving them a reasonable opportunity to make their representations, if any, in writing, by order, direct either that the transfer shall be registered by the company or that it need not be registered by it; and in the former case, the company shall give effect to the decision forthwith.

(6) The Central Government may, in its order aforesaid, give such incidental and consequential directions as to the payment of costs or otherwise as it thinks fit.

(7), * * * * * * All proceedings in appeals under sub-section (3) or in relation thereto shall be confidential, and no suit, prosecution or other legal proceeding shall lie in respect of any allegation made in such proceedings, whether orally or otherwise.

111. Certification of transfers.—(1) The certification by a company of any instrument of transfer of shares in, or debentures of, the company, shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a *prima facie* title to the shares or debentures in the transferor named in the instrument of transfer, but not as a representation that the transferor has any title to the shares or debentures.

(2) Where any person acts on the faith of an erroneous certification made by a company negligently, the company shall be under the same liability to him as if the certification had been made fraudulently.

(3) For the purposes of this section—

(*a*) an instrument of transfer shall be deemed to be certificated if it bears the words "certificate lodged" or words to the like effect;

(*b*) the certification of an instrument of transfer shall be deemed to be made by a company, if—

(*i*) the person issuing the certificated instrument is a person authorised to issue such instruments of transfer on the company's behalf; and

(*ii*) the certification is signed by any officer or servant of the company or any other person, authorised to certificate transfers on the company's behalf, or if a body corporate has been so authorised, by any officer or servant of that body corporate,

(c) a certification shall be deemed to be signed by any person, if it purports to be authenticated by his signature * * * * * * * unless it is shown that the signature * * was * * placed there neither by himself nor by any person authorised to use the signature * * for the purpose of certificating transfers on the company's behalf.

Issue of Certificate of Shares, etc.

112. Limitation of time for issue of certificates.—(*1*) Every company shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within three months after the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

The expression "transfer", for the purposes of this sub-section, means a transfer duly stamped and otherwise valid, and does not include any transfer which the company is for any reason entitled to refuse to register and does not register.

(2) If default is made in complying with sub-section (*1*), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(3) If any company on which a notice has been served requiring it to make good any default in complying with the provisions of sub-section (*1*), fails to make good the default within ten days after the service of the notice, the Court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as may be specified in the order; and any such order may provide that all costs of and incidental

to the application shall be borne by the company or by any officer of the company responsible for the default.

Share warrants

113. Issue and effect of share warrants to bearer.—(*1*) A public company limited by shares, if so authorised by its articles, may, with the previous approval of the Central Government, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares specified in the warrant.

(*2*) The warrant aforesaid is in this Act referred to as a "share warrant".

* (*3*) A share warrant shall entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant.

114. Share warrants and entries in register of members.—(*1*) On the issue of a share warrant, the company shall strike out of its register of members the name of the member then entered therein as holding the shares specified in the warrant as if he had ceased to be a member, and shall enter in that register the following particulars, namely:—

(*a*) the fact of the issue of the warrant;

(b) a statement of the shares included in the warrant, distinguishing each share by its number ** ; and

(c) the date of the issue of the warrant.

(*2*) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering the warrant for cancellation and paying such fee to the company as the Board of directors may from time to time determine, to have his name entered as a member in the register of members.

(*3*) The company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of a bearer of a share warrant in respect of the shares therein specified, without the warrant being surrendered and cancelled.

(*4*) Until the warrant is surrendered, the particulars specified in sub-section (*1*) shall be deemed to be the particulars required by this Act to be entered in the register of members; and, on the surrender, the date of the surrender shall be entered in that register.

(*5*) Subject to the provisions of this Act, the bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, ****** for any purposes defined in the articles.

(*6*) If ** default is made in complying with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

Penalty for personation of shareholder

115. Penalty for personation of shareholder.—If any person deceitfully personates an owner of any share or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such share or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

Special Provisions as to Debentures

116. Debentures with voting rights not to be issued hereafter.—No company shall, after the commencement of this Act, issue any debentures carrying voting rights at any meeting of the company, whether generally or in respect of particular classes of business.

117. Right of debenture holders and members to have copies of trust deed.—(*1*) A copy of any trust deed for securing any issue of debentures shall be forwarded to the holder of any such debentures or any member of the company, at his request and within seven days of the making thereof, on payment—

(*a*) in the case of a printed trust deed, of the sum of one rupee; and

(*b*) in the case of a trust deed which has not been printed, of six annas for every one hundred words or fractional part thereof required to be copied.

(*2*) If a copy is refused, or is not forwarded within the time specified in sub-section (*1*), the company, and every officer of the company who is in default, shall be punishable, for each offence, with fine which may extend to fifty rupees, and with a further fine which may extend to twenty rupees for every day during which the offence continues.

(*3*) The Court may also, by order, direct that the copy required shall forthwith be sent to the person requiring it.

(*4*) The trust deed referred to in sub-section (*1*) shall also be open to inspection by any member or debenture holder of the company in the same manner, to the same extent, and on payment of the same fees, as if it were the register of members of the company.

118. Liability of trustees for debenture holders.—(*1*) Subject to the provisions of this section, any provision contained in a trust deed for securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, liability for breach of trust, where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

(*2*) Sub-section (*1*) shall not invalidate—

(*a*) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(*b*) any provision enabling such a release to be given—

(*i*) on the agreement thereto of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy, at a meeting summoned for the purpose; and

(*ii*) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

(*3*) Sub-section (*1*) shall not operate—

(*a*) to invalidate any provision in force at the commencement of this Act so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under sub-section (*4*) remains a trustee of the deed in question; or

(*b*) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.

(*4*) While any trustee of a trust deed remains entitled to the benefit of a provision saved by sub-section (*3*), the benefit of that provision may be given either—

(*a*) to all trustees of the deed, present and future; or

(*b*) to any named trustees or proposed trustees thereof;

by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person or, where proxies are permitted, by proxy, at a meeting called for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for calling meetings, at a meeting called for the purpose in any manner approved by the Court.

119. **Perpetual debentures.**—A condition contained in any debenture or in any deed for securing any debentures, whether issued or executed before or after the commencement of this Act, shall not be invalid by reason only that thereby, the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

120. **Power to re-issue redeemed debentures in certain cases.**—(*1*) Where either before or after the commencement of this Act, a company has redeemed any debentures previously issued, then,—

(*a*) unless any provision to the contrary, whether express or implied, is contained in the articles, or in the conditions of issue, or in any contract entered into by the company; or

* * * * * *

(*b*) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled;

the company shall have, and shall be deemed always to have had, the right to keep the debentures alive for the purposes of re-issue; and in exercising such a right, the company shall have, and shall be deemed always to have had, power to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place.

(2) Upon such re-issue, the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had never been redeemed.

(3) Where with the object of keeping debentures alive for the purpose of re-issue, they have, either before or after the commencement of this Act, been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(4) Where a company has, either before or after the commencement of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(5) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped; but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(6) Nothing in this section shall prejudice—

(a) the operation of any decree or order of a Court of competent jurisdiction pronounced or made before the twenty-fifth day of February, 1910, as between the parties to the proceedings in which the decree or order was made; * *

(b) where an appeal has been preferred against any such decree or order, the operation of any decree or order passed on such appeal, as between the parties to such appeal; or

(c) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

121. Specific performance of contract to subscribe for debentures.—A contract with a company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

122. Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.—(1) Where either—

(a) a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or

(b) possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge,

then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part VII relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) In the application of the provisions aforesaid, section 527 shall be construed as if the provision for payment of accrued holiday remuneration becoming payable on the termination of employment before or by the effect of the winding-up order or resolution were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of the appointment of the receiver or possession being taken as aforesaid.

(3) The periods of time mentioned in the said provisions of Part VII shall be reckoned from the date of appointment of the receiver, or of possession being taken as aforesaid, as the case may be.

(4) Where the date referred to in sub-section (3) occurred before the commencement of this Act, sub-sections (1) and (3) shall have effect with the substitution, for references to the said provisions of Part VII, of references to the provisions which, by virtue of sub-section (9) of section 527, are deemed to remain in force in the case therein mentioned, and sub-section (2) shall not apply.

(5) Any payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

PART V

REGISTRATION OF CHARGES

123. "Charge" to include mortgage in this Part.—In this Part, the expression "charge" includes a mortgage.

124. Certain charges to be void against liquidator or creditors if not registered.—(1) Subject to the provisions of this Part, every charge created on or after the 1st day of April, 1914, by a company and being a charge to which this section applies shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner, are filed with the Registrar for registration in the manner required by this Act within twenty-one days after the date of its creation.

(2) Nothing in sub-section (1) shall prejudice any contract or obligation for the repayment of the money secured by the charge.

(3) When a charge becomes void under this section, the money secured thereby shall immediately become payable.

(4) This section applies to the following charges:—

(a) a charge for the purpose of securing any issue of debentures;

(b) a charge on uncalled share capital of the company;

(*c*) a charge on any immovable property, wherever situate, or any interest therein * * * * * * * * * *;

(*d*) a charge on any book debts of the company;

(*e*) a charge, not being a pledge, on any movable property of the company * * *;

(*f*) a floating charge on the undertaking or any property of the company including stock-in-trade;

(*g*) a charge on calls made but not paid;

(*h*) a charge on a ship or any share in a ship;

(*i*) a charge on goodwill, on a patent or a licence under a patent, on a trade mark, or on a copyright or a licence under a copyright.

(*5*) In the case of a charge created out of India, and comprising solely property situate outside India, twenty-one days after the date on which the instrument creating or evidencing the charge or copy thereof could, in due course of post and if despatched with due diligence, have been received in India shall be substituted for twenty-one days after the date of the creation of the charge, as the time within which the particulars and instrument or copy are to be filed with the Registrar.

(*6*) Where a charge is created in India but comprises property outside India, the instrument creating or purporting to create the charge under this section or a copy thereof verified in the prescribed manner, may be filed for registration, notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(*7*) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not, for the purposes of this section, be treated as a charge on those book debts.

(*8*) The holding of debentures entitling the holder to a charge on immovable property shall not, for the purposes of this section, be deemed to be an interest in immovable property.

* * * * *

125. Date of notice of charge.—Where any charge on any property of a company required to be registered under section 124 has been so registered, any person acquiring such property or any part thereof, or any share or interest therein, shall be deemed to have notice of the charge as from the date of such registration.

126. Registration of charges on properties acquired subject to charge.—(*1*) Where a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Registrar for registration in the manner required

by this Act within twenty-one days after the date on which the acquisition is completed:

Provided that, if the property is situate and the charge was created outside India, twenty-one days after the date on which the copy of the instrument could, in due course of post and if despatched with due diligence, have been received in India shall be substituted for twenty-one days after the completion of the acquisition as the time within which the particulars and the copy of the instrument are to be delivered to the Registrar.

(*2*) If default is made in complying with sub-section (*1*), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

127. Particulars in case of series of debentures entitling holders *pari passu*.—Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall, for the purposes of section 124, be sufficient, if there are filed with the Registrar, within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars:—

(*a*) the total amount secured by the whole series;

(*b*) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined;

(*c*) a general description of the property charged; and

(*d*) the names of the trustees, if any, for the debenture holders;

together with the deed containing the charge, or a copy of the deed verified in the prescribed manner, or if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be filed with the Registrar, for entry in the register, particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

128. Particulars in case of commission etc., on debentures.—Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be filed for registration under sections 124 and 127 shall include particulars as to the amount or rate per cent of the commission, discount or allowance so paid or made; but an omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not, for the purposes of this section, be treated as the issue of the debentures at a discount.

129. Register of charges to be kept by Registrar.—(*1*) The Registrar shall keep, with respect to each company, a register in the prescribed form of all the charges requiring registration under this Part, and shall, on payment of the prescribed fee, enter in the register, with respect to every such charge, the following particulars:—

(*a*) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in sections 127 and 128;

(*b*) in the case of any other charge—

(*i*) if the charge is a charge created by the company, the date of its creation; and if the charge was a charge existing on property acquired by the company, the date of the acquisition of the property;

(*ii*) the amount secured by the charge;

(*iii*) short particulars of the property charged; and

(*iv*) the persons entitled to the charge.

(*2*) After making the entry required by sub-section (*1*), the Registrar shall return the instrument, if any, or the verified copy thereof, as the case may be, filed in accordance with the provisions of this Part, to the person filing the same.

(*3*) The register kept in pursuance of this section shall be open to inspection by any person on payment of a fee of one rupee for each inspection.

130. Index to register of charges.—The Registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the charges registered with him in pursuance of this Part.

131. Certificate of registration.—The Registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part, stating the amount thereby secured; and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

132. Endorsement of certificate of registration on debenture or certificate of debenture stock.—(*1*) The company shall cause a copy of every certificate of registration given under section 131, to be endorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the charge so registered:

Provided that nothing in this sub-section shall be construed as requiring a company to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the company before the charge was created.

(*2*) If any person knowingly delivers, or wilfully authorises or permits the delivery of, any debenture or certificate of debenture stock which, under the provisions of sub-section (*1*), is required to have endorsed on it a copy of a certificate of registration without the copy being so endorsed upon it, he shall, without prejudice to any other liability, be punishable with fine which may extend to one thousand rupees.

133. Duty of company as regards registration and right of interested party.—(*1*) It shall be the duty of a company to file with the Registrar for registration the particulars of every charge created by the company, and of every issue of debentures of a series, requiring registration under this Part; but registration of any such charge may also be effected on the application of any person interested therein.

(*2*) Where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar on the registration.

134. Provisions of Part to apply to modification of charges.—Whenever the terms or conditions, or the extent or operation, of any charge registered under this Part are or is modified, it shall be the duty of the company to send to the Registrar the particulars of such modification, and the provisions of this Part as to registration of a charge shall apply to such modification of the charge.

135. Copy of instrument creating charge to be kept by company at registered office.—Every company shall cause a copy of every instrument creating any charge requiring registration under this Part to be kept at the registered office of the company:

Provided that, in the case of a series of uniform debentures, a copy of one debenture of the series shall be sufficient.

136. Entry in register of charges of appointment of receiver or manager.—(*1*) If any person obtains an order for the appointment of a receiver of, or of a person to manage, the property of a company, or if any person appoints such receiver or person under any powers contained in any instrument, he shall, within fifteen days from the date of the passing of the order or of the making of the appointment under the said powers, give notice of the fact to the Registrar; and the Registrar shall, on payment of the prescribed fee, enter the fact in the register of charges.

(*2*) Where any person so appointed * * * * * * * under the powers contained in any instrument ceases to act as such, he shall, on so ceasing, give to the Registrar notice to that effect; and the Registrar shall enter the notice in the register of charges.

(*3*) If any person makes default in complying with the requirements of sub-section (*1*) or (*2*), he shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

137. Company to report satisfaction and procedure thereafter.—(*1*) The company shall give intimation to the Registrar of the payment or satisfaction, in whole or in part, of any charge relating to the company and requiring registration under this Part, within twenty-one days from the date of such payment or satisfaction.

(*2*) The Registrar shall, on receipt of such intimation, cause a notice to be sent to the holder of the charge calling upon him to show cause within a time (not exceeding fourteen days) specified in such notice, why payment or satisfaction should not be recorded as intimated to the Registrar.

(3) If no cause is shown, the Registrar shall order that a memorandum of satisfaction in whole or in part, as the case may be, shall be entered in the register of charges.

(4) If cause is shown, the Registrar shall record a note to that effect in the register, and shall inform the company that he has done so.

* * * * * * * * * *

(5) Nothing in this section shall be deemed to affect the power of the Registrar to make an entry in the register of charges under section 138 otherwise than on receipt of an intimation from the company.

138. Power of Registrar to make entries of satisfaction and release * * * * in absence of intimation from company.—The Registrar may, on evidence being given to his satisfaction with respect to any registered charge,—

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part ; or

(b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking;

** enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, notwithstanding the fact that no intimation has been received by him from the company.

139. Copy of memorandum of satisfaction to be furnished to company.—Where the Registrar enters a memorandum of satisfaction in whole or in part, in pursuance of section 137 or 138, he shall, if so required, furnish the company with a copy of the memorandum.

140. Rectification by Court of register of charges.—(1) The Court, on being satisfied—

(a) that the omission to register a charge within the time required by this Part or that the omission or mis-statement of any particular with respect to any such charge or any memorandum of satisfaction or other entry made in pursuance of section 137 or 138 was accidental, or due to inadvertence, or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or

(b) that on other grounds it is just and equitable to grant relief,

may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the time for the registration shall be extended or, as the case may be, that the omission or mis-statement shall be rectified.

(2) The Court may make such order as to the costs of an application under sub-section (1) as it thinks fit.

(3) Where the Court extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.

141. Penalties.—(1) If default is made in filing with the Registrar for registration the particulars—

(a) of any charge created by the company; * *

(b) of the payment or satisfaction, in whole or in part, of a debt in respect of which a charge has been registered under this part ; or

(c) of the issues of debentures of a series;

requiring registration with the Registrar under the provisions of this Part, then, unless the registration has been effected on the application of some other person, the company, and every officer of the company or other person who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the other requirements of this Act as to the registration with the Registrar of any charge created by the company or of any fact connected therewith, the company, and every officer of the company who is in default, shall, without prejudice to any other liability, be punishable with fine which may extend to one thousand rupees.

142. Company's register of charges.—(1) Every company shall keep at its registered office a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or on any property of the company, giving in each case—

(i) a short description of the property charged;

(ii) the amount of the charge; and

(iii) except in the case of securities to bearer, the names of the persons entitled to the charge.

(2) If any officer of the company knowingly omits, or wilfully authorises or permits the omission of, any entry required to be made in pursuance of sub-section (1), he shall be punishable with fine which may extend to five hundred rupees.

143. Right to inspect copies of instruments creating charges and company's register of charges.—(1) The copies of instruments creating charges kept * * * * * * in pursuance of section 135 and the register of charges kept in pursuance of section 142, shall be open during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day are allowed for inspection) to the inspection of any creditor or member of the company without fee, at the registered office of the company.

(2) The register of charges kept in pursuance of section 142 shall also be open, during business hours but subject to the reasonable restrictions aforesaid, to the inspection of any other person on payment of a fee of one rupee for each inspection, at the registered office of the company.

(3) If inspection of the said copies or register is refused, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees and with a further fine which may extend to twenty rupees for every day during which the refusal continues.

(4) The Court may also by order compel an immediate inspection of the said copies or register.

144. Application of Part to charges requiring registration under it but not under previous law.—In respect of any charge created before the commencement of this Act which, if this Act had been in force at the relevant time, would have had to be registered by the company in pursuance of this Part but which did not require registration under the Indian Companies Act, 1913 (VII of 1913), and in respect of all matters relating to such charge, the provisions of this Part shall apply and have effect in all respects, as if the date of commencement of this Act had been substituted therein for the date of creation of the charge, or the date of completion of the acquisition of the property subject to the charge, as the case may be.

PART VI

MANAGEMENT AND ADMINISTRATION

CHAPTER I

* * General Provisions

Registered Office and Name

145. Registered office of company.—(1) A company shall, as from the day on which it begins to carry on business, or as from the twenty-eighth day after the date of its incorporation, whichever is earlier, have a registered office to which all communications and notices may be addressed.

(2) Notice of the situation of the registered office, and of every change therein, shall be given within twenty-eight days after the date of the incorporation of the company or after the date of the change, as the case may be, to the Registrar who shall record the same:

Provided that except on the authority of a special resolution passed by the company, the registered office of the company shall not be removed—

(a) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act, or where it may be situated later by virtue of a special resolution passed by the company; and

(b) in the case of any other company, outside the local limits of any city, town or village where such office is first situated, or where it may be situated later by virtue of a special resolution passed by the company.

(3) The inclusion in the annual return of a company of a statement as to the address of its registered office shall not be taken to satisfy the obligation imposed by sub-section (2).

(4) If default is made in complying with the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which it so carries on business.

146. Publication of name by company.—(1) Every company—

(a) shall paint or affix its name, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible; and if the characters employed therefor are not those of the language, or of one of the languages, in general use in that locality, also in the characters of that language or of one of those languages;

(b) shall have its name engraven in legible characters on its seal; and

(c) shall have its name mentioned in legible characters in all its business letters, in all its bill heads and letter paper and in all its notices, advertisements and other official publications * * *; and in all bills of exchange, hundies, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

(2) If a company does not paint or affix its name, or keep the same painted or affixed in the manner directed by clause (a) of sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed.

(3) If a company fails to comply with clause (b) or clause (c) of sub-section (1), the company shall be punishable with fine which may extend to five hundred rupees.

(4) If an officer of a company or any person on its behalf—

(a) uses, or authorises the use of, any seal purporting to be a seal of the company whereon its name is not engraven in the manner aforesaid,

(b) issues, or authorises the issue of, any business letter, bill head, letter paper, notice, advertisement or other official publication of the company wherein its name is not mentioned in the manner aforesaid,

(c) signs, or authorises to be signed, on behalf of the company, any bill of exchange, hundi, promissory note, endorsement, cheque or order for money or goods wherein its name is not mentioned in the manner aforesaid, or

(d) issues or authorises the issue of any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in the manner aforesaid,

such officer or person shall be punishable with fine which may extend to five hundred rupees, and shall further be personally liable to the holder of the bill of exchange, hundi, promissory note, cheque

or order for money or goods, for the amount thereof, unless it is duly paid by the company.

147. Publication of authorised as well as subscribed and paid-up capital.—(*1*) Where any notice, advertisement or other official publication, or any business letter, bill head or letter paper, of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication or such letter, bill head or letter paper, shall also contain a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid up.

(*2*) If default is made in complying with the requirements of sub-section (*1*), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one thousand rupees.

Restrictions on commencement of business.

148. Restrictions on commencement of business.—(*1*) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless—

(*a*) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;

(*b*) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription;

(c) no money is, or may become, liable to be repaid to applicants for any shares or debentures which have been offered for public subscription by reason of any failure to apply for, or to obtain, permission for the shares or debentures to be dealt in on any recognized stock exchange; and

(*d*) there has been filed with the Registrar a duly verified declaration by one of the directors or the secretary, in the prescribed form, that * * * * clauses (*a*), (*b*) and (*c*) of this sub-section, have been complied with

(*2*) Where a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless—

(*a*) there has been filed with the Registrar a statement in lieu of prospectus;

(*b*) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and

(*c*) there has been filed with the Registrar a duly verified declaration by one of the directors or the secretary, in the

prescribed form, that clause (*b*) of this sub-section has been complied with.

(*3*) The Registrar shall, on the filing of a duly verified declaration in accordance with the provisions of sub-section (*1*) or sub-section (*2*), as the case may be, and, in the case of a company which is required by sub-section (*2*) to file a statement in lieu of prospectus, of such a statement, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(*4*) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(*5*) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(*6*) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be punishable with fine which may extend to five hundred rupees for every day during which the contravention continues.

(*7*) Nothing in this section shall apply to—

(*a*) a private company; or

(*b*) a company registered before the first day of April, 1914, which has not issued a prospectus inviting the public to subscribe for its shares.

(*8*) The provisions of this section, in so far as they do not relate to shares, shall also apply to a company limited by guarantee and not having a share capital.

Registers of members and debenture holders

149. Register of Members.—(*1*) Every company shall keep in one or more books a register of its members, and enter therein the following particulars:—

(*a*) the name and address, and the occupation, if any, of each member;

(*b*) in the case of a company having a share capital, the shares held by each member, distinguishing each share by its number, * * and the amount paid or agreed to be considered as paid on those shares;

(c) the date at which each person was entered in the register as a member; and

(*d*) the date at which any person ceased to be a member:

Provided that where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall show the amount of stock held by each of the members concerned instead of the shares so converted which were previously held by him.

(*2*) If default is made in complying with sub-section (*1*), the company, and every officer of the company who is in default, shall

be punishable with fine which may extend to fifty rupees for every-day during which the default continues.

150. Index of members.—(*1*) Every company having more than fifty members shall, unless the register of members is in such a form as in itself to constitute an index, keep an index (which may be in the form of a card index) of the names of the members of the company and shall, within fourteen days after the date on which any alteration is made in the register of members, make the necessary alteration in the index.

(*2*) The index shall, in respect of each member, contain a sufficient indication to enable the entries relating to that member in the register to be readily found.

(*3*) The index shall, at all times, be kept at the same place as the register of members.

(*4*) If default is made in complying with sub-section (*1*), * * (*2*) or (*3*), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

151. Register and index of debenture holders of company.—(*1*) Every company shall keep in one or more books a register of the holders of its debentures and enter therein the following particulars, namely:—

(*a*) the name and address, and the occupation, if any, of each debenture holder;

(*b*) the debentures held by each holder, distinguishing each debenture by its number, * * and the amount paid or agreed to be considered as paid on those debentures;

(*c*) the date at which each person was entered in the register as a debenture holder; and

(d) the date at which any person ceased to be a debenture holder.

(*2*) (*a*) Every company having more than fifty debenture holders shall, unless the register of debenture holders is in such a form as in itself to constitute an index, keep an index (which may be in the form of a card index) of the names of the debenture holders of the company and shall, within fourteen days after the date on which any alteration is made in the register of debenture holders, make the necessary alteration in the index.

(*b*) The index shall, in respect of each debenture holder, contain a sufficient indication to enable the entries relating to that holder in the register to be readily found.

(*3*) If default is made in complying with sub-sections (*1*) and (*2*), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

(*4*) Sub-sections (*1*) to (*3*) shall not apply with respect to debentures which, *ex facie*, are payable to the bearer thereof.

152. Trusts not to be entered on register.—No notice of any trust, express, implied or constructive, shall be entered on the register of members or of debenture holders, or be receivable by the Registrar.

153. Power to close register of members or debenture holders.—(*1*) A company may, after giving not less than seven days' previous notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members or the register of debenture holders for any period or periods not exceeding in the whole forty-five days in each year, but not exceeding thirty days at any one time.

(*2*) If the register of members or of debenture holders is closed without giving the notice provided in sub-section (*1*), or after giving shorter notice than that so provided, or for a continuous or an aggregate period in excess of the limits specified in that sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the register is so closed.

154. Power of Court to rectify register of members.—(*1*) If—

(*a*) * * * * * * * * * * the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(*b*) default is made, or unnecessary delay takes place, in entering on the register the fact of any person having become, or ceased to be, a member;

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(*2*) The Court may either reject the application or order rectification of the register; and in the latter case, may direct * * the company to pay the damages, if any, sustained by any party aggrieved.

In either case, the Court in its discretion may make such order as to costs as it thinks fit.

(*3*) On an application under this section, the Court—

(*a*) may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and

(*b*) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.

(*4*) From any order passed by the Court on the application, or on any issue raised therein and tried separately, an appeal shall lie on the grounds mentioned in section 100 of the Code of Civil Procedure, 1908 (Act V of 1908)—

(*a*) if the order be passed by a District Court, to the High Court;

(*b*) if the order be passed by a single Judge of a High Court consisting of three or more Judges, to a Bench of that High Court.

155. Notice to Registrar of rectification of register.—In the case of a company required by this Act to file a list of its members with

the Registrar, the Court, when making an order for rectification of the register, shall, by its order, direct notice of the rectification to be filed with the Registrar within fourteen days from the date of the making of the order.

Foreign registers of members or debenture holders.

156. Power for company to keep branch register of members or debenture holders outside India.—(*1*) A company which has a share capital or which has issued debentures may, if so authorised by its articles, keep in any State or country outside India a branch register of members or debenture holders resident in that State or country (in this Act called a "foreign register").

(*2*) The company shall, within one month from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office where such register is kept; and in the event of any change in the situation of such office or of its discontinuance, shall, within one month from the date of such change or discontinuance, as the case may be, file notice with the Registrar of such change or discontinuance.

(*3*) If default is made in complying with the requirements of * * sub-section (*2*), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

157. Provisions as to foreign registers.—(*1*) A foreign register shall be deemed to be part of the company's register (in this section called the "principal register") of members or of debenture holders, as the case may be.

(*2*) A foreign register shall be kept, shall be open to inspection and may be closed, and extracts may be taken therefrom and copies thereof may be required, in the same manner, *mutatis mutandis*, as is applicable to the principal register under this Act, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the foreign register is kept.

(*3*) (*a*) The Central Government may, by notification in the Official Gazette, direct that the provisions of clause (*b*) shall apply, or cease to apply, to foreign registers kept in any State or country outside India.

(*b*) If a foreign register is kept by a company in any State or country to which a direction under clause (*a*) applies for the time being the decision of any competent Court in that State or country * * * in regard to the rectification of the register shall have the same force and effect as if it were the decision of a competent Court in India.

(*4*) The company shall—

(*a*) transmit to its registered office in India a copy of every entry in any foreign register as soon as may be after the entry is made; and

(*b*) keep at such office a duplicate of every foreign register duly entered up from time to time.

(*5*) Every such duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(*6*) Subject to the provisions of this section with respect to duplicate registers, the shares or debentures registered in any foreign register shall be distinguished from the shares or debentures registered in the principal register and in every other foreign register; and no transaction with respect to any shares or debentures registered in a foreign register shall, during the continuance of that registration, be registered in any other register.

(*7*) The company may discontinue the keeping of any foreign register; and thereupon all entries in that register shall be transferred to some other foreign register kept by the company in the same part of the world or to the principal register.

(*8*) Subject to the provisions of this Act, a company may, by its articles, make such regulations as it thinks fit in regard to its foreign registers.

(*9*) If default is made in complying with sub-section (*4*), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

Annual Returns

158. Annual return to be made by company having a share capital.—(*1*) Every company having a share capital shall, within forty-two days from the day on which each of the annual general meetings referred to in section 165 is held, prepare and file with the Registrar a return containing the particulars specified in Part I of Schedule V, as they stood on that day, regarding—

(*a*) its registered office.

(*b*) the register of its members.

(c) the register of its debenture holders.

(*d*) its shares and debentures.

(*e*) its indebtedness,

(*f*) its members and debenture holders, past and present, and

(*g*) its directors, managing directors, managing agents, secretaries and treasurers and managers, past and present.

(*2*) The said return shall be in the Form set out in Part II of Schedule V or as near thereto as circumstances admit:

Provided that where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list referred to in paragraph 5 of Part I of Schedule V shall state the amount of stock held by each of the members concerned instead of the shares so converted previously held by him.

159. Annual return to be made by company not having a share capital.—(*1*) Every company not having a share capital shall, within forty-two days from the day on which each of the annual general meetings referred to in section 165 is held, prepare and file with the

Registrar a return stating the following particulars as they stood on that day:—

(*a*) the address of the registered office of the company;

(*b*) all such particulars with respect to the persons who, at the date of the return, were the directors of the company, its managing agent, its secretaries and treasurers and its manager as are set out in section 302.

(*2*) There shall be annexed to the return a statement containing particulars of the total amount of the indebtedness of the company as on the day aforesaid in respect of all charges which are or were required to be registered with the Registrar under this Act or under any previous companies law, or which would have been required to be registered under this Act if they had been created after the commencement of this Act.

160. Further provisions regarding annual return and certificate to be annexed thereto.—(*1*) The copy of the annual return filed with the Registrar under section 158 or 159 as the case may be, shall be signed both by a director and by the managing agent, secretaries and treasurers, manager or secretary of the company, or where there is no managing agent, secretaries and treasurers, manager or secretary, by two directors of the company, one of whom shall be the managing director where there is one.

(*2*) There shall also be filed with the Registrar along with the return a certificate signed by both the signatories of the return, stating—

(*a*) that the return states the facts as they stood on the day of the annual general meeting aforesaid, correctly and completely; and

(*b*) in the case of a private company also, (*i*) that the company has not, since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company, and (*ii*) that, where the annual return discloses the fact that the number of members of the company exceeds fifty, the excess consists wholly of persons who under sub-clause (*b*) of clause (*iii*) of sub-section (*1*) of section 3 are not to be included in reckoning the number of fifty.

161. Penalty and interpretation.—(*1*) If a company fails to comply with any of the provisions contained in sections 158, 159, or 160, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(*2*) For the purposes of this section and sections 158, 159, and 160, the expressions "officer" and "director" shall include any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act.

General provisions regarding registers and returns

162. Place of keeping, and inspection of, registers and returns.—(*1*) The register of members commencing from the date of the registration of the company, the index of members, the register and index of debenture holders and copies of all annual returns prepared under sections 158 and 159, together with the copies of certificates and documents required to be annexed thereto under sections 159 and 160 shall be kept at the registered office of the company.

(*2*) The registers, indexes, returns, and copies of certificates and other documents referred to in sub-section (*1*) shall, except when the register of members or debenture holders is closed under the provisions of this Act, be open during business hours (subject to such reasonable restrictions, as the company * * * may impose, so that not less than two hours in each day are allowed for inspection) to the inspection of—

(*a*) any member or debenture holder without fee; and

(*b*) any other person on payment of a fee of one rupee, for each inspection.

(*3*) Any such member, debenture holder or other person may—

(*a*) make extracts from any register, index, or copy * * * referred to in sub-section (*1*) without fee or additional fee, as the case may be; or

(b) require a copy of any such register, index or copy or of any part thereof, on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(*4*) The company shall cause any copy required by any person under clause (*b*) of sub-section (*3*) to be sent to that person within a period of ten days, exclusive of non-working days, commencing on the day next after the day on which the requirement is received by the company.

(*5*) If any inspection, or the making of any extract required under this section, is refused, or if any copy required under this section is not sent within the period specified in sub-section (*4*), the company, and every officer of the company who is in default, shall be punishable, in respect of each offence, with fine which may extend to fifty rupees for every day during which the refusal or default continues.

(*6*) The Court may also, by order, compel an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it, or that the copy required shall forthwith be sent to the person requiring it, as the case may be.

163. Registers etc., to be evidence.—The register of members, the register of debenture holders, and the annual returns, certificates and statements referred to in sections 158, 159, and 160 shall be *prima facie* evidence of any matters directed or authorised to be inserted therein by this Act.

Meetings and Proceedings

164. Statutory meeting and statutory report of company.—(*1*) Every company limited by shares, and every company limited by guarantee and having a share capital, shall, within a period of not less than one month nor more than six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called "the statutory meeting".

(*2*) The Board of directors shall, at least twenty-one days before the day on which the meeting is held, forward a report (in this Act referred to as "the statutory report") to every member of the company:

Provided that if the statutory report is forwarded later than is required above, it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed to by all the members entitled to attend and vote at the meeting.

(*3*) The statutory report shall set out—

(*a*) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up, the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(*b*) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;

(*c*) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company, showing separately any commission or discount paid or to be paid on the issue or sale of shares or debentures;

(*d*) the names, addresses and occupations of the directors of the company and of its auditors; and also, if there be any, of its managing agent, secretaries and treasurers, manager, and secretary; and the charges, if any, which have occurred m such names, addresses and occupations since the date of the incorporation of the company;

(*e*) the particulars of any contract which, or the modification or the proposed modification of which, is to be submitted to the meeting for its approval, together in the latter case with the particulars of the modification or proposed modification;

(*f*) the extent, if any, to which each under-writing contract, if any, has not been carried out, and the reasons therefor;

(*g*) the arrears, if any, due on calls from every director; from the managing agent, every partner of the managing agent, every firm in which the managing agent is a partner, and where the managing agent is a private company, every director thereof; from the secretaries and treasurers, where they are a

firm, from every partner therein, and where they are a private company, from every director thereof; and from the manager; and

(*h*) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director; to the managing agent, any partner of the managing agent, any firm in which the managing agent is a partner, and where the managing agent is a private company, to any director thereof; to the secretaries and treasurers, where they are a firm, to any partner therein, and where they are a private company, to any director thereof; or to the manager.

(4) The statutory report shall be certified as correct by not less than two directors of the company one of whom shall be a managing director, where there is one.

After the statutory report has been certified as aforesaid, the auditors * * of the company shall, in so far as the report relates to the shares allotted by the company, the cash received in respect of such shares and the receipts and payments of the company on capital account, certify it as correct.

(5) The Board shall cause a copy of the statutory report certified as is required by this section to be delivered to the Registrar for registration forthwith, after copies thereof have been sent to the members of the company.

(6) The Board shall cause a list showing the names, addresses and occupations of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the statutory meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution may be passed of which notice has not been given in accordance with the provisions of this Act.

(8) The meeting may adjourn from time to time, and at any adjourned meeting, any resolution of which notice has been given in accordance with the provisions of this Act, whether before or after the former meeting, may be passed; and the adjourned meeting shall have the same powers as an original meeting.

(9) If default is made in complying with the provisions of this section, every director or other officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees.

(*10*) This section shall not apply to a private company.

165. Annual general meeting—(*1*) (*a*) Every company shall, in addition to any other meetings, hold a general meeting which shall be styled its annual general meeting at the intervals, and in accordance with the provisions, specified below.

(*b*) The first annual general meeting shall be held by a company within eighteen months of its incorporation.

(c) The next annual general meeting of the company shall be held by it within nine months of the expiry of the financial year in which the first annual general meeting was held; and thereafter an annual general meeting shall be held by the company within nine months of the expiry of each financial year:

Provided that the Registrar may, for any special reason, extend the time within which any annual general meeting (not being the first annual general meeting) shall be held, by a further period not exceeding six months.

(*d*) Except in the case referred to in the foregoing proviso, not more than fifteen months shall elapse between the date of one annual general meeting and that of the next.

(*2*) Every annual general meeting shall be called for a time during business hours, on a day that is not a public holidays, and shall be held either at the registered office of the company or at some other place within the town or village in which the registered office of the company is situate; and the notices calling the meeting shall specify it as the annual general meeting.

* * * * * * * * * * * * * * * *

166. Power of Central Government to call annual general meeting. —(*1*) If default is made in holding an annual general meeting in accordance with section 165, the Central Government may, notwithstanding anything in this Act or in the articles of the company, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the Central Government thinks expedient * * * * * in relation to the calling, holding and conducting of the meeting * * * * * *

Explanation.—The directions that may be given under this sub-section may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(*2*) A general meeting held in pursuance of sub-section (*1*) shall, subject to any directions of the Central Government, be deemed to be an annual general meeting of the company.

167. Penalty for default in complying with section 165 or 166.— If default is made in holding a meeting of the company in accordance with section 165, or in complying with any directions of the Central Government under sub-section (*1*) of section 166, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

168. Calling of extraordinary general meeting on requisition. – (*1*) The Board of directors of a company shall, on the requisition of such number of members of the company as is specified in sub-section (*4*), forthwith proceed duly to call an extraordinary general meeting of the company.

(2) The requisition shall set out the matters for the consideration of which the meeting is to be called, shall be signed by the requisitionists, and shall be deposited at the registered office of the company.

(3) The requisition may consist of several documents in like form, each signed by one or more requisitionists.

(4) The number of members entitled to requisition a meeting in regard to any matter shall be—

(a) in the case of a company having a share capital, such number of them as hold at the date of the deposit of the requisition, not less than one-tenth of such of the paid-up capital of the company as at that date carries the right of voting in regard to that matter;

(b) in the case of a company not having a share capital, such number of them as have at the date of deposit of the requisition not less than one-tenth of the total voting power of all the members having at the said date a right to vote in regard to that matter.

(5) Where two or more distinct matters are specified in the requisition, the provisions of sub-section (4) shall apply separately in regard to each such matter; and the requisition shall accordingly be valid only in respect of those matters in regard to which the condition specified in that sub-section is fulfilled.

(6) If the Board does not, within twenty-one days from the date of the deposit of a valid requisition in regard to any matters, proceed duly to call a meeting for the consideration of those matters on a day not later than forty-five days from the date of the deposit of the requisition, the meeting may be called—

(a) by the requisitionists themselves, * *

(b) in the case of a company having a share capital, by such of the requisitionists as represent either a majority in value of the paid-up share capital held by all of them or not less than one-tenth of such of the paid-share capital of the company as is referred to in clause (a) of sub-section (4), whichever is less; or

(c) in the case of a company not having a share capital, by such of the requisitionists as represent not less than one-tenth of the total voting power of all the members of the company referred to in clause (b) of sub-section (4).

Explanation.—For the purposes of this sub-section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by sub-section (2) of section 188.

(7) A meeting called under sub-section (6) by the requisitionists or any of them—

(a) shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by the Board; but

(b) shall not be held after the expiration of three months from the date of the deposit of the requisition.

Explanation.—Nothing in clause (*b*) shall be deemed to prevent a meeting duly commenced before the expiry of the period of three months aforesaid, from adjourning to some day after the expiry of that period.

(*8*) Where two or more persons hold any shares or interest in a company jointly, a requisition, or a notice calling a meeting, signed by one or some only of them shall, for the purposes of this section, have the same force and effect as if it had been signed by all of them.

(*9*) Any reasonable expenses incurred by the requisitionists by reason of the failure of the Board duly to call a meeting shall be repaid to the requisitionists by the company; and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration for their services to such of the directors as were in default.

169. Sections 170 to 185 to apply to meetings * * * *.—(*1*) The provisions of sections 170 to 185.

(*i*) shall, notwithstanding anything to the contrary in the articles of the company, apply with respect to general meetings * * * * * * of a public company, and of a private company which is a subsidiary of a public company; and

(*ii*) shall, unless otherwise specified therein or unless the articles of the company otherwise provide, apply with respect to general meetings * * * * * of a private company which is not a subsidiary of a public company.

(*2*) (*a*) Section 175, with such adaptations and modifications, if any, as may be prescribed, shall apply with respect to meetings of any class of members, or of debenture holders or any class of debenture holders, of a company, in like manner as it applies with respect to general meetings of the company.

(*b*) Unless the articles of the company or a contract binding on the persons concerned otherwise provide, sections 170 to 174 and sections 176 to 185 with such adaptations and modifications, if any as may be prescribed, shall apply with respect to meetings of any class of members, or of debenture holders or any class of debenture holders, of a company, in like manner as they apply with respect to general meetings of the company.

170. Length of notice for calling meeting.—(*1*) A general meeting of the company may be called by giving not less than twenty-one days' notice in writing. * * * * * * * * * * * * * * *

(*2*) A general meeting may be called after giving shorter notice than that specified in sub-section (*1*), if consent is accorded thereto—

(*i*) in the case of an annual general meeting, by all the members entitled to vote thereat; and

(*ii*) in the case of any other meeting, by members of the company (*a*) holding, if the company has a share capital, not less than 95 per cent. of such part of the paid-up share capital

of the company as gives a right to vote at the meeting, or (*b*) having, if the company has no share capital, not less than 95 per cent. of the total voting power exercisable at that meeting:

Provided that where any members of a company are entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub-section in respect of the former resolution or resolutions and not in respect of the latter.* * * * * * * * *

171. Contents and manner of service of notice and persons on whom it is to be served.—(*1*) Every notice of a meeting of a company shall specify the place and the day and hour of the meeting, and shall contain a statement of the business to be transacted thereat.

(*2*) Notice of every meeting of the company shall be given * * * *—

(*i*) to every member of the company, in any manner authorised by sub-sections (*1*) to (*4*) of section 52;

(*ii*) to the persons entitled to a share in consequence of the death or insolvency of a member, by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignees of the insolvent, or by any like description, at the address, if any, in India supplied for the purpose by the persons claiming to be so entitled, or until such an address has been so supplied, by giving the notice in any manner in which it might have been given if the death or insolvency had not occurred; and

(*iii*) to the auditor or auditors for the time being of the company in any manner authorised by section 52 in the case of any member or members of the company.

(*3*) The accidental omission to give notice to, or the non-receipt of notice by, any member or other person to whom it should be given shall not invalidate the proceedings at the meeting.

172. Explanatory statement to be annexed to notice.—(*1*) For the purposes of this section—

(*a*) in the case of an annual general meeting, all business to be transacted at the meeting shall be deemed special, with the exception of business relating to (*i*) the consideration of the accounts, balance sheet and the reports of the Board of directors and auditors, (*ii*) the declaration of a dividend, (*iii*) the appointment of directors in the place of those retiring, and (*iv*) the appointment of, and the fixing of the remuneration of, the auditors; and

(*b*) in the case of any other meeting, all business shall be deemed special.

(*2*) Where any items of business to be transacted at the meeting are deemed to be special as aforesaid, there shall be annexed to the

notice of the meeting a statement setting out all material facts concerning each such item of business, including in particular the nature and extent of the interest, if any, therein, of every director, the managing agent, if any, the secretaries and treasurers, if any, and the manager, if any.

(3) Where any item of business consists of the according of approval to any document by the meeting, the time and place where the document can be inspected shall be specified in the statement aforesaid.

173. Quorum for meeting.—Unless the articles of the company * * provide for a larger number, five members personally present in the case of a public company, and two members personally present in the case of a private company, shall be the quorum for a meeting of the company.

174. Chairman of meeting.—(1) Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the chairman thereof on a show of hands.

(2) If a poll is demanded on the election of the chairman, it shall be taken forthwith in accordance with the provisions of this Act, the chairman elected on a show of hands exercising all the powers of the chairman under the said provisions.

(3) If some other person is elected chairman as a result of the poll, he shall be chairman for the rest of the meeting.

175. Proxies.—(1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of himself; and a proxy so appointed by a member of a private company shall also have the same right as the member to speak at the meeting:

Provided that, unless the articles otherwise provide—

(a) this sub-section shall not apply in the case of a company not having a share capital;

(b) a member of a private company shall not be entitled to appoint more than one proxy to attend on the same occasion; and

(c) a proxy shall not be entitled to vote except on a poll.

(2) In every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

If default is made in complying with this sub-section as respects any meeting, every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees.

(3) Any provision contained in the articles of a public company or of a private company which is a subsidiary of a public company shall be void, in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than

forty-eight hours before the meeting in order that the appointment may be effective thereat.

(4) If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one thousand rupees:

Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(5) The instrument appointing a proxy shall—

(a) be in writing; and

(b) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

(6) An instrument appointing a proxy, if in any of the forms set out in Schedule IX, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles.

(7) Every member entitled to vote at a meeting of the company or on any resolution to be moved thereat shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

176. **Voting to be by show of hands in first instance.**—At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 178, be decided on a show of hands.

177. **Chairman's declaration of result of voting by show of hands to be conclusive.**—A declaration by the chairman in pursuance of section 176 that on a show of hands, a resolution has * * or has not been carried, or has or has not been carried either unanimously or by a particular majority, and an entry to that effect in the books containing the minutes of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes cast in favour of or against such resolution.

178. **Demand for poll.**—(1) Before or on the declaration of the result of the voting on any resolution on a show of hands, a poll may be ordered to be taken by the chairman of the meeting of his own motion, and shall be ordered to be taken by him on a demand

made in that behalf by the persons or person specified below, that is to say,—

(*a*) in the case of a public company, by at least five members having the right to vote on the resolution and present in person or by proxy, * *

(*b*) in the case of a private company, by one member having the right to vote on the resolution and present in person or by proxy if not more than seven such members are personally present, and by two such members present in person or by proxy if more than seven such members are personally present, * *

(*c*) by any member or members present in person or by proxy and having not less than one-tenth of the total voting power in respect of the resolution, or

(*d*) by any member or members present in person or by proxy and holding shares in the company conferring a right to vote on the resolution, being shares on which an aggregate sum has been paid up which is not less than one-tenth of the total sum paid up on all the shares conferring that right.

(*2*) The demand for a poll may be withdrawn at any time by the person or persons who made the demand.

179. Time of taking poll.—(*1*) A poll demanded on a question of adjournment shall be taken forthwith.

(*2*) A poll demanded on any other question (not being a question relating to the election of a chairman which is provided for in section 174) shall be taken at such time not being later than forty-eight hours from the time when the demand was made, as the chairman may direct.

* * * * * * * *

180. Restriction on exercise of voting right of members who have not paid calls etc.—Notwithstanding anything contained in this Act, the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid or in regard to which the company has, and has exercised, any right of lien.

181. * * Restrictions on exercise of voting right in other cases to be void.—A public company, or a private company which is a subsidiary of a public company, shall not prohibit any member from exercising his voting on the ground that he has not held his share or other interest in the company for any specified period preceding the date on which the vote is taken or on any other ground not being a ground set out in section 180.

182. Right of member to use his votes differently.—On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

183. Scrutineers at poll.—(*1*) Where a poll is to be taken, the chairman of the meeting shall appoint two scrutineers to scrutinise the votes given on the poll and to report thereon to him.

(2) The chairman shall have power, at any time before the result of the poll is declared, to remove a scrutineer from office and to fill vacancies in the office of scrutineer arising from such removal or from any other cause.

(3) Of the two scrutineers appointed under this section, one shall always be a member (not being an officer or employee of the company) present at the meeting, provided such a member is available and willing to be appointed.

184. Manner of taking poll and result thereof.—(1) Subject to the provisions of this Act, the chairman of the meeting shall have power to regulate the manner in which a poll shall be taken.

(2) The result of the poll shall be deemed to be the decision of the meeting on the resolution * * * * * * on which the poll was taken.

185. Power of Court to order meeting to be called.—(1) If for any reason it is impracticable to call a meeting of a company other than an annual general meeting in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting,—

(a) order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit; and

(b) give such ancillary or consequential directions as the Court thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act and of the company's articles.

Explanation.—The directions that may be given under this subsection may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any such order shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

186. Representation of corporations at meetings of companies and of creditors.—(1) A body corporate (whether a company within the meaning of this Act or not) may—

(a) if it is a member of a company within the meaning of this Act, by resolution of its Board of directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company;

(b) if it is a creditor (including a holder of debentures) of a company within the meaning of this Act, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any

rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised by resolution as aforesaid shall be entitled * * * * * * * * * * * * * * * * to exercise the same rights and powers (including the right to vote by proxy) on behalf of the body corporate which he represents as that body could exercise if it were a member, creditor or holder of debentures of the company.

187. Circulation of members' resolutions.—(1) Subject to the provisions of this section, a company shall, on the requisition in writing of such number of members as is hereinafter specified and (unless the company otherwise resolves) at the expense of the requisitionists,—

(a) give to members of the company entitled to receive notice of the next annual general meeting, notice of any resolution which may properly be moved and is intended to be moved at that meeting;

(b) circulate to members entitled to have notice of any general meeting sent to them, any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under sub-section (1) shall be—

(a) such number of members as represent not less than one-twentieth of the total voting power of all the members having at the date of the requisition a right to vote on the resolution or business to which the requisition relates; or

(b) not less than one hundred members having the right aforesaid and holding shares in the company on which there has been paid up an aggregate sum of not less than one lakh of rupees in all.

(3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them, by serving a copy of the resolution or statement on each member in any manner permitted for service of notice of the meeting; and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company:

Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

(*a*) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company—

(*i*) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting;

(*ii*) in the case of any other requisition, not less than two weeks before the meeting; and

(*b*) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy, although not deposited within the time required by this sub-section, shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the Court may order the company's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this sub-section, notice shall be deemed to have been so given, notwithstanding the accidental omission, in giving it, of one or more members.

(7) If default is made in complying with the provisions of this section, every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

188. **Ordinary and special resolutions.**—(*1*) A resolution shall be an ordinary resolution when at a general meeting of which the notice required under this Act has been duly given, the votes cast (whether on a show of hands, or on a poll, as the case may be,) in favour of the resolution (including the casting vote, if any, of the chairman) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, exceed the votes, if any, cast against the resolution by members so entitled and voting.

(2) A resolution shall be a special resolution when—

(*a*) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general

meeting or other intimation given to the members of the resolution;

(*b*) the notice required under this Act has been duly given of the general meeting; and

(c) the votes cast in favour of the resolution (whether on a show of hands, or on a poll, as the case may be,) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, are not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

* * * * * * * * * * * * * * *

189. Resolutions requiring special notice.—(*1*) Where, by any provision contained in this Act or in the articles, special notice is required of any resolution, notice of the intention to move the resolution shall be given to the company not less than twenty-eight days before the meeting at which it is to be moved, exclusive of the day on which the notice is served or deemed to be served and the day of the meeting.

(*2*) The company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting, or if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than twenty-one days before the meeting.

(*3*) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, then, notwithstanding anything contained in sub-sections (*1*) and (*2*), the notice, though not given within the time required by this section, shall be deemed to have been properly given for the purposes thereof.

190. Resolutions passed at adjourned meetings.—Where a resolution is passed at an adjourned meeting of—

(*a*) a company;

(*b*) the holders of any class of shares in a company; or

(*c*) the Board of directors of a company;

the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

191. Registration and copies of certain resolutions and agreements.—(*1*) A copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making thereof, be printed or typewritten and duly certified under the signature of an officer of the company and filed with the Registrar who shall record the same.

(*2*) Where articles have been registered, a copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.

(3) Where articles have not been registered, a printed copy of every such resolution or agreement shall be forwarded to any member at his request, on payment of one rupee.

(4) This section shall apply to—

(a) special resolutions;

(b) resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;

(c) any resolution of the Board of directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;

(d) any agreement relating to the appointment, re-appointment or renewal of the appointment of a managing agent or secretaries and treasurers for a company, or varying the terms of any such agreement, executed by the company;

(e) resolutions or agreements which have been agreed to by all the members of any class of shareholders but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members;

(f) resolutions requiring a company to be wound up voluntarily passed in pursuance of sub-section (1) of section 482.

(5) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to twenty rupees for every day during which the default continues.

(6) If default is made in complying with sub-section (2) or (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ten rupees for each copy in respect of which default is made.

(7) For the purposes of sub-sections (5) and (6), the liquidator of a company shall be deemed to be an officer of the company.

192. Minutes of proceedings of general meetings and of meetings of Board of directors, etc.—(1) Every company shall cause minutes of all proceedings of general meetings, and of all proceedings at meetings of its Board of directors or of committees of the Board, to be entered in books kept for that purpose.

(2) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat * * * * * * * * * * * * * * * * *.

(3) All appointments of officers made at any of the meetings aforesaid shall be included in the minutes of the meeting.

(4) In the case of a meeting of the Board of directors or of a committee of the Board, the minutes shall also contain—

(a) the names of the directors present at the meeting, and

(b) in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring in, the resolution.

(5) Nothing contained in sub-sections (1) to (4) shall be deemed to require the inclusion in any such minutes of any matter which, in the opinion of the chairman of the meeting—

(a) is, or could reasonably be regarded as, defamatory of any person; * *

(b) is irrelevant or immaterial to the proceedings, or

(c) is detrimental to the interests of the company.

Explanation.—The chairman shall exercise an absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in this sub-section * *.

(6) If default is made in complying with the foregoing provisions of this section in respect of any meeting, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

193. Minutes to be evidence of proceedings.—Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

194. Presumptions to be drawn where minutes duly drawn and signed.—Where minutes of the proceedings of any general meeting of the company or of any meeting of its Board of directors or of a committee of the Board have been made and signed in accordance with the provisions of sections 192 and 193, then, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and in particular, all appointments of directors or liquidators made at the meeting shall be deemed to be valid.

195. Inspection of minute books of general meetings.—(1) The books containing the minutes of the proceedings of any general meeting of a company held on or after the 15th day of January, 1937, shall—

(a) be kept at the registered office of the company, and

(b) be open, during business hours, to the inspection of any member without charge, subject to such reasonable restrictions as the company may, by its articles or in general meeting impose, so however that not less than two hours in each day are allowed for inspection.

(2) Any member shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of any minutes referred to in sub-section (1), on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(3) If any inspection required under sub-section (1) is refused, or if any copy required under sub-section (2) is not furnished within the time specified therein, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees in respect of each offence.

(4) In the case of any such refusal or default, the Court may, by order, compel an immediate inspection of the minute books or direct that the copy required shall forthwith be sent to the person requiring it.

196. Publication of reports of proceedings of general meetings.— (1) No document purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters required by section 192 to be contained in the minutes of the proceedings of such meeting.

(2) If any report is circulated or advertised in contravention of sub-section (1), the company, and every officer of the company who is in default, shall be punishable, in respect of each offence, with fine which may extend to five hundred rupees.

Managerial Remuneration, etc.

197. Overall maximum managerial remuneration and minimum managerial remuneration in the absence or inadequacy of profits.— (1) Save as otherwise expressly provided in this Act, in the case of a public company or a private company which is a subsidiary of a public company, the total remuneration payable by the company to its directors, its managing agent or secretaries and treasurers, if any, and its manager, if any, shall not exceed eleven per cent. of the net profits of the company, computed in the manner laid down in sections 348, 349 and 350, except that the remuneration of the directors shall not be deducted from the gross profits.

(2) The percentage aforesaid shall be exclusive of any fees payable to directors for meetings of the Board attended by them.

(3) Nothing contained in sub-sections (1) and (2) shall be deemed—

(a) to prohibit the payment of a monthly remuneration to directors in accordance with the provisions of section 308 or to a manager in accordance with the provisions of section 387; or

(b) to affect the operation of sections 351, 352, 353, 354, 356, 357, 358, 359 or 360.

(4) Notwithstanding anything contained in sub-sections (1) to (3), if in any financial year, a company has no profits or its profits are inadequate, the company may pay to any director or directors including managing or whole-time directors, if any, its managing agent or secretaries and treasurers, if any, and its manager, if any, or if there are two or more of them holding office in the company,

to all of them together, by way of minimum remuneration, such sum not exceeding fifty thousand rupees per annum as it considers reasonable.

198. Calculation of commission etc., in certain cases.—(*1*) Where any commission or other remuneration payable to any officer or employee of a company (not being a director, the managing agent, secretaries and treasurers or a manager) is fixed at a percentage of, or is otherwise based on, the net profits of the company, such profits shall be calculated in the manner set out in sections 348, 349 and 350.

(*2*) Any provision in force at the commencement of this Act * * for the payment of any commission or other remuneration in any manner based on the net profits of a company, shall continue to be in force for a period of two years from such commencement; and thereafter shall become subject to the provisions of sub-section (*1*).

199. Prohibition of tax-free payments.—(*1*) No company shall pay to any officer or employee thereof, whether in his capacity as such or otherwise, remuneration free of any tax, or otherwise calculated by reference to, or varying with, any tax payable by him, or the rate or standard rate of any such tax, or the amount thereof.

Explanation.—In this sub-section, the expression "tax" comprises any kind of income-tax including super-tax.

(*2*) Where by virtue of any provision in force immediately before the commencement of this Act, whether contained in the company's articles or in any contract made with the company or in any resolution passed by the company in general meeting or by the company's Board of directors, any officer or employee of the company holding any office at the commencement of this Act is entitled to remuneration in any of the modes prohibited by sub-section (*1*), such provision shall have effect during the residue of the term for which he is entitled to hold such office at such commencement, as if it provided instead for the payment of a gross sum subject to the tax in question, which, after deducting such tax, would yield the net sum actually specified in such provision.

(*3*) This section shall not apply to any remuneration—

(*a*) which fell due before the commencement of this Act, or

(*b*) which may fall due after the commencement of this Act, in respect of any period before such commencement.

200. Avoidance of provisions relieving liability of officers and auditors of company.—(*1*) Save as provided in this section, any provision, whether contained in the articles of a company or in an agreement with a company or in any other instrument, for exempting any officer of the company or any person employed by the company as auditor from, or indemnifying him against, any liability which, by virtue of any rule of law, would otherwise attach to him in respect of any negligence, default, misfeasance, breach of duty

or breach of trust of which he may be guilty in relation to the company, shall be void:

Provided that a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or discharged or in connection with any application under section 627 in which relief is granted to him by the Court.

(2) Nothing contained in * * * the proviso to sub-section (1) shall apply to the constituted attorney of the managing agent of a company, unless such attorney is, or is deemed to be, an officer of the company.

Prevention of management by undesirable persons.

201. Undischarged insolvent not to discharge functions of director, etc. * * *—(1) If any person, being an undischarged insolvent, * * * * * * * *—

(a) discharges any of the functions of a director, or acts as or discharges any of the functions of the managing agent, secretaries and treasurers, or manager, of any company, or

(b) directly or indirectly takes part or is concerned in the promotion, formation or management of any company,

he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

* * * * * * * *

(2) In this section, "company" includes—

(a) an unregistered company; and

(b) a body corporate incorporated outside India, which has an established place of business within India.

202. Power to restrain fraudulent persons from managing companies.—(1) Where—

(a) a person is convicted of any offence in connection with the promotion, formation or management of a company; or

(b) in the course of winding up a company it appears that a person—

(i) has been guilty of any offence for which he is punishable (whether he has been convicted or not) under section 539, or

(ii) has otherwise been guilty, while an officer of the company, of any fraud or misfeasance in relation to the company or of any breach of his duty to the company;

the Court may make an order that that person shall not, without the leave of the Court, be a director of, or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of, a company, for such period not exceeding five years as may be specified in the order.

(2) In sub-section (1), the expression "the Court",—

(a) in relation to the making of an order against any person by virtue of clause (a) thereof, includes the Court by which he is convicted, as well as any Court having jurisdiction to wind up the company, as respects which the offence was committed; and

(b) in relation to the granting of leave, means any Court having jurisdiction to wind up the company as respects which leave is sought.

(3) A person intending to apply for the making of an order under this section by the Court having jurisdiction to wind up a company shall give not less than ten days' notice of his intention to the person against whom the order is sought, and at the hearing of the application, the last-mentioned person may appear and himself give evidence or call witnesses.

(4) An application for the making of an order under this section by the Court having jurisdiction to wind up a company may be made by the Official Liquidator, or by the liquidator of the company, or by any person who is or has been a member or creditor of the company.

(5) On the hearing of any application for an order under this section by the Official Liquidator or the liquidator, or of any application for leave under this section by a person against whom an order has been made on the application of the Official Liquidator or liquidator, the Official Liquidator or liquidator shall appear and call the attention of the Court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(6) An order may be made by virtue of sub-clause (ii) of clause (b) of sub-section (1), notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made, and for the purposes of the said sub-clause (ii), the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(7) If any person acts in contravention of an order made under this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

(8) The provisions of this section shall be in addition to, and without prejudice to the operation of, any other provision contained in this Act.

Restriction on appointment of firms and bodies corporate to offices.

203. Restriction on appointment of firm or body corporate to office or place of profit under a company.—(*1*) Save as provided in sub-section (*2*), no company shall, after the commencement of this Act, appoint or employ any firm or body corporate to or in any office or place of profit under the company, other than the office of managing agent or secretaries and treasurers, for a term exceeding five years at a time.

(*2*) Sub-section (*1*) shall not apply to the appointment or employment of a firm or body corporate as a technician or a consultant, unless the firm or body corporate is already—

(*i*) the managing agent or secretaries and treasurers of the company; * *

(*ii*) where the managing agent or secretaries and treasurers are a firm, a partner in the firm; * *

(*iii*) where the managing agent or secretaries and treasurers are a private company, a director or member of such company; or

(*iv*) where the managing agent or secretaries and treasurers are a body corporate other than a private company, a director of such body corporate.

(*3*) Any firm or body corporate holding at the commencement of this Act any office or place of profit under the company shall, unless * * its term of office expires earlier, be deemed to have vacated its office immediately on the expiry of five years from the commencement of this Act.

(*4*) Nothing contained in sub-section (*1*) shall be deemed to prohibit the re-appointment, re-employment, or the extension of the term of office, of any firm or body corporate by further periods not exceeding five years on each occasion:

Provided that any such re-appointment, re-employment or extension shall be sanctioned only in the last two years of an existing term.

(*5*) The expression "office or place of profit" shall have the same meaning in this section as it has in section 313.

(*6*) This section shall not apply to a private company, unless it is a subsidiary of a public company.

Dividends and manner and time of payment thereof

204. Dividend to be paid only out of profits.—No dividend shall, be declared or paid * * * * * * * except out of the profits of the company or out of moneys provided by the Central or a State Government for the payment of the dividend in pursuance of a guarantee given by such Government.

Explanation.—Nothing in this section shall be deemed to affect in any manner the operation of section 207.

205. Dividend not to be paid except to registered shareholders or to their order or to their bankers.—(*1*) No dividend shall be paid by a company in respect of any share therein, except—

(*a*) to the registered holder of such share or to his order or to his bankers; or

(*b*) in case a share warrant has been issued in respect of the share in pursuance of section 113, to the bearer of such warrant or to his bankers.

(*2*) Nothing contained in sub-section (*1*) shall be deemed to require the bankers of a registered shareholder to make a separate application to the company for the payment of the dividend.

206. Penalty for failure to distribute dividends within three months.—Where a dividend has been declared by a company, but it has not been paid, or the warrant in respect thereof has not been posted, within three months from the date of the declaration, to any shareholder entitled to the payment of the dividend, every director of the company, its managing agent or secretaries and treasurers, and where the managing agent is a firm or body corporate, every partner in the firm and every director of the body corporate and where the secretaries and treasurers are a firm, every partner in the firm and where they are a body corporate, every director thereof, shall, if he is knowingly a party to the default, be punishable with simple imprisonment for a term which may extend to seven days and shall also be liable to fine:

Provided that no offence shall be deemed to have been committed within the meaning of the foregoing provision in the following cases, namely:—

(*a*) where the dividend could not be paid by reason of the operation of any law;

(*b*) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with;

(*c*) where there is a dispute regarding the right to receive any dividend;

(*d*) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(*e*) where, for any other reason, the failure to pay the dividend or to post the warrant within the period aforesaid was not due to any default on the part of the company.

Payments of interest out of capital

207. Power of company to pay interest out of capital in certain cases.—(*1*) Where any shares in a company are issued for the purpose of raising money to defray the expenses of the construction of any work or building, or the provision of any plant, which cannot be made profitable for a lengthy period, the company may—

(*a*) pay interest on so much of that share capital as is for the time being paid up, for the period and subject to the conditions and restrictions mentioned in sub-sections (*2*) to (*7*); and

(*b*) charge the sum so paid by way of interest, to capital as part of the cost of construction of the work or building, or the provision of the plant.

(*2*) No such payment shall be made unless it is authorised by the articles or by a special resolution.

(*3*) No such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Central Government.

The grant of such sanction shall be conclusive evidence, for the purposes of this section, that the shares of the company, in respect of which such sanction is given, have been issued for a purpose specified in this section.

(*4*) Before sanctioning any such payment, the Central Government may, at the expense of the company, appoint a person to inquire into, and report to the Central Government on, the circumstances of the case; and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry.

(*5*) The payment of interest shall be made only for such period as may be determined by the Central Government; and that period shall in no case extend beyond the close of the half-year next after the half-year during which the work or building has been actually completed or the plant provided.

(*6*) The rate of interest shall in no case exceed four per cent. per annum or such other rate as the Central Government may, by notification in the Official Gazette, direct.

(7) The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

(8) Nothing in this section shall affect any company to which the Indian Railway Companies Act, 1895 (X of 1895), or the Indian Tramways Act, 1902 (IV of 1902), applies.

Accounts

208. Books to be kept by company and penalty for not keeping proper books.—(1) Every company shall keep at its registered office or at such other place in India as the Board of directors thinks fit, proper books of account with respect to—

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place;

(b) all sales and purchases of goods by the company;

(c) the assets and liabilities of the company.

(2) Where a company has a branch office, whether in or outside India, the company shall be deemed to have complied with the provisions of sub-section (1), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarised returns, made up to dates at intervals of not more than three months, are sent by the branch office to the company at its registered office or the other place referred to in sub-section (1).

(3) For the purposes of sub-sections (1) and (2), proper books of account shall not be deemed to be kept with respect to the matters specified therein, if there are not kept such books as are necessary to give a true and fair view of the state of the affairs of the company or branch office, as the case may be, and to explain its transactions.

(4) The books of account shall be open to inspection by any director during business hours.

(5) If any of the persons referred to in sub-section (6) fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be punishable with fine which may extend to one thousand rupees:

Provided that in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that he had reasonable ground to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty.

(6) The persons referred to in sub-section (5) are the following, namely:—

(a) where the company has a managing agent or secretaries and treasurers, such managing agent or secretaries and treasurers;

(*b*) where such managing agent or secretaries and treasurers are a firm, every partner in the firm;

(*c*) where such managing agent or secretaries and treasurers are a body corporate, every director of such body corporate; and

(*d*) where the company has neither a managing agent nor secretaries and treasurers, every director of the company.

209. Annual accounts and balance sheet.—(*1*) At every annual general meeting of a company held in pursuance of section 165, the Board of directors of the company shall lay before the company—

(*a*) a balance sheet as at the end of the period specified in sub-section (*3*); and

(*b*) a profit and loss account for that period.

(*2*) In the case of a company not carrying on business for profit, an income and expenditure account shall be laid before the company at its annual general meeting instead of a profit and loss account, and all references to * * "profit and loss account", "profit" and "loss" in this section and elsewhere in this Act, shall be construed, in relation to such a company, as references respectively to the "income and expenditure account," "the excess of income over expenditure," and "the excess of expenditure over income".

(*3*) The profit and loss account shall relate—

(*a*) in the case of the first annual general meeting of the company, to the period beginning with the incorporation of the company and ending with a day which shall not precede the day of the meeting by more than nine months; and

(*b*) in the case of any subsequent annual general meeting of the company, to the period beginning with the day immediately after the period for which the account was last submitted and ending with a day which shall not precede the day of the meeting by more than nine months, or in cases where an extension of time has been granted for holding the meeting under the proviso to section 165 (*1*) (c), by more than nine months and the extension so granted.

(*4*) The period to which the account aforesaid relates is referred to in this Act as a "financial year" and it may be less or more than a calendar year, but it shall not exceed fifteen months:

Provided that it may extend to eighteen months where special permission has been granted in that behalf by the Registrar.

(*5*) If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he

had reasonable ground to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty:

Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

210. Form and contents of balance sheet and profit and loss account.—(*1*) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit.

(*2*) Every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year and shall, subject as aforesaid, comply with the requirements of Part II of Schedule VI, so far as they are applicable thereto.

(*3*) The Central Government may, by notification in the Official Gazette, exempt any * * class of companies from compliance with any of the requirements in Schedule VI if, in its opinion, it is necessary to grant the exemption in the national interest.

Any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

(*4*) The Central Government may, on the application, or with the consent, of the Board of directors of the company by order, modify in relation to that company any of the requirements of this Act as to the matters to be stated in the company's balance sheet or profit and loss account for the purpose of adapting them to the circumstances of the company.

(*5*) The balance sheet and the profit and loss account of a company shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose—

(*i*) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938 (IV of 1938);

(*ii*) in the case of a banking company, any matters which are not required to be disclosed by the Banking Companies Act, 1949 (X of 1949);

(*iii*) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Supply Act, 1948 (LIV of 1948);

(*iv*) in the case of a company governed by any other special Act for the time being in force, any matters which are not required to be disclosed by that special Act; or

(*v*) in the case of any * * company, any matters which are not required to be disclosed by virtue of the provisions contained in Schedule VI or by virtue of a notification issued under sub-section (*3*) or an order issued under sub-section (*4*).

(*6*) For the purposes of this section, except where the context otherwise requires, any reference to a balance sheet or profit and loss account shall include any notes thereon or documents annexed thereto, giving information required by this Act, and allowed by this Act to be given in the form of such notes or documents.

(*7*) If any such person as is referred to in sub-section (*6*) of section 208 fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty:

Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

211. Balance sheet of holding company to include certain particulars as to its subsidiaries.—(*1*) There shall be attached to the balance sheet of a holding company having a subsidiary or subsidiaries at the end of the financial year as at which the holding company's balance sheet is made out, the following documents in respect of such subsidiary or of each such subsidiary, as the case may be:—

(*a*) a copy of the balance sheet of the subsidiary;

(*b*) a copy of its profit and loss account;

(*c*) a copy of the report of its Board of directors;

(*d*) a copy of the report of its auditors;

(*e*) a statement of the holding company's interest in the subsidiary as specified in sub-section (*3*);

(*f*) the statement referred to in sub-section (*5*), if any; and

(*g*) the report referred to in sub-section (*6*), if any.

(*2*) (*a*) The balance sheet referred to in clause (*a*) of sub-section (*1*) shall be made out, in accordance with the requirements of this Act, as at the end of the financial year of the subsidiary next before the day as at which the holding company's balance sheet is made out.

(*b*) The profit and loss account and the * * * reports of the Board of directors and of the auditors, referred to in clauses (*b*), (*c*) and (*d*) of sub-section (*1*), shall be made out, in accordance with the requirements of this Act, for the financial year of the subsidiary referred to in clause (*a*).

(c) The financial year aforesaid of the subsidiary shall not end on a day which precedes the day on which the holding company's financial year ends by more than six months.

(d) Where the financial year of a subsidiary is shorter in duration than that of its holding company, references to the financial year of the subsidiary in clauses (a), (b) and (c) shall be construed as references to two or more financial years of the subsidiary the duration of which, in the aggregate, is not less than the duration of the holding company's financial year.

(3) The statement referred to in clause (e) of sub-section (1) shall specify—

(a) the extent of the holding company's interest in the subsidiary at the end of the financial year or of the last of the financial years of the subsidiary referred to in sub-section (2) ;

(b) the net aggregate amount, so far as it concerns members of the holding company and is not dealt with in the company's accounts, of the subsidiary's profits after deducting its losses or *vice versa*—

(i) for the financial year or years of the subsidiary aforesaid ; and

(ii) for the previous financial years of the subsidiary since it became the holding company's subsidiary;

(c) the net aggregate amount of the profits of the subsidiary after deducting its losses or *vice versa*—

(i) for the financial year or years of the subsidiary aforesaid ; and

(ii) for the previous financial years of the subsidiary since it became the holding company's subsidiary;

so far as those profits are dealt with, or provision is made for those losses, in the company's accounts.

(4) Clauses (b) and (c) of sub-section (3) shall apply only to profits and losses of the subsidiary which may properly be treated in the holding company's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the holding company or any other of its subsidiaries shall not (for that or any other purpose) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the company or any of its subsidiaries, except that they may in a proper case be so treated where—

(a) the company is itself the subsidiary of another body corporate;

(b) the shares were acquired from that body corporate or a subsidiary of it;

and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period, the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

(5) Where the financial year or years of a subsidiary referred to in sub-section (2) do not coincide with the financial year of the holding company, a statement containing information on the following matters shall also be attached to the balance sheet of the holding company:—

(a) whether there has been any, and, if so, what change in the holding company's interest in the subsidiary between the end of the financial year or of the last of the financial years of the subsidiary and the end of the holding company's financial year;

(b) details of any material changes which have occurred between the end of the financial year or of the last of the financial years of the subsidiary and the end of the holding company's financial year in respect of—

(i) the subsidiary's fixed assets;

(ii) its investments;

(iii) the moneys lent by it;

(iv) the moneys borrowed by it for any purpose other than that of meeting current liabilities.

(6) If, for any reason, the Board of directors of the holding company is unable to obtain information on any of the matters required to be specified by sub-section (4), a report in writing to that effect shall be attached to the balance sheet of the holding company.

(7) The documents referred to in clauses (e), (f) and (g) of sub-section (1) shall be signed by the persons by whom the balance sheet of the holding company is required to be signed.

(8) The Central Government may, on the application or with the consent of the Board of directors of the company, direct that in relation to any subsidiary, the provisions of this section shall not apply, or shall apply only to such extent as may be specified in the direction.

(9) If any such person as is referred to in sub-section (6) of section 208 fails to take all reasonable steps to comply with the provisions of this section, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that in any proceedings against a person in respect of an offence under this section it shall be a defence to prove that he had reasonable ground to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty:

Provided further that no person shall be sentenced to imprisonment for such an offence unless it was committed wilfully.

212. Financial year of holding company and subsidiary.—(1) Where it appears to the Central Government desirable for a holding company or a holding company's subsidiary, to extend its financial year so that the subsidiary's financial year may end with that of the holding company, and for that purpose to postpone the submission

of the relevant accounts to a general meeting, the Central Government may, on the application or with the consent of the Board of directors of the company whose financial year is to be extended, direct that in the case of that company, the submission of accounts to a general meeting, the holding of an annual general meeting or the making of an annual return, shall not be required to be submitted, held or made, earlier than the dates specified in the direction, notwithstanding anything to the contrary in this Act or in any other Act for the time being in force.

(2) The Central Government shall, on the application of the Board of directors of a holding company or a holding company's subsidiary, exercise the powers conferred on that Government by sub-section (1) if it is necessary so to do, in order to secure that the end of the financial year of the subsidiary does not precede * * * the end of the holding company's financial year by more than six months, where that is not the case at the commencement of this Act, or at the date on which the relationship of holding company and subsidiary comes into existence, where that date is later than the commencement of this Act.

213. Rights of holding company's representatives and members.— (1) A holding company may, by resolution, authorise representatives named in the resolution to inspect the books of account kept by any of its subsidiaries; and the books of account of any such subsidiary shall be open to inspection by those representatives at any time during business hours.

(2) The rights conferred by section 234 upon members of a company may be exercised, in respect of any subsidiary, by members of the holding company as if they alone were members of the subsidiary.

214. Authentication of balance sheet and profit and loss account.— (1) Save as provided by sub-section (2), every balance sheet and every profit and loss account of a company shall be signed on behalf of the Board of directors—

(i) in the case of a banking company, by the persons specified in clause (a) or clause (b), as the case may be, of sub-section (2) of section 29 of the Banking Companies Act, 1949 (X of 1949);

(ii) in the case of any other company, by its managing agent, secretaries and treasurers, manager or secretary, if any, and by not less than two directors of the company one of whom shall be a managing director where there is one.

(2) In the case of a company not being a banking company, when only one of its directors * * * is for the time being in India * * * * * * the balance sheet and the profit and loss account shall be signed * * *******by such director; but in such a case there shall be attached to the balance sheet and the profit and loss account a statement signed by him explaining the reason for non-compliance with the provisions of sub-section (1).

(3) The balance sheet and the profit and loss account shall be approved by the Board of directors before they are signed on behalf

of the Board in accordance with the provisions of this section and before they are submitted to the auditors for their report thereon.

215. Profit and loss account to be annexed and auditors' report to be attached to balance sheet.—The profit and loss account shall be annexed to the balance sheet and the auditors' report shall be attached thereto.

216. Board's report.—(*1*) There shall be attached to every balance sheet laid before a company in general meeting, a report by its Board of directors, with respect to—

(*a*) the state of the company's affairs;

(*b*) the amounts, if any, which it proposes to carry to any reserves * * either in such balance sheet or in a subsequent balance sheet; and

(*c*) the amount, if any, which it recommends should be paid, by way of dividend.

(*2*) The Board's report shall, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the Board's opinion be harmful to the business of the company or of any of its subsidiaries, deal with any changes which have occurred during the financial year—

(*a*) in the nature of the company's business;

(*b*) in the company's subsidiaries or in the nature of the business carried on by them; and

(*c*) generally in the classes of business in which the company has an interest* * * * * *

(*3*) The Board shall also be bound to give the fullest information and explanations in its report aforesaid, or in cases falling under the proviso to section 221, in an addendum to that report, on every reservation, qualification or adverse remark contained in the auditors' report.

(*4*) The Board's report may be signed by its chairman * * * * * if, and only if, he is authorised in that behalf by the Board.

(*5*) If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of sub-sections (*1*) to (*3*), or being the chairman signs the Board's report otherwise than in conformity with the provisions of sub-section (*4*), he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully:

Provided further that in any proceedings against a person in respect of an offence under sub-section (*1*), it shall be a defence to prove that he had reasonable ground to believe, and did believe, that a competent and reliable person was charged with the duty of

seeing that the provisions of that sub-section were complied with and was in a position to discharge that duty.

217. Penalty for improper issue, circulation or publication of balance sheet or profit and loss account.—(*a*) If any copy of a balance sheet or profit and loss account which has not been signed as required by section 214 is issued, circulated or published; or

(*b*) If any copy of a balance sheet is issued, circulated or published without there being annexed or attached thereto, as the case may be, a copy each of (*i*) the profit and loss account, (*ii*) any accounts, reports or statements which, by virtue of section 211, are required to be attached to the balance sheet, (*iii*) the auditors' report, and (*iv*) the Board's report referred to in section 216;

the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

218. Right of member to copies of balance sheet and auditors' report.—(*1*) A copy of every balance sheet (including the profit and loss account, the auditors' report and every other document required by law to be annexed or attached, as the case may be, to the balance sheet) which is to be laid before a company in general meeting shall, not less than twenty-one days before the date of the meeting, be sent to every member of the company, to every holder of debentures issued by the company (not being debentures which *ex facie* are payable to the bearer thereof), to every trustee for the holders of any debentures issued by the company (whether such member, holder or trustee is or is not entitled to have notices of general meetings of the company sent to him), * * * * * * * * * * * * * * * * * * * and to all persons other than such members, holders or trustees, being persons so entitled.

Provided that—

(*a*) in the case of a company not having a share capital, this sub-section shall not require the sending of a copy of the documents aforesaid to a member, or holder of debentures, of the company who is not entitled to have notices of general meetings of the company sent to him * * * * * *;

(*b*) this sub-section shall not require a copy of the documents aforesaid to be sent—

(*i*) to a member, * * * or * * holder of debentures, of the company, * * * who is not entitled to have notices of general meetings of the company sent to him and of whose address the company is unaware;

(*ii*) to more than one of the joint holders of any shares or debentures none of whom is entitled to have such notices sent to him; or

(*iii*) in the case of joint holders of any shares or debentures some of whom are and some of whom are not entitled

to have such notices sent to them, to those who are not so entitled; and

(c) if the copies of the documents aforesaid are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to vote at the meeting.

(2) Any member or holder of debentures of a company, whether he is or is not entitled to have copies of the company's balance sheet sent to him * * * * shall, on demand, be entitled to be furnished without charge, with a copy of the last balance sheet of the company and of every document required by law to be annexed or attached thereto, * * * * including the profit and loss account and the auditors' report.

(3) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

(4) If, when any person makes a demand for a copy of any document with which he is entitled to be furnished by virtue of sub-section (2), default is made in complying with the demand within seven days after the making thereof, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees, unless it is proved that that person had already made a demand for and been furnished with a copy of the document.

The Court may also, by order, direct that the copy demanded shall forthwith be furnished to the person concerned.

(5) Sub-sections (1) to (4) shall not apply in relation to a balance sheet of a private company laid before it before the commencement of this Act; and in such a case the right of any person to have sent to him or to be furnished with a copy of the balance sheet, and the liability of the company in respect of a failure to satisfy that right, shall be the same as they would have been if this Act had not been passed.

219. Three copies of balance sheet, etc. to be filed with Registrar.—(1) After the balance sheet and the profit and loss account have been laid before a company at the annual general meeting as aforesaid, there shall be filed with the Registrar at the same time as the copy of the annual return referred to in section 160—

(a) in the case of a public company, three copies of the balance sheet and the profit and loss account, signed by the managing director, managing agent, secretaries and treasurers, manager or secretary of the company, or if there be none of these, by a director of the company, together with three copies of all documents which are required by this Act to be annexed or attached to such balance sheet or profit and loss account;

(b) in the case of a private company, three copies of the balance sheet certified to be true copies by the company's auditors together with the auditors' report in so far as it relates to the balance sheet.

(2) If the annual general meeting of a public or private company before which a balance sheet is laid as aforesaid does not adopt the balance sheet, a statement of that fact and of the reasons therefor shall be annexed to the balance sheet and to the copies thereof required to be filed with the Registrar.

(3) If default is made in complying with the requirements of sub-sections (1) and (2), the company, and every officer of the company who is in default, shall be liable to the like punishment as is provided by section 161 for a default in complying with the provisions of sections 158, 159 and 160.

220. Duty of officer to make disclosure of payments, etc.—(1) Where any particulars or information is required to be given in the balance sheet or profit and loss account of a company or in any document required to be annexed or attached thereto, it shall be the duty of the concerned officer of the company to furnish without delay to the company, and also to the company's auditor whenever he so requires, those particulars or that information in as full a manner as possible.

(2) Where the officer concerned is a firm or body corporate acting as managing agent or as secretaries and treasurers, the duty aforesaid shall extend to every partner in the firm or to every director of the body corporate, as the case may be.

(3) The particulars or information referred to in sub-section (1) may relate to payments made to any director, managing agent, secretaries and treasurers, or other person by any other company, body corporate, firm or person.

(4) If any person knowingly makes default in performing the duty cast on him by the foregoing provisions of this section, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

221. Construction of references to documents annexed to accounts.—References in this Act to documents annexed or required to be annexed to a company's accounts or any of them shall not include the Board's report, * * the auditors' report or any document attached or required to be attached to those accounts:

Provided that any information which is required by this Act to be given in the accounts, and is allowed by it to be given in a statement annexed to the accounts, may be given in the Board's report instead of in the accounts; and if any such information is so given, the report shall be annexed to the accounts and this Act shall apply in relation thereto accordingly, except that the auditors shall report thereon only in so far as it gives the said information.

222. Certain companies to publish statement in Form F in Schedule I.—(1) Every company which is a limited banking company, an insurance company or a deposit, provident or benefit

society, shall, before it commences business and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in Form F in Schedule I, or in a Form as near thereto as circumstances admit.

(2) A copy of the statement, together with a copy of the last audited balance sheet laid before the members of the company, shall be displayed and until the display of the next following statement, shall be kept displayed, in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member, and every creditor, of the company shall be entitled, on payment of a sum of eight annas, to be furnished with a copy of the statement, within seven days of such payment.

(4) If default is made in complying with any of the requirements of this section, the company, and every officer of the company who is in default shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(5) This section shall not apply to a life assurance company or provident insurance society to which the provisions of the Insurance Act, 1938 (IV of 1938), as to the annual statements to be made by such company or society, apply with or without modifications, if the company or society complies with those provisions.

Audit

223. * * * **Appointment and remuneration of auditors.**—(1) Every company shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.

(2) At any annual general meeting, a retiring auditor, by whatsoever authority appointed, shall be re-appointed, unless—

(a) he is not qualified for re-appointment; * *

(b) he has given the company notice in writing of his unwillingness to be re-appointed;

(c) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be re-appointed; or

(d) where notice has been given of an intended resolution to appoint some person or persons in the place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with * * * * *.

(3) Where at an annual general meeting no auditors are appointed or reappointed, the Central Government may appoint a person to fill the vacancy.

(4) The company shall, within seven days of the Central Government's power under sub-section (3) becoming exercisable, give

notice of that fact to that Government; and, if a company fails to give such notice, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

(5) The first auditor or auditors of a company shall be appointed by the Board of directors within one month of the date of registration of the company; and the auditor or auditors so appointed shall hold office until the conclusion of the first annual general meeting:

Provided that—

(a) the company may, at a general meeting, remove any such auditor or all or any of such auditors and appoint in his or their places any other person or persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting; and

(b) if the Board fails to exercise its powers under this sub-section, the company in general meeting may appoint the first auditor or auditors.

(6) (a) The Board may fill any casual vacancy in the office of an auditor; but while any such vacancy continues, the remaining auditor or auditors, if any, may act:

Provided that where such vacancy is caused by the resignation of an auditor, the vacancy shall only be filled by the company in general meeting.

(b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

(7) Except as provided in the proviso to sub-section (5), any auditor appointed under this section may be removed from office before the expiry of his term only by the company in general meeting, after obtaining the previous approval of the Central Government in that behalf.

(8) The remuneration of the auditors of a company—

(a) in the case of an auditor appointed by the Board or * * the Central Government, may be fixed by the Board or * * the Central Government, as the case may be; and

(b) subject to clause (a), shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

For the purposes of this sub-section, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

224. Provisions as to resolutions for appointing or removing auditors.—(1) Special notice shall be required for a resolution at

an annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be re-appointed.

(2) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor * *.

(3) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so,—

(*a*) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(*b*) send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representations by the company;

and if a copy of the representations is not sent as aforesaid because they were received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Court may order the company's costs on such an application * * * to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(4) Sub-sections (2) and (3) shall apply to a resolution to remove the first auditors or any of them under sub-section (5) of section 223 or to the removal of any auditor or auditors under sub-section (7) of that section, as they apply in relation to a resolution that a retiring auditor shall not be re-appointed.

225. Qualifications and disqualifications of auditors.—(1) A person shall not be qualified for appointment as auditor of a company unless either—

(*a*) he is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (XXXVIII of 1949), or

(*b*) he is for the time being authorised by the Central Government to be so appointed * * as having obtained similar qualifications outside India * * *:

Provided that a firm whereof all the partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company, in which case any partner so practising may act in the name of the firm.

(2) (*a*) Notwithstanding anything contained in sub-section (*1*) but subject to the provisions of rules made under clause (*b*), the holder of a certificate granted under a law in force in the whole or any portion of a Part B State immediately before the commencement of the Part B State (Laws) Act, 1951 (III of 1951), entitling him to act as an auditor of companies in that State or any portion thereof shall be entitled to be appointed to act as an auditor of companies registered anywhere in that State.

(*b*) The Central Government may, by notification in the Official Gazette, make rules providing for the grant, renewal, suspension or cancellation of auditors' certificates to persons in Part B States for the purposes of clause (*a*), and prescribing conditions and restrictions for such grant, renewal, suspension or cancellation.

(*3*) None of the following persons shall be qualified for appointment as auditor of a company—

(*a*) a body corporate;

(*b*) an officer or servant of the company;

(c) a person who is a partner, or who is in the employment, of an officer or servant of the company;

(d) a person who is indebted to the company for an amount exceeding one thousand rupees or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the company for an amount exceeding one thousand rupees;

(*e*) a person who is a director or member of a private company, or a partner of a firm, which is the managing agent or the secretaries and treasurers of the company;

(*f*) a person who is a director, or the holder of shares exceeding five per cent in nominal value of the subscribed capital, of any body corporate which is the managing agent, or the secretaries and treasurers, of the company:

Provided that any shares held by such person as nominee or trustee for any third person and in which the holder has no beneficial interest shall be excluded in computing the percentage of shares held by him for the purpose of this clause.

Explanation.—References in this sub-section to an officer or servant shall be construed as not including references to an auditor.

(*4*) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of sub-section (*3*), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(*5*) If an auditor becomes subject after his appointment to any of the disqualifications specified in sub-sections (*3*) and (*4*), he shall be deemed to have vacated his office as such.

226. Powers and duties of auditors.—(*1*) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, whether kept at the head office of the company or elsewhere, and shall be entitled to require from the officers of the company such information and explanations as the auditor may think necessary for the performance of his duties as auditor.

(*2*) The auditor shall make a report to the members of the company on the accounts examined by him, and on every balance sheet and profit and loss account and on every other document declared by this Act to be part of or annexed to the balance sheet or profit and loss account, which are laid before the company in general meeting during his tenure of office, and the report shall state whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view—

(*i*) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year; and

(*ii*) in the case of the profit and loss account, of the profit or loss for its financial year.

(*3*) The auditor's report shall also state—

(*a*) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit;

(*b*) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books, and proper returns adequate for the purposes of his audit have been received from branches not visited by him;

(*c*) whether the company's balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns.

(*4*) Where any of the matters referred to in clauses (*i*) and (*ii*) of sub-section (*2*) or in clauses (*a*), (*b*) and (*c*) of sub-section (*3*) is answered in the negative or with a qualification, the auditor's report shall state the reason for the answer.

(*5*) Where the company is one which is not required to disclose any matters by virtue of any provisions contained in this or in any other Act, if the balance sheet and the profit and loss account specify those provisions and if, in the opinion of the auditor and to the best of his information and according to the explanations given to him, they give the information required by this Act in the manner so required and subject to the provisions aforesaid, give a true and fair view, in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year, and in the case of the profit and loss account, of the profit or loss for its

financial year, the auditor's report shall state that in his opinion and to the best of his information and according to the explanations given to him, the accounts of the company are properly drawn up so as to disclose the state of the company's affairs as at the date of its balance sheet and its profit or loss for its financial year ending on that date, so far as is required by the provisions of this or any other Act applicable to the company.

227. Audit of accounts of branch office of company.—(*1*) Where a company has a branch office, the accounts of that office shall, unless the company in general meeting decides otherwise, be audited by a person qualified for appointment as auditor of the company under section 225, or where the branch office is situate in a country outside India, either by a person qualified as aforesaid or by an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.

(*2*) Where the accounts of any branch office are not so audited, the company's auditor—

(*a*) shall be entitled to visit the branch office, if he deems it necessary to do so for the performance of his duties as auditor; and

(*b*) shall have a right of access at all times to the books and accounts and vouchers of the company maintained at the branch office * * * * * * :

Provided that in the case of a banking company having a branch office outside India, it shall be sufficient if the auditor is allowed access to such copies of, and extracts from, the books and accounts of the branch as have been transmitted to the principal office of the company in India.

228. Signature of audit report etc.—Only the person appointed as auditor of the company, or where a firm is so appointed in pursuance of the proviso to sub-section (*1*) of section 225, only a partner in the firm practising in India, may sign the auditor's report, or sign or authenticate any other document of the company required by law to be signed or authenticated by the auditor.

229. Reading and inspection of auditor's report.—The auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

230. Right of auditor to receive notices of and attend general meeting.—All notices of, and other communications relating to, any general meeting of a company which any member of the company is entitled to have sent to him shall be forwarded to the auditor of the company; and the auditor shall be entitled to attend any general meeting and to be heard at any general meeting which he attends on any part of the business which concerns him as auditor.

231. Penalty for non-compliance by company with sections 224 to 230.—If default is made by a company in complying with any of the provisions contained in sections 224 to 230, the company, and

every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

232. Penalty for non-compliance by auditor with sections 226 and 228.—If any auditor's report is made, or any document of the company is signed or authenticated, otherwise than in conformity with the requirements of sections 226 and 228, the auditor concerned and the person, if any, other than the auditor who signs the report or signs or authenticates the document shall, if the default is wilful, be punishable with fine which may extend to one thousand rupees.

Power of Registrar to call for information etc.

233. Power of Registrar to call for information or explanation.—(*1*) Where, on perusing any document which a company is required to submit to him under this Act, the Registrar is of opinion that any information or explanation is necessary in order that such document may afford full particulars of the matter to which it purports to relate, he may, by a written order, call on the company submitting the document to furnish in writing such information or explanation, within such time as he may specify in the order.

(*2*) On receipt by the company of an order under sub-section (*1*), it shall be the duty of the company, and of all persons who are officers of the company, to furnish such information or explanation to the best of their power.

(*3*) On receipt of a copy of an order under sub-section (*1*), it shall also be the duty of every person who has been an officer of the company to furnish such information or explanation to the best of his power.

(*4*) If the company, or any such person as is referred to in sub-section (*2*) or (*3*), refuses or neglects to furnish any such information or explanation,—

(*a*) the company, and each such person, shall be punishable with fine which may extend to fifty rupees in respect of each offence; and

(*b*) the Court may, on the application of the Registrar and after notice to the company, make an order on the company for production of such documents as, in the opinion of the Court, may reasonably be required by the Registrar for the purpose referred to in sub-section (*1*) and allow the Registrar inspection thereof on such terms and conditions as it thinks fit.

(*5*) On receipt of any document containing such information or explanation, the Registrar may annex it to the original document submitted to him; and any document so annexed shall be subject to the like provisions as to inspection, the taking of extracts, and the furnishing of copies, as the original document is subject.

(*6*) If such information or explanation is not furnished within the specified time, or if after perusal of such information or explanation the Registrar is of opinion that the document in question discloses an unsatisfactory state of affairs, or that it does not disclose a full and fair statement of the matter to which it purports to

relate, the Registrar shall report in writing the circumstances of the case to the Central Government.

(7) If it is represented to the Registrar on materials placed before him by any contributory or creditor that the business of a company is being carried on in fraud of its creditors or of persons dealing with the company or otherwise for a fraudulent or unlawful purpose, he may, after giving the company an opportunity of being heard, by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order, within such time as he may specify therein; and the provisions of sub-sections (2), (3), (4) and (6) of this section shall apply to such order.

If upon inquiry the Registrar is satisfied that any representation on which he took action under this sub-section was frivolous or vexatious, he shall disclose the identity of his informant to the company.

(8) The provisions of this section shall apply *mutatis mutandis* to documents which a liquidator, or a foreign company within the meaning of section 586, is required to file under this Act.

Investigation

234. Investigation of affairs of company on application by members or report by Registrar.—The Central Government may appoint one or more competent persons as inspectors to investigate the affairs of any company and to report thereon in such manner as the Central Government may direct,—

(a) in the case of a company having a share capital, on the application either of not less than two hundred members or of members holding not less than one-tenth of the shares issued;

(b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members;

(c) in the case of any company, on a report by the Registrar under sub-section (6), or sub-section (7) read with sub-section (6), of section 233.

235. Application * * by members to be supported by evidence and power to call for security.—An application by members of a company under clause (a) or (b) of section 234 shall be supported by such evidence as the Central Government may require for the purpose of showing that the applicants have good reason for requiring the investigation; and the Central Government may, before appointing an inspector, require the applicants to give security, for such amount not exceeding one thousand rupees as it may think fit, for payment of the costs of the investigation.

236. Investigation of company's affairs in other cases.—Without prejudice to its powers under section 234, the Central Government—

(a) shall appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct, if—

(i) the company, by special resolution, or

(*ii*) the Court, by order,

declares that the affairs of the company ought to be investigated by an inspector appointed by the Central Government; and

(*b*) may do so if, in the opinion of the Central Government, there are circumstances suggesting—

(*i*) that the business of the company is being conducted with intent to defraud its creditors or * * * any other persons, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members, or that the company was formed for any fraudulent or unlawful purpose; or

(*ii*) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

(*iii*) that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, the managing agent, the secretaries and treasurers, or the manager, of the company.

237. Firm, body corporate or association not to be appointed as inspector.—No firm, body corporate or other association shall be appointed as an inspector under section 234 or 236.

238. Power of inspectors to carry investigation into affairs of related companies or of managing agent or associate.—(*1*) If an inspector appointed under section 234 or 236 to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of—

(*a*) any other body corporate which is, or has at any relevant time, been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary;

(*b*) any other body corporate which is, or has at any relevant time been, managed—

(*i*) by any person as managing agent or as secretaries and treasurers who was also either the managing agent or the secretaries and treasurers of the company;

(*ii*) by any person who is, or was at the relevant time, an associate of the managing agent or secretaries and treasurers of the company; or

(*iii*) by any person of whom the managing agent or secretaries and treasurers of the company is, or was at the relevant time, an associate;

(*c*) any other body corporate which is, or has at any relevant time been, managed by the company; or

(*d*) any person who is, or has at any relevant time been, the company's managing agent or secretaries and treasurers or an associate of such managing agent or secretaries and treasurers,

the inspector shall, subject to the provisions of sub-section (*2*), have power so to do, and shall report on the affairs of the other body corporate or of the managing agent, secretaries and treasurers or associate of the managing agent or secretaries and treasurers, so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

(*2*) In the case of any body corporate or person referred to in clause (*b*) (*ii*), (*b*) (*iii*), (c), or (*d*) of sub-section (*1*), the inspector shall not exercise his power of investigating into, and reporting on, its or his affairs without first having obtained the prior approval of the Central Government thereto.

239. Production of documents and evidence on investigation.—(*1*) It shall be the duty of all officers and agents of the company, and where the company is or was managed by a managing agent or secretaries and treasurers, of all officers and agents of the managing agent or secretaries and treasurers, and where the affairs of any other body corporate or of a managing agent or secretaries and treasurers or of an associate of a managing agent or secretaries and treasurers are investigated by virtue of section 238, of all officers and agents of such body corporate, managing agent, secretaries and treasurers, or associate, and where such managing agent, secretaries and treasurers or associate is or was a firm, of all partners in the firm—

(*a*) to produce to an inspector all books and papers of, or relating to, the company or as the case may be, of or relating to the other body corporate, managing agent, secretaries and treasurers or associate, which are in their custody or power; and

(*b*) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(*2*) An inspector may examine on oath any of the persons referred to in sub-section (*1*), in relation to the affairs of the company, other body corporate, managing agent, secretaries and treasurers or associate, as the case may be; and may administer an oath accordingly.

(*3*) If any such person refuses—

(*a*) to produce to an inspector any book or paper which it is his duty under sub-section (*1*) to produce, or

(*b*) to answer any question which is put to him by an inspector in pursuance of sub-section (*2*),

the inspector may certify the refusal under his hand to the Court; and the Court may thereupon inquire into the case; and * * after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing * * any statement which may be offered

in * * defence, * * * * * * * * * * * punish the offender as if he had been guilty of contempt of the Court.

(4) If an inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be so examined, he may apply to the Court and the Court may, if it sees fit, order that person to attend and be examined on oath before it on any matter relevant to the investigation, and on any such examination—

(a) the inspector may take part therein either personally or by a legal practitioner;

(b) the Court may put such questions to the person examined as the Court thinks fit;

(c) the person examined shall answer all such questions as the Court may put or allow to be put to him, but may at his own cost employ a legal practitioner, who shall be at liberty to put to such person such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him:

Provided that, notwithstanding anything in clause (c), the Court may allow the person examined such costs as in its discretion it may think fit, and any costs so allowed shall be treated as part of the expenses of the investigation.

* * (5) Notes of any examination under sub-section (2) or (4) shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(6) In this section—

(a) the expression "agent", in relation to any company, body corporate or person, means any one acting or purporting to act for or on behalf of such company, body corporate or person, and includes the bankers and legal advisers of, and persons employed as auditors by, such company, body corporate or person; and

(b) any reference to officers, * * agents or partners shall be construed as a reference to past as well as present officers, * *, agents or partners, as the case may be.

240. Inspectors' report.—(1) The inspectors may, and if so directed by the Central Government shall, make interim reports to that Government, and on the conclusion of the investigation, shall make a final report to the Central Government.

Any such report shall be written or printed, as the Central Government may direct.

(2) The Central Government—

(a) shall forward a copy of any report made by the inspectors to the company at its registered office, and also to any body corporate, managing agent, secretaries and treasurers or associate dealt with in the report by virtue of section 238;

(*b*) may, if it thinks fit, furnish a copy thereof, on request and on payment of the prescribed fee, to any person—

(*i*) who is a member of the company or other body corporate (including a managing agent, secretaries and treasurers or an associate of a managing agent or secretaries and treasurers, where such managing agent, secretaries and treasurers or associate is a body corporate) dealt with in the report by virtue of section 238, * *

(*ii*) who is a partner in the firm, where such managing agent, secretaries and treasurers or associate is a firm, or

(*iii*) whose interests as a creditor of the company, other body corporate, managing agent, secretaries and treasurers or associate aforesaid appear to the Central Government to be affected;

(*c*) shall, where the inspectors are appointed under clause (*a*) or (*b*) of section 234, * * furnish, at the request of the applicants for the investigation, a copy of the report to them; * *

(*d*) shall, where the inspectors are appointed under section 236 in pursuance of an order of the Court, * * furnish a copy of the report to the Court; and

(*e*) * * * may also cause the report to be published.

241. **Prosecution on inspectors' report.**—(*1*) If, from any report made under section 240, it appears to the Central Government that any person has, in relation to the company or in relation to any other body corporate, managing agent, secretaries and treasurers, or associate of a managing agent or secretaries and treasurers whose affairs have been investigated by virtue of section 238, been guilty of any offence for which he is criminally liable, the Central Government may, after taking such legal advice as it thinks fit, prosecute such person for the offence; and it shall be the duty of all officers and agents of the company, body corporate, managing agent, secretaries and treasurers, or associate, as the case may be, (other than the accused in the proceedings) to give the Central Government all assistance in connection with the prosecution which they are reasonably able to give.

(*2*) Sub-section (*6*) of section 239 shall apply for the purposes of this section, as it applies for the purposes of that section.

242. **Application for winding up of company etc. on inspectors' report.**—If any such company or other body corporate, or any such managing agent, secretaries and treasurers, or associate, being a body corporate, is liable to be wound up under this Act and it appears to the Central Government from any such report as aforesaid that it is expedient so to do by reason of any such circumstances as are referred to in sub-clause (*i*) or (*ii*) of clause (*b*) of section 236, the Central Government may, unless the company, body corporate, managing agent, secretaries and treasurers or associate is already being wound

up by the Court, cause to be presented to the Court by any person authorised by the Central Government in this behalf—

(*a*) a petition for the winding up of the company, body corporate, managing agent, secretaries and treasurers, or associate, on the ground that it is just and equitable that it should be wound up;

(*b*) an application for an order under section 396 or 397; or

(*c*) both a petition and an application as aforesaid.

243. Proceedings for recovery of damages or property on inspectors' report.—(*1*) If from any such report as aforesaid, it appears to the Central Government that proceedings ought in the public interest to be brought by the company or any body corporate whose affairs have been investigated in pursuance of clause (a), (*b*) or (c) of section 238,

(*a*) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate;

(*b*) for the recovery of any property of such company, or body corporate, which has been misapplied or wrongfully retained;

the Central Government may itself bring proceedings for that purpose in the name of such company or body corporate.

(*2*) The Central Government shall indemnify such company or body corporate against any costs or expenses incurred by it in, or in connection with, any proceedings brought by virtue of sub-section (*1*).

244. Recovery of expenses of investigation etc.—(*1*) The expenses of and incidental to an investigation by an inspector appointed by the Central Government under section 234 or 236 shall be defrayed in the first instance by the Central Government; but the following persons shall, to the extent mentioned below, be liable to reimburse the Central Government in respect of such expenses:—

(*a*) any person who is convicted on a prosecution instituted in pursuance of section 241, or who is ordered to pay damages or restore any property in proceedings brought by virtue of section 243, may, in the same proceedings, be ordered to pay the said expenses to such extent as may be specified by the Court convicting such person or ordering him to pay such damages or restore such property, as the case may be;

(*b*) any company or body corporate in whose name proceedings are brought as aforesaid shall be liable, to the extent of the amount or value of any sums or property recovered by it as a result of the proceedings; and

(c) unless, as a result of the investigation, a prosecution is instituted in pursuance of section 241,—

(*i*) any company, body corporate, managing agent, secretaries and treasurers or associate dealt with by the report,

where the inspector was appointed under clause (*a*) or * * (*b*) of section 234 or * * clause (*a*) of section 236, shall be liable to reimburse the Central Government in respect of the whole of the expenses, unless, and except in so far as, the Central Government otherwise directs; and

(*ii*) the applicants for the investigation, where the inspector was appointed under clause (*a*) or * * (*b*) of section 234, shall be liable to such extent, if any, as the Central Government may direct.

(*2*) Any amount for which a company or body corporate is liable by virtue of clause (*b*) of sub-section (*1*) shall be a first charge on the sums or property mentioned in that clause.

(*3*) The report of an inspector appointed under clause (c) of section 234 or clause (*b*) of section 236, may if he thinks fit, and shall if the Central Government so directs, include a recommendation as to the directions, if any, which he thinks appropriate, in the light of his investigation, to be given under clause (c) of sub-section (*1*).

(*4*) For the purposes of this section, any costs or expenses incurred by the Central Government in or in connection with proceedings brought by virtue of section 243 (including expenses incurred by virtue of sub-section (*2*) thereof) shall be treated as expenses of the investigation giving rise to the proceedings.

(*5*) (*a*) Any liability to reimburse the Central Government imposed by clauses (*a*) and (*b*) of sub-section (*1*) shall, subject to satisfaction of the right of the Central Government to reimbursement, be a liability also to indemnify all persons against liability under clause (c) of that sub-section.

(*b*) Any such liability imposed by the said clause (*a*) shall, subject as aforesaid, be a liability also to indemnify all persons against liability under the said clause (*b*).

(*c*) Any person liable under the said clause (*a*) or * * (*b*) or sub-clause (*i*) or sub-clause (*ii*) of the said clause (c) shall be entitled to contribution from any other persons liable under the same clause or sub-clause, as the case may be, according to the amount of their respective liabilities thereunder.

(*6*) In so far as the expenses to be defrayed by the Central Government under this section are not recovered thereunder, they shall be paid out of moneys provided by Parliament.

245. Inspectors' report to be evidence.—A copy of any report of any inspector or inspectors appointed under section 234 or 236 authenticated in such manner, if any, as may be prescribed, shall be admissible in any legal proceeding as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report.

246. Appointment and powers of inspectors to investigate ownership of company.—(*1*) Where it appears to the Central Government that there is good reason so to do, it may appoint one or more inspectors to investigate and report on the membership of any company and other matters relating to the company, for the purpose of determining the true persons—

(*a*) who are or have been financially interested in the success or failure, whether real or apparent, of the company, or

(*b*) who are or have been able to control or materially to influence the policy of the company.

(*2*) When appointing an inspector under sub-section (*1*), the Central Government may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular shares or debentures.

(*3*) Subject to the terms of an inspector's appointment, his powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant to the purposes of his investigation.

(*4*) Subject as aforesaid, the powers of the inspector shall also extend, where the company has or at any time had a managing agent or secretaries and treasurers,—

(*a*) in case such managing agent or secretaries and treasurers, are or were a body corporate, to the investigation of the ownership of the shares of such body corporate, and of who the persons are or were who control or manage or controlled or managed its affairs;

(*b*) in case such managing agent or secretaries and treasurers, are or were a firm, to the investigation of who the persons are or were who control or manage or controlled or managed its affairs as partners in the firm or otherwise and of the respective interests therein of the partners; and

(*c*) in all cases, to the investigation of who the persons are who are entitled or who the persons were who were entitled to any share of, or any amount forming part of, the * * * remuneration of such managing agent or secretaries and treasurers.

(*5*) For the purposes of any investigation under this section, sections 238, 239 and 240 shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate or of any managing agent, secretaries and treasurers, or associate:

Provided that the said sections shall apply in relation to all persons (including persons concerned only on behalf of others) who are or have been, or whom the inspector has reasonable cause to believe to be or to have been—

(*i*) financially interested in the success or failure, or the apparent success or failure, of the company, or of any other body corporate, managing agent, secretaries and treasurers or associate whose membership or constitution is investigated with that of the company, or

(*ii*) able to control or materially to influence the policy of such company, body corporate, managing agent, secretaries and treasurers or associate,

as they apply in relation to officers and agents of the company, of the other body corporate, or of the managing agent, secretaries and treasurers or associate, as the case may be:

Provided further that the Central Government shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof, if it is of opinion that there is good reason for not divulging the contents of the report or of parts thereof; but in such a case, the Central Government shall cause to be kept by the Registrar a copy of any such report, or as the case may be, of the parts thereof, as respects which it is not of that opinion.

(*6*) The expenses of any investigation under this section shall be defrayed by the Central Government out of moneys provided by Parliament, unless the Central Government directs that the expenses or any part thereof should be paid by the persons on whose application the investigation was ordered.

247. Power to require information as to persons interested in shares or debentures or in interest in managing agency firm etc.— (*1*) Where it appears to the Central Government that there is good reason to investigate the ownership of any shares in or debentures of a company, or of a body corporate which acts or has acted as the managing agent or secretaries and treasurers of a company, and that it is unnecessary to appoint an inspector for the purpose, the Central Government may require any person whom it has reasonable cause to believe—

(*a*) to be, or to have been, interested in those shares or debentures; or

(*b*) to act, or to have acted, in relation to those shares or debentures, as the legal adviser or agent of someone interested therein;

to give the Central Government any information which he has, or can reasonably be expected to obtain, as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of sub-section (1), a person shall be deemed to have an interest in a share or debenture—

(a) if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof; * *

(b) if his consent is necessary for the exercise of any of the rights of other persons interested therein; or

(c) if other persons interested therein can be required, or are accustomed, to exercise their rights in accordance with his directions or instructions.

(3) Where it appears to the Central Government that there is good reason to investigate the ownership of any interest in a firm which acts or has acted as managing agent or as secretaries and treasurers of any company, and that it is unnecessary to appoint an inspector for the purpose, the Central Government may require any person whom it has reasonable cause to believe—

(a) to have, or to have had, any interest in the firm, or

(b) to act or to have acted, in relation to any such interest, as the legal advised or agent of someone interested therein,

to give the Central Government any information which he has, or can reasonably be expected to obtain, as to the present and past interests held in the firm, and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to any such interest.

(4) Any person—

(a) who fails to give any information required of him under this section, or

(b) who, in giving any such information, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

248. Investigation regarding association with managing agent.—(1) Where any question arises as to whether any body corporate, firm, or individual is or is not, or was or was not, an associate of the managing agent or secretaries and treasurers of a company and it

appears to the Central Government that there is good reason to investigate such question, it may either—

(*a*) appoint an inspector for the purpose of making the investigation; or

(*b*) if it considers it unnecessary to appoint an inspector as aforesaid, require any person whom it has reasonable cause to believe to be in a position to give relevant information in regard to the question, to furnish the Central Government with information on such matters as may be specified by it.

(*2*) The provisions of section 246 shall apply *mutatis mutandis* to cases falling under clause (*a*) of sub-section (*1*) and those of section 247 to cases falling under clause (*b*) of that sub-section.

249. Power to impose restrictions on shares or debentures.— (*1*) Where in connection with an investigation under section 246, 247 or 248, it appears to the Central Government that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, the Central Government may, by order, direct that the shares shall, until further order, be subject to the restrictions imposed by this section.

(*2*) So long as any shares are directed to be subject to the restrictions imposed by this section—

(*a*) any transfer of those shares shall be void;

(*b*) where those shares are to be issued, they shall not be issued; and any issue thereof or any transfer of the right to be issued therewith, shall be void;

(*c*) no voting rights shall be exercisable in respect of those shares;

(*d*) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof; and any issue of such shares, or any transfer of the right to be issued therewith, shall be void;

(*e*) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of dividend, capital or otherwise.

(*3*) Where the Central Government makes an order directing that any shares shall be subject to the said restrictions, or refuses to make an order directing that any shares shall cease to be subject thereto, any person aggrieved thereby may apply to the Court, and the Court may, if it sees fit, direct that the shares shall cease to be subject to the said restrictions.

(*4*) Any order (whether of the Central Government or of the Court), directing that any shares shall cease to be subject to the said restrictions which is expressed to be made with a view to permitting a transfer of those shares may continue the restrictions mentioned

in clauses (d) and (e) of sub-section (2), either in whole or in part, so far as they relate to any right acquired or offer made, before the transfer.

(5) Any person who—

(a) exercises, or purports to exercise, any right to dispose of any shares or of any right to be issued with any such shares, when to his knowledge, he is not entitled to do so, by reason of any of the said restrictions applicable to the case;

(b) votes in respect of any such shares, whether as holder or proxy, or appoints a proxy to vote in respect thereof when, to his knowledge, he is not entitled to do so by reason of any of the said restrictions applicable to the case; or

(c) being the holder of any such shares, fails to give notice of the fact of their being subject to the said restrictions to any person whom he does not know to be aware of that fact but whom he knows to be entitled, apart from such restrictions, to vote in respect of those shares, whether as holder or as proxy;

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(6) Where shares in any company are issued in contravention of such of the said restrictions as may be applicable to the case, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

(7) A prosecution shall not be instituted under this section except by, or with the consent of, the Central Government.

(8) This section shall apply in relation to debentures as it applies in relation to shares.

250. Saving for legal advisers and bankers.—Nothing in sections 233 to 249 shall require the disclosure to the Registrar or to the Central Government or to an inspector appointed by that Government—

(a) by a legal adviser, of any privileged communication made to him in that capacity, except as respects the name and address of his client; or

(b) by the bankers of any company, body corporate, managing agent, secretaries and treasurers or other person, referred to in the sections aforesaid, as such bankers, of any information as to the affairs of any of their customers other than such company, body corporate, managing agent, secretaries and treasurers or person.

CHAPTER II

* * DIRECTORS

Constitution of Board of Directors

251. Minimum number of directors.—(*1*) Every public company, and every private company which is a subsidiary of a public company, shall have at least three directors.

(*2*) Every private company which is not a subsidiary of a public company shall have at least two directors.

(*3*) The directors of a company collectively are referred to in this Act as the "Board of directors" or "Board".

252. Only individuals to be directors.—No body corporate, association or firm shall be appointed director of a public or private company, and only an individual shall be so appointed.

253. Subscribers of memorandum deemed to be directors.—In default of and subject to any regulations in the articles of a company, subscribers of the memorandum who are individuals, shall be deemed to be the directors of the company, until the directors are duly appointed in accordance with section 254.

254. Appointment of directors and proportion of those who are to retire by rotation.—(*1*) Not less han two-thirds of the total number of directors of a public company, or of a private company which is a subsidiary of a public company, shall—

(*a*) be persons whose period of office is liable to determination by retirement of directors by rotation, and

(*b*) save as otherwise expressly provided in this Act, be appointed by * * * the company in general meeting.

(*2*) The remaining directors in the case of any such company, and the directors generally in the case of a private company which is not a subsidiary of a public company, shall, in default of and subject to any regulations in the articles of the company, also be appointed by * * * the company in general meeting.

255. Provision regarding directors retiring by rotation.—(*1*) At the first annual general meeting of a public company or a private company which is a subsidiary of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with section 254, and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is not three or a multiple of three, then, the number nearest to one-third, shall retire from office.

(2) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

(3) At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

(4) (*a*) If the place of the retiring director is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place.

(*b*) If at the adjourned meeting also, the place of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless—

(*i*) at that meeting or at the previous meeting a resolution for the reappointment of such director has been put to the meeting and lost;

(*ii*) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so reappointed;

(*iii*) he is not qualified or is disqualified for appointment;

(*iv*) a resolution, whether special or ordinary, is required for his appointment or re-appointment in virtue of any provisions of this Act; or

(*v*) the proviso to sub-section (2) of section 262 or sub-section (3) of section 279 is applicable to the case.

(5) Where a director is to retire at any annual general meeting both in virtue of sub-section (2) and in virtue of sub-section (2) of section 279, he shall be deemed, for the purposes of this section, to retire in virtue of sub-section (2) of this section.

256. Right of persons other than retiring directors to stand for directorship.—(1) A person who is not a retiring director shall, subject to the provisions of this Act, be eligible for appointment to the office of director at any general meeting, if he or some * * member intending to propose him has, not less than fourteen days before the meeting, left at the office of the company a notice in writing under his hand signifying his candidature for the office of director or the intention of such member to propose him as a candidate for that office, as the case may be.

(2) Sub-section (1) shall not apply to a private company, unless it is a subsidiary of a public company.

257. Right of company to increase or reduce the number of directors.—(1) Subject to the provisions of sections 251, 254 and

258, a company in general meeting may, * * * * by ordinary resolution, increase or reduce the number of its directors within the limits fixed in that behalf by its articles.

258. Increase in number of directors to require Government sanction.—In the case of a public company or a private company which is a subsidiary of a public company, any increase in the number of its directors, except—

(*a*) in the case of a company which was in existence on the 21st day of July, 1951, an increase which was within the permissible maximum under its articles as in force on that date; and

(*b*) in the case of a company which came or may come into existence after that date, an increase which is within the permissible maximum under its memorandum and articles as first registered,

shall not have any effect unless approved by the Central Government; and shall become void if, and in so far as, it is disapproved by that Government.

259. Additional directors.—Nothing * * * in section 254, 257, or 258 shall affect any power conferred on the Board of directors by the articles to appoint additional directors:

Provided that such additional directors shall hold office only up to the date of the next annual general meeting of the company:

Provided further that the number of the directors and additional directors together shall not exceed the maximum strength fixed for the Board by the articles.

260. Certain persons connected with managing agent not to be appointed directors, except by special resolution.—(*1*) If a public company, or a private company which is a subsidiary of a public company, has a managing agent and such managing agent is authorised by the articles to appoint any director to the Board, none of the following persons shall be appointed as a director of the company whose period of office is liable to determination by retirement of directors by rotation, except by a special resolution passed by the company:—

(*a*) any person who is an officer or employee of, or who holds any office or place of profit under, the company or any subsidiary thereof:

Provided that nothing in this clause shall apply to the director of such company or subsidiary, or to the holder of any office or place of profit under such company or subsidiary which may be held by a director of the company by virtue of section 313;

(*b*) where any office or place of profit which would disqualify a person under clause (*a*), read with the proviso thereto, is held by any firm, any partner in, or employee of, the firm;

(*c*) where any such office or place of profit is held by a private company, any member, officer or employee of such company;

(*d*) where any such office or place of profit is held by a body corporate, any officer or employee of such body corporate;

(*e*) any person who is entitled, by virtue of any agreement, to any share of, or any amount out of, the remuneration received by the managing agent;

(*f*) where the managing agent is an individual, any partner or employee of the managing agent; or

* * * * * *

(*g*) any person who is an officer or employee of, or who holds any office or place of profit under, any body corporate under the management of the managing agent or any subsidiary of such body corporate:

Provided that nothing in clause (*g*) shall apply to the director of such body corporate or subsidiary or to the holder of any office or place of profit under such body corporate or subsidiary which may be held by a director of such body corporate by virtue of section 313.

(*2*) Special notice shall be required of any resolution appointing, or approving the appointment of, any person referred to in clauses (*a*) to (*g*) of sub-section (*1*), as a director of the company.

(*3*) The notice given to the company of any such resolution, and the notice thereof given by the company to its members, shall set out the reasons which make the resolution necessary.

(*4*) Nothing in this section shall be deemed to prevent any director holding any office immediately before the commencement of this Act from continuing to hold that office up to the next annual general meeting of the company.

261. Filling of * * casual vacancies among directors.—(*1*) In the case of a public company or a private company which is a subsidiary of a public company, if the office of any director appointed by the company in general meeting * * is vacated before his term of office will expire in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of directors at a * * meeting of the Board.

(*2*) Any person so appointed shall hold office only up to * * * * the date up to which the director in whose place he is appointed would have held office if it had not been vacated as aforesaid * * *.

* * * * * *

262. Appointment of directors to be voted on individually.—(*1*) At a general meeting of a public company or of a private company which is a subsidiary of a public company, a motion shall not be made for the appointment of two or more persons as directors of the company by a single resolution, unless a resolution that it shall be

so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution moved in contravention of sub-section (1) shall be void, whether or not objection was taken at the time to its being so moved:

Provided that where a resolution so moved is passed, no provision for the automatic re-appointment of retiring directors in default of another appointment shall apply.

(3) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

* * * * * * * * *

263. Consent of candidate for directorship to be filed with Registrar.—(1) A person who is not a retiring director shall not be capable of being appointed director of a company unless he has, by himself or by his agent authorised in writing, signed and filed with the Registrar, a consent in writing to act as such director.

(2) Sub-section (1) shall not apply to a private company unless it is a subsidiary of a public company.

264. Option to company to adopt proportional representation for the appointment of directors.—Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a public company or of a private company which is a subsidiary of a public company, according to the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise, the appointments being made once in every three years and interim casual vacancies being filled in accordance with the provisions, *mutatis mutandis,* of section 261.

265. Restrictions on appointment or advertisement of director.—(1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement in lieu of prospectus filed with the Registrar by or on behalf of a company, unless, before the registration of the articles, the publication of the prospectus, or the filing of the statement in lieu of prospectus, as the case may be, he has, by himself or by his agent authorised in writing,—

(a) signed and filed with the Registrar a consent in writing to act as such director; and

(b) * * * * * * either—

(i) signed the memorandum for * * * shares not being less in number or value than that of his qualification shares, if any; * *

(*ii*) taken his qualification shares, if any, from the company and paid or agreed to pay for them; * *

(*iii*) signed and filed with the Registrar an undertaking m writing to take from the company his qualification shares, if any, and pay for them; or

(*iv*) made and filed with the Registrar an affidavit to the effect that * * * shares, not being less in number or value than that of his qualification shares, if any, are registered in his name.

(2) Where a person has signed and filed as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for shares of that number or value.

(3) References in this section to the share qualification of a director or proposed director shall be construed as including only a share qualification required within a period determined by reference to the time of appointment, and references therein to qualification shares shall be construed accordingly.

(4) On the application for registration of the memorandum and the articles, if any, of a company, the applicant shall file with the Registrar a list of the persons who have consented to be directors of the company; and, if this list contains the name of any person who has not so consented, the applicant shall be punishable with fine which may extend to five hundred rupees.

(5) This section shall not apply to—

(*a*) a company not having a share capital;

(*b*) a private company; * *

(*c*) a company which was a private company before becoming a public company; or

(d) a prospectus issued by or on behalf of a company after the expiry of one year from the date on which the company was entitled to commence business.

Managing Directors, etc.

266. Certain persons not to be appointed managing directors.— (1) No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of, any person as its managing director who—

(*a*) is an undischarged insolvent, or has at any time been adjudged an insolvent;

(*b*) suspends, or has at any time suspended, payment to his creditors, or makes, or has at any time made, a composition with them; or

(c) is, or has at any time been, convicted by a Court in India of an offence involving moral turpitude.

(2) This section shall not apply to a private company, unless it is a subsidiary of a public company.

267. Amendment of provision relating to managing or non-rotational directors to require Government approval.—In the case of a public company or a private company which is a subsidiary of a public company, an amendment of any provision relating to the appointment or re-appointment of a managing director or of a director not liable to retire by rotation, whether that provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or by its Board of directors, shall not have any effect unless approved by the Central Government; and the amendment shall become void if, and in so far as, it is disapproved by that Government.

268. Appointment of manging director to require Government approval.—In the case of a public company or a private company which is a subsidiary of a public company, the appointment of a managing director for the first time after the commencement of this Act in the case of an existing company, and after the expiry of three months from the date of its incorporation in the case of any other company, shall not have any effect unless approved by the Central Government; and shall become void if, and in so far as, it is disapproved by that Government.

Share Qualification

269. Time within which share qualification is to be obtained and maximum amount thereof.—(*1*) Without prejudice to the restrictions imposed by section 265, it shall be the duty of every director who is required by the articles of the company to hold a specified share qualification and who is not already qualified in that respect, to obtain his qualification within two months after his appointment as director.

(*2*) Any provision in the articles of the company (whether made before or after the commencement of this Act) shall be void in so far as it requires a person to hold the qualification shares before his appointment as a director or to obtain them within a shorter time than two months after his appointment as such.

(*3*) The nominal value of the qualification shares shall not exceed five thousand rupees, or the nominal value of one share where it exceeds five thousand rupees.

(*4*) For the purpose of any provision in the articles requiring a director to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

270. Filing of declaration of share qualification by director.—Every director, not being a technical director or a director appointed by the Central or a State Government, shall within two months after his appointment, or in the case of a director holding office at the commencement of this Act, within two months after such commencement, file with the company a declaration specifying the qualification shares held by him.

271. Penalty.—If, after the expiry of the said period of two months, any person acts as a director of the company when he does not hold the qualification shares referred to in section 269, he shall be punishable with fine which may extend to fifty rupees for every day between such expiry and the last day on which he acted as a director.

272. Saving.—Sections 269 to 271 shall not apply to a private company, unless it is a subsidiary of a public company.

Disqualifications of Directors

273. Disqualifications of directors.—(*1*) A person shall not be capable of being appointed director of a company, if—

(*a*) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force; * *

(*b*) he is an undischarged insolvent; * *

(*c*) he has applied to be adjudicated as an insolvent and his application is pending;

(*d*) he has been convicted by a Court in India of any * * offence and sentenced in respect thereof * * * to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence; * *

(*e*) he or any firm in which he is a partner * * * has not paid any call in respect of shares of the company held by him or the firm, * * * and six months have elapsed from the last day fixed for the payment of the call; or

(*f*) an order disqualifying him for appointment as director has been passed by a Court in pursuance of section 202 and is in force, unless the leave of the Court has been obtained for his appointment in pursuance of that section.

(*2*) The Central Government may, by notification in the Official Gazette, remove—

(*a*) the disqualification incurred by any person in virtue of clause * * (*d*) * * of sub-section (*1*), either generally or in relation to any company or companies specified in the notification; or

(*b*) the disqualification incurred by any person in virtue of clause (*e*) of sub-section (*1*).

* * * * * * * * * *

(*3*) A private company which is not a subsidiary of a public company may, by its articles, provide that a person shall be disqualified for appointment as a director on any grounds in addition to those specified in sub-section (*1*).

Restrictions on Number of Directorships * * * * *

274. No person to be a director of more than twenty companies.—After the commencement of this Act, no person shall, save as otherwise provided in section 275, hold office at the same time as director in more than twenty companies.

275. Choice to be made by director of more than twenty companies at commencement of Act.—(*1*) Any person holding office as director in more than twenty companies immediately before the commencement of this Act shall, within two months from such commencement,—

(*a*) choose not more than twenty of those companies, as companies in which he wishes to continue to hold the office of director;

(*b*) resign his office as director in the other companies; and

(c) intimate the choice made by him under clause (*a*) to each of the companies in which he was holding the office of director before such commencement, to the Registrar having jurisdiction in respect of each such company, and also to the Central Government.

(*2*) Any resignation made in pursuance of clause (*b*) of sub-section (*1*) shall become effective immediately on the despatch thereof to the company concerned.

(*3*) No such person shall act as director—

(*a*) in more than twenty companies, after the expiry of two months from the commencement of this Act, or

(*b*) of any company after despatching the resignation of his office as director thereof, in pursuance of clause (*b*) of sub-section (*1*).

276. Choice by person becoming director of more than twenty companies after commencement of Act.—(*1*) Where a person already holding the office of director in twenty companies is appointed, after the commencement of this Act, as a director of any other company, the appointment—

(*a*) shall not take effect unless such person has, within fifteen days thereof, effectively vacated his office as director in any of the companies in which he was already a director, and

(*b*) shall become void immediately on the expiry of the fifteen days if he has not, before such expiry, effectively vacated his office as director in any of the other companies aforesaid.

(*2*) Where a person already holding the office of director in nineteen companies or less is appointed, after the commencement of this Act, as a director of other companies, making the total number of his directorships more than twenty, he shall choose the directorships which he wishes to continue to hold or to accept, so however that the total number of the directorships, old and new, held by him shall not exceed twenty.

None of the new appointments of director shall take effect until such choice is made; and all the new appointments shall become void if the choice is not made within fifteen days of the day on which the last of them was made.

277. Exclusion of certain directorships for the purposes of sections 274, 275 and 276.—(*1*) In calculating for the purposes of sections 274, 275 and 276, the number of companies of which a person may be a director, the following companies shall be excluded, namely: —

(*a*) a private company which is neither a subsidiary nor a holding company of a public company;

(*b*) an unlimited company;

(*c*) an association not carrying on business for profit or which prohibits the payment of a dividend;

(*d*) a company in which such person is only an alternate director, that is to say, a director who is only qualified to act as such during the absence or incapacity of some other director.

(*2*) In making the calculation aforesaid, any company referred to in clauses (*a*), (*b*) and (*c*) of sub-section (*1*) shall be excluded for a period of three months from the date on which the company ceases to fall within the purview of those clauses.

278. Penalty.—Any person who holds office, or acts, as a director of more than twenty companies in contravention of the foregoing provisions shall be punishable with fine which may extend to five thousand rupees in respect of each of those companies after the first twenty.

Retiring age of Directors

279. Age limit and vacation of office on reaching age limit.—(*1*) Save as otherwise provided in section 280, a person shall not be capable of being appointed a director of a public company or of a private company which is a subsidiary of a public company, if he has attained the age of sixty-five years.

(*2*) Save as aforesaid, a director of a public company or of a private company which is a subsidiary of a public company shall vacate his office at the conclusion of the annual general meeting commencing next after he attains the age of sixty-five years:

Provided that this sub-section shall not apply to a director who is in office at the commencement of this Act so as to require the termination of the appointment then held by him before the conclusion of the third annual general meeting held after the commencement of this Act, but shall apply so as to terminate the appointment aforesaid at the conclusion of that meeting, if he had completed the age of sixty-five years before the commencement of the meeting.

(*3*) Where a person retires by virtue of sub-section (*2*), no provision for the automatic re-appointment of retiring directors in default

of another appointment shall apply; and if at the meeting at the conclusion of which he retires, the vacancy is not filled, it may be filled as a casual vacancy under section 261.

280. Age limit not to apply if company so resolves.—(*1*) Nothing in section 279 shall prevent the appointment of a director who has attained the age of sixty-five years or require a director to retire who has attained that age, if his appointment is or was made or approved by a resolution passed by the company in general meeting and specifically declaring that the age limit shall not apply to him.

(*2*) Special notice shall be required of any such resolution; and unless such notice is given, the resolution shall be void.

(*3*) Notice of any such resolution given to the company, and by the company to its members, must state or must have stated the age of the person to whom it relates.

281. Duty of director to disclose age.—(*1*) Any person who is appointed, or to his knowledge is proposed to be appointed, director of a company at a time when he has attained the age of sixty-five years or such lower age, if any, as may be specified in the company's articles in this behalf, shall give notice of his age to the company:

Provided that this sub-section shall not apply in relation to a person's re-appointment on the termination of his previous appointment as director of the company, if notice has been given as aforesaid in connection with, or at any time during the continuance of, such previous appointment or any appointment as director prior thereto.

(*2*) Any person who—

(*a*) fails to give notice of his age as required by sub-section (*1*), or

(*b*) acts as director under any appointment which is invalid or which has terminated, by reason of his age,

shall be punishable with fine which may extend to fifty rupees for every day during which the failure continues or during which he continues to act as aforesaid, as the case may be.

(*3*) For the purposes of clause (*b*) of sub-section (*2*), a person who has acted as director under an appointment which is invalid or has terminated, shall be deemed to have continued so to act throughout the period from the date of the invalid appointment or the date on which the appointment terminated, as the case may be, until the last day on which he acted thereunder.

Vacation of Office by Directors

282. Vacation of office by directors.—(*1*) The office of a director shall be vacated if—

(*a*) he fails to obtain within the time specified in sub-section (*1*) of section 269, or at any time thereafter ceases to hold, the share qualification, if any, required of him by the articles of the company; * *

(b) he is found to be of unsound mind by a Court of competent jurisdiction; * *

(c) he applies to be adjudicated an insolvent;

(d) he is adjudged an insolvent, * *

* * * * * * * * *

(e) he is convicted by a Court in India of any * * offence and is sentenced in respect thereof * * * to imprisonment for not less than six months;

(f) he or any firm in which he is a partner * * * fails to pay any call in respect of shares of the company held by him or the firm * * * within six months from the last date fixed for the payment of the call; * *

* * * * * *

(g) he absents himself from three consecutive meetings of the Board of directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board; * *

(h) he, or any firm in which he is a partner or any private company of which he is a director, accepts a loan, or any guarantee or security for a loan, from the company in contravention of section 294; * *

(i) he acts in contravention of section 298; * *

(j) he becomes disqualified by an order of Court under section 202; or

(k) he is removed * * * in pursuance of section 283.

(2) Notwithstanding anything in clauses * * (d), * * (e) and (j) of sub-section (1), the disqualification referred to in those clauses shall not take effect—

(a) for thirty days from the date of the adjudication or sentence;

(b) where any appeal or petition is preferred within the thirty days aforesaid against the adjudication, sentence or conviction resulting in the sentence, until the expiry of seven days from the date on which such appeal or petition is disposed of; or

(c) where within the seven days aforesaid, any further appeal or petition is preferred in respect of the adjudication, sentence, or conviction and the appeal or petition, if allowed, would result in the removal of the disqualification, until such further appeal or petition is disposed of.

(3) A private company which is not a subsidiary of a public company may, by its articles, provide, that the office of director shall be vacated on any grounds in addition to those specified in sub-section (1).

283. Removal of directors.—(*1*) A company may, by ordinary resolution, remove a director before the expiry of his period of office:

Provided that this sub-section shall not, in the case of a private company, authorise the removal of a director holding office for life on the 1st day of April, 1952, whether or not he is subject to retirement under an age limit by virtue of the articles or otherwise.

(*2*) Special notice shall be required of any resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed.

(*3*) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(*4*) Where notice is given of a resolution to remove a director under this section and the director concerned makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so,—

(*a*) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and

(*b*) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company);

and if a copy of the representations is not sent as aforesaid because they were received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Court may order the company's costs on the application * * *to be paid in whole or in part by the director notwithstanding that he is not a party to it.

(*5*) A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board in pursuance of section 261, be filled by the appointment of another director in his stead by the meeting at which he is removed, provided special notice of the intended appointment was given under sub-section (*2*).

A director so appointed shall hold office until the date up to which his predecessor would have held office if he had not been removed as aforesaid.

(6) If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions, so far as they may be applicable, of section 261, and all the provisions of that section shall apply accordingly:

Provided that the director who was removed from office shall not be re-appointed as a director by the Board of directors.

(7) Nothing in this section shall be taken—

(*a*) as depriving a person removed thereunder of any compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director, or

(*b*) as derogating from any power to remove a director which may exist apart from this section.

* * * * * * * * * *

Meetings of Board

284. Board * * to meet once in every three months.—In the case of every company, a meeting of its Board of directors shall be held at least once in every three calendar months * * *.

285. Notice of meetings.—(*1*) Notice of every meeting of the Board of directors of a company shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.

(*2*) Every officer of the company whose duty it is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to one hundred rupees.

* * * * * * * * * *

286. Quorum for meetings.—The quorum for a * * meeting of the Board of directors of a company shall be—

(*a*) one-third of the total strength of the Board, as determined in pursuance of this Act, provided that the number of the directors, if any, whose places may be vacant at the time shall not be taken into account for the purposes of this clause, or

(*b*) two directors,

whichever is higher.

287. Procedure where meeting adjourned for want of quorum.—(*1*) The provisions of section 284 shall not be deemed to have been contravened merely by reason of the fact that a * * meeting of the Board which had been * * called in compliance with the terms of that section could not be held for want of a quorum.

(2) In such a case, unless the articles otherwise provide, the meeting shall automatically stand adjourned till the same day * * in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place.

* * * * * * * * *

288. Passing of resolutions by circulation.—No resolution shall be deemed to have been duly passed by the Board or by a committee thereof * * by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or to all the members of the committee, then in India (not being less in number than the quorum fixed for a meeting of the Board or committee, as the case may be), and to all other directors or members, at their usual address in India and has been approved by such of them, or by a majority of such of them, as are entitled to vote on the resolution.

289. Validity of acts of directors.—Acts done by a person as a director shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles:

Provided that nothing in this section shall be deemed to give validity to acts done by a director after his appointment has been shown to the company to be invalid or to have terminated.

Board's Powers and Restrictions thereon

290. General powers of Board.—(1) Subject to the provisions of this Act, * * * the Board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do:

Provided that the Board shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting:

Provided further that in exercising any such power or doing any such act or thing, the Board shall be subject to the provisions contained in that behalf, in this or any other Act, or in the memorandum or articles of the company, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting.

(2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

291. Certain powers to be exercised by Board only at meeting.—(1) The Board of directors of a company shall exercise the following

powers on behalf of the company, and it shall do so, only by means of resolutions passed at * * meetings of the Board:—

(*a*) the power to make calls on shareholders in respect of money unpaid on their shares;

(*b*) the power to issue debentures;

(*c*) the power to borrow moneys otherwise than on debentures;

(*d*) the power to invest the funds of the company; and

(*e*) the power to make loans:

* * * * * * * * *

Provided that the Board may, by a resolution passed at a * * meeting, delegate to any committee of directors, the managing director, the managing agent, secretaries and treasurers, or the manager of the company or in the case of a banking company, also to a manager or other principal officer of a branch office of the company, the powers specified in clauses (*c*), (*d*) and (*e*), to the extent specified in sub-sections (*2*), (*3*), and (*4*) respectively.

(*2*) Every resolution delegating the power referred to in clause (*c*) of sub-section (*1*) shall specify the total amount up to which moneys may be borrowed by the delegate.

(*3*) Every resolution delegating the power referred to in clause (*d*) of sub-section (*1*) shall specify the total amount up to which the funds may be invested, and the nature of the investments which may be made, by the delegate.

(*4*) Every resolution delegating the power referred to in clause (*e*) of sub-section (*1*) shall specify the total amount up to which loans may be made by the delegate, the purposes for which the loans may be * * made, and the maximum amount of loans which may be made for each such purpose in individual cases.

* * * * * *

(*5*) Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the Board of any of the powers specified in sub-section (*1*).

292. Restrictions on powers of Board.—(*1*) The Board of directors of a public company or of a private company which is a subsidiary of a public company shall not, except with the consent of such public company or subsidiary in general meeting,—

(*a*) sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking of the company, or where the company owns more than one undertaking, of the whole, or substantially the whole, of any such undertaking, * *

(*b*) remit, or give time for the re-payment of, any debt due by a director, * *

(c) invest otherwise than in trust securities the sale proceeds resulting from the acquisition, after the commencement of this Act, * * * without the consent of the company, of any such undertaking as is referred to in clause (*a*), or of any premises or properties used for any such undertaking and without which it cannot be carried on or can be carried on only with difficulty or only after a considerable time, * * * * *

(*d*) borrow moneys after the commencement of this Act, where the moneys to be * * borrowed together with the moneys already borrowed by the company, (apart from temporary loans obtained from the company's bankers in the ordinary course of business) will exceed the aggregate of the paid-up capital of the company and its free reserves, that is to say, reserves not set apart for any specific purpose, or

(*e*) contribute or agree to contribute, after the commencement of this Act, to charitable and other funds not directly relating to the business of the company or the welfare of its employees, any amounts the aggregate of which exceeds or will, when taken with contributions made or agreed to be made before the commencement of this Act, exceed in any financial year ten thousand rupees or three per cent of its average net profits as determined in accordance with the provisions of sections 348 and 349 during the three financial years immediately preceding, whichever is greater.

(2) Nothing contained in clause (*a*) of sub-section (*1*) shall affect—

(*a*) the title of a buyer or other person who buys or takes a lease of any such undertaking as is referred to in that clause, in good faith and after exercising due care and caution; or

(*b*) the selling or leasing of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.

(3) Any resolution passed by the company permitting any transaction such as is referred to in clause (*a*) of sub-section (*1*) may attach such conditions to the permission as may be specified in the resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transaction:

Provided that this sub-section shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in that behalf in this Act.

(4) The acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of moneys by the banking company within the meaning of clause (*d*) of sub-section (*1*).

(5) No debt incurred by the company in excess of the limit imposed by clause (*d*) of sub-section (*1*) shall be valid or effectual,

unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

293. Appointment of sole selling agents to require approval of company in general meeting.—(*1*) After the commencement of this Act, the Board of directors of a company shall not appoint a sole selling agent for any area, except subject to the condition that the appointment shall cease to be valid if it is not approved by the company in general meeting within a period of six months from the date on which the appointment is made.

(*2*) If the company in general meeting disapproves of the appointment, or does not approve of it within the period of six months aforesaid, it shall cease to be valid with effect from the date of such disapproval, or the expiry of the period of six months aforesaid, whichever is earlier.

(*3*) Where before the commencement of this Act, a company has appointed a sole selling agent for any area for a period of not less than five years, the appointment shall be placed before the company in general meeting within a period of six months from such commencement; and the company in general meeting may, by resolution.—

(*a*) if the appointment was made on or after the 15th day of February, 1955, terminate the appointment forthwith or with effect from such later date as may be specified in the resolution; and

(*b*) if the appointment was made before the date specified in clause (*a*), terminate the appointment with effect from such date as may be specified in the resolution, not being earlier than five years from the date on which the appointment was made, or the expiry of one year from the commencement of this Act, whichever is later.

294. Loans to directors, etc.—(*1*) Save as otherwise provided in sub-section (*2*), no company (hereinafter in this section referred to as "the lending company") shall, without obtaining the previous approval of the Central Government in that behalf, make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by.—

(*a*) any director of the lending company or of a company which is its holding company; * *

(*b*) any firm in which any such director is a partner; * *

(*c*) any private company of which any such director is a director or member; * *

(*d*) any body corporate at a general meeting of which not less than twenty-five percent of the total voting power may be exercised or controlled by any such director, or by two or more such directors together * * *; or

(*e*) any body corporate * * * * * the Board of directors, managing director, managing agent, secretaries and treasurers, or manager whereof is accustomed to act in accordance with the directions or instructions of the Board or of any director or directors of the lending company * * * * *

(*2*) Sub-section (*1*) shall not apply to any loan made, guarantee given or security provided—

(*a*) by a private company unless it is a subsidiary of a public company; * *

(*b*) by a banking company; * *

(*c*) by a holding company to its subsidiary; or

(*d*) by a company which is the managing agent or secretaries and treasurers of another company to the latter.

(*3*) Where any loan made, guarantee given or security provided by a lending company and outstanding at the commencement of this Act could not have been made, given or provided, without the previous approval of the Central Government, if this section had then been in force, the lending company shall, within six months from the commencement of this Act or such further time not exceeding six months as the Central Government may grant for that purpose, either obtain the approval of the Central Government to the transaction or enforce the repayment of the loan made, or in connection with which the guarantee was given or the security was provided, notwithstanding any agreement to the contrary.

(*4*) Every person who is knowingly a party to any contravention of sub-section (*1*) or (*3*) including in particular any person to whom the loan is made or who has taken the loan in respect of which the guarantee is given or the security is provided, shall be punishable either with the fine which may extend to five thousand rupees or with simple imprisonment for a term which may extend to six months:

Provided that where any loan in connection with which any such guarantee or security has been given or provided by the lending company has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section; and where the loan has been re-paid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be proportionately reduced.

(*5*) All persons who are knowingly parties to any contravention of sub-section (*1*) or (*3*) shall be liable, jointly and severally, to the lending company for the repayment of the loan or for making good the sum which the lending company may have been called upon to pay in virtue of the guarantee given or the security provided by such company.

(6) No officer of the lending company or of the borrowing body corporate shall be punishable under sub-section (4) or shall incur the liability referred to in sub-section (5) in respect of any loan made, guarantee given or security provided * * * in contravention of clause (*d*) or (*e*) of sub-section (*1*), unless at the time when the loan was made, the guarantee was given or the security was provided by the lending company, he knew or had express notice that that clause was being contravened thereby.

295. Saving regarding book-debts.—Nothing contained in section 294 shall apply to a book-debt which is required to be treated by virtue of the provision contained in that behalf in Schedule VI as a loan or an advance for the purpose of preparing the balance sheet of the company, unless the transaction represented by the book-debt was from its inception in the nature of a loan or an advance.

296. Board's sanction to be required for certain contracts in which particular directors are interested.—(*1*) Except with the consent of the Board of directors of a company, a director of the company, a firm in which he is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company—

(*a*) for the sale, purchase or supply of any goods, materials or services; or

(*b*) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the company * * * *

(*2*) Nothing contained in clause (*a*) of sub-section (*1*) shall affect * * any contract or contracts for the sale, purchase or supply of any goods, * * materials or services in which either the company, or the director, firm, partner or private company, as the case may be, regularly trades, or does business, provided that the value of such goods and materials and the cost of such services do not exceed five thousand rupees in the aggregate in any calendar year comprised in the period of the contract or contracts. * *

* * * * * * * * * *

(*3*) The consent of the Board required by sub-section (*1*) shall not be deemed to have been given within the meaning of that sub-section, unless the consent is accorded—

(*a*) by a resolution passed at a meeting of the Board; and

(*b*) before the contract is entered into or within two months of the date on which it was entered into.

(*4*) Where such consent is not accorded to the contract before it is entered into, anything done in pursuance of the contract shall, if such consent is ultimately not accorded, be voidable at the option of the Board.

(*5*) Sub-sections (*3*) and (*4*) shall not apply to any case where consent has been accorded to the contract before the commencement of this Act.

297. Power of directors to carry on business when managing agent or secretaries and treasurers are deemed to have vacated office, etc.—Where in pursuance of any provisions contained in this Act the managing agent or secretaries and treasurers are deemed to have vacated or to have been suspended from office, or are removed or suspended from office, or cease to act or to be entitled to act as managing agent or secretaries and treasurers, or where a permanent or temporary vacancy has otherwise occurred in the office of managing agent or secretaries and treasurers, then, notwithstanding anything contained in this Act, the Board of directors * * * shall have power to carry on, or arrange for the carrying on of, the affairs of the company until the managing agent or secretaries and treasurers again become entitled to act as such, or until the company in general meeting resolves otherwise. * * * * *

Procedure, etc., where Director interested

298. Disclosure of interests by director.—(*1*) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into, by or on behalf of the company, shall disclose the nature of his concern or interest at a meeting of the Board of directors * * * .

(*2*) (*a*) In the case of a proposed contract or arrangement, the disclosure required to be made by a director under sub-section (*1*) shall be made at the meeting of the Board at which the question of entering into the contract or arrangement is first taken into consideration, or if the director was not, at the date of that meeting, concerned or interested in the proposed contract or arrangement, at the first meeting of the Board held after he becomes so concerned or interested.

(*b*) In the case of any other contract or arrangement * * * * , the required disclosure shall be made at the first meeting of the Board held after the director becomes concerned or interested in the contract or arrangement.

(*3*) (*a*) For the purposes of sub-sections (*1*) and (*2*), a general notice given to the Board by a director, to the effect that he is a director or a member of a specified body corporate or is a member of a specified firm and is to be regarded as concerned or interested in any contract or arrangement which may, after the date of the notice, be entered into with that body corporate or firm, shall be deemed to be a sufficient disclosure of concern or interest in relation to any contract or arrangement so made.

(*b*) Any such general notice shall expire at the end of the financial year in which it is given, but may be renewed for further periods of one financial year at a time, by a fresh notice given in the last month of the financial year in which it would otherwise have expired.

(c) No such general notice, and no renewal thereof, shall be of effect unless either it is given at a meeting of the Board, or the director concerned takes reasonable steps to secure that it is brought up and read at the first meeting of the Board after it is given.

(4) Every director who fails to comply with sub-section (1) or (2) shall be punishable with fine which may extend to five thousand rupees.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contracts or arrangements with the company.

299. Interested director not to participate or vote in Board's proceedings.—(1) No director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement; nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote; and if he does vote, his vote shall be void.

(2) Sub-section (1) shall not apply to—

(a) a private company which is neither a subsidiary nor a holding company of a public company; * *

(b) a private company which is a subsidiary of a public company, in respect of any contract or arrangement entered into, or to be entered into, by the private company with the holding company thereof; * *

(c) any contract of indemnity against any loss which the directors or any one or more of them may suffer by reason of becoming or being sureties or a surety for the company; * *

(d) any contract or arrangement entered into or to be entered into with a public company, or a private company which is a subsidiary of a public company, in which the interest of the director aforesaid consists solely in his being a director of such company and the holder of not more than shares of such number or value therein as is requisite to qualify him for appointment as a director thereof; or

(e) a public company or a private company which is a subsidiary of a public company, in respect of which a notification is issued under sub-section (3), to the extent specified in the notification.

(3) In the case of a public company or a private company which is a subsidiary of a public company, if the Central Government is of opinion that having regard to the desirability of establishing or promoting any industry, business or trade, it would not be in the public interest to apply all or any of the prohibitions contained in sub-section (1) to the company, the Central Government may, by notification in the Official Gazette, direct that that sub-section shall not apply to such company, or shall apply thereto subject to such exceptions, modifications and conditions as may be specified in the notification.

(4) Every director who knowingly contravenes the provisions of this section shall be punishable with fine which may extend to five thousand rupees.

300. Register of contracts, companies and firms in which directors are interested.—(*1*) A register shall be kept by every company, in which shall be entered particulars of all contracts or arrangements to which section 296 or 298 applies, including * * * the following particulars, namely:—

(*a*) the date of the contract or arrangement;

(*b*) the names of the parties thereto;

(*c*) the principal terms and conditions thereof;

(*d*) the date on which it was placed before the Board;

(*e*) the names of the directors voting for and against the contract or arrangement and the names of those remaining neutral.

(*2*) Particulars of every such contract or arrangement * * * * shall be entered in the register aforesaid within three days of the * * meeting of the Board at which the contract or arrangement is approved; and the register shall be placed before the next meeting of the Board and shall then be signed by all the directors present at that meeting.

(*3*) The register aforesaid shall also specify, in relation to each director of the company, the names of the bodies corporate and firms of which notice has been given by him under sub-section (*3*) of section 298.

(*4*) If default is made in complying with the provisions of sub-section (*1*), * * (*2*) or (*3*), the company, and every officer of the company who is in default, shall, in respect of each default, be punishable with fine which may extend to five hundred rupees.

(*5*) The register aforesaid shall be kept at the registered office of the company; and it shall be open to inspection at such office, and extracts may be taken therefrom and copies thereof may be required, by any member of the company to the same extent, in the same manner, and on payment of the same fee as in the case of the register of members of the company; and the provisions of section 162 shall apply accordingly.

301. Disclosure to members of director's interest in contract appointing manager, managing director, managing agent or secretaries and treasurers.—(*1*) Where a company—

(*a*) enters into a contract for the appointment of a manager of the company, in which contract any director of the company is in any way, whether directly or indirectly, concerned or interested, or

(*b*) varies any such contract already in existence and in which a director is concerned or interested as aforesaid,

the company shall, within twenty-one days from the date of entering into the contract or of the varying of the contract, as the case may be, send to every member of the company an abstract of the terms of the contract or variation, together with a memorandum clearly specifying the nature of the concern or interest of the director in such contract or variation.

(2) Where a company enters into a contract for the appointment of a managing director of the company, or varies any such contract which is already in existence, the company shall send an abstract of the terms of the contract or variation to every member of the company within the time specified in sub-section (1); and if any other director of the company is concerned or interested in the contract or variation, a memorandum clearly specifying the nature of the concern or interest of such other director in the contract or variation shall also be sent to every member of the company with the abstract aforesaid.

(3) Where a company proposes to enter into a contract for the appointment of a managing agent or of secretaries and treasurers, in which contract any director of the company is concerned or interested as aforesaid, or proposes to vary any such contract already in existence in which a director is concerned or interested as aforesaid, the company shall send the abstract and memorandum referred to in sub-section (2) to every member of the company, in sufficient time before the general meeting of the company at which the proposal is to be considered.

(4) Where a director becomes concerned or interested as aforesaid in any such contract as is referred to in sub-section (1), (2) or (3) after it is made, the abstract and memorandum, if any, referred to in the said sub-sections shall be sent to every member of the company within twenty-one days from the date on which the director becomes so concerned or interested.

(5) If default is made in complying with the foregoing provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one thousand rupees.

(6) All contracts entered into by a company for the appointment of a manager, managing director, managing agent or secretaries and treasurers, shall be kept at the registered office of the company, and shall be open to the inspection of any member of the company at such office; and extracts may be taken therefrom and copies thereof may be required by any such member, to the same extent, in the same manner and on payment of the same fee, as in the case of the register of members of the company; and the provisions of section 162 shall apply accordingly.

Register of Directors, etc.

302. Register of directors, * * managing agents, secretaries and treasurers etc. * *.—(1) Every company shall keep at its registered office a register of its directors, managing director, managing agent, secretaries and treasurers, manager and secretary, containing with respect to each of them the following particulars, that is to say:—

(a) in the case of an individual, his present name and surname in full; any former name or surname in full; his usual residential address; his nationality; and, if that nationality is not the nationality of origin, his nationality of origin; his business occupation, if any; if he holds the office of director, managing director, managing agent, manager or secretary in any other body corporate, the particulars of each such office held by him;

and except in the case of a private company which is not a subsidiary of a public company, the date of his birth;

(*b*) in the case of a body corporate, its corporate name and registered or principal office; and the full name, address, nationality, and nationality of origin, if different from that nationality, of each of its directors; and if it holds the office of managing agent, * * * * secretaries and treasurers, manager or secretary in any other body corporate, the particulars of each such office * * ;

(*c*) in the case of a firm, the name of the firm, the full name, address, nationality, and nationality of origin, if different from that nationality, of each partner; and the date on which each became a partner; and if the firm holds the office of managing agent, * * *, secretaries and treasurers, manager or secretary in any other body corporate, the particulars of each such office * *;

(d) if any director or directors have been nominated by a body corporate, its corporate name; all the particulars referred to in clause (*a*) in respect of each director so nominated, and also all the particulars referred to in clause (*b*) in respect of the body corporate;

(*e*) if any director or directors have been nominated by a firm, the name of the firm, all the particulars referred to in clause (*a*) in respect of each director so nominated, and also all the particulars referred to in clause (c) in respect of the firm.

Explanation.—For the purposes of this sub-section—

(*1*) any person * * * * * * * in accordance with whose instructions, the Board of directors of a company is accustomed to act shall be deemed to be a director of the company;

(*2*) in the case of a person usually known by a title different from his surname, the expression "surname" means that title; and

(*3*) references to a former name or surname do not include—

(*i*) in the case of a person usually known by an Indian title different from his surname, the name by which he was known previous to the adoption of, or succession to, the title:

(*ii*) in the case of any person, a former name or surname, where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years, or has been changed or disused for a period of not less than twenty years; and

(*iii*) in the case of a married woman, the name or surname by which she was known previous to the marriage.

(*2*) The company shall, within the periods respectively mentioned in this sub-section, send to the Registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors, managing directors, managing agents, secretaries and treasurers, managers or secretaries or in any of the particulars contained in the register, specifying the date of the change.

The period within which the said return is to be sent shall be a period of twenty-eight days from the appointment of the first directors of the company and the period within which the said notification of a change is to be sent shall be twenty-eight days from the happening thereof.

(3) If default is made in complying with sub-section (1) or (2), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

303. Inspection of the register.—(1) The register * * kept under section 302 shall be open to the inspection of any member of the company without charge and of any other person on payment of one rupee for each inspection during business hours subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day are allowed for inspection.

(2) If any inspection required under sub-section (1) is refused,—

(a) the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees, and

* * * * * * * * * (b) the Court may, by order, compel an immediate inspection of the register.

304. Duty of directors etc., to make disclosure.—Every director [including a person deemed to be a director by virtue of the *Explanation* to sub-section (1) of section 302], managing director, managing agent, secretaries and treasurers, manager or secretary of any company, who is appointed to the office of director, managing director, managing agent, secretaries and treasurers, manager or secretary of any other body corporate shall, within twenty days of his appointment, disclose to the company aforesaid the particulars relating to the office in the other body corporate which are required to be specified under sub-section (1) of section 302; and if he fails to do so, he shall be punishable with fine which may extend to five hundred rupees.

305. Register to be kept by Registrar and inspection thereof.—(1) The Registrar shall keep a separate register or registers in which there shall be entered the particulars received by him under sub-section (2) of section 302 in respect of companies, so however that all entries in respect of each such company shall be together.

(2) The register or registers aforesaid shall be open to inspection by any member of the public at any time during office hours, on payment of the prescribed fee.

Register of Directors' Shareholdings.

306. Register of directors' shareholdings, etc.—(1) Every company shall keep a register showing, as respects each director of the company, the number, description and amount of any shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by him, or in trust for

him, or of which he has any right to become the holder whether on payment or not.

* * * * * * * * * * * * * * *

(2) Where any shares or debentures have to be recorded in the said register or to be omitted therefrom, in relation to any director, by reason of a transaction entered into after the commencement of this Act and while he is a director, the register shall also show the date of, and the price or other consideration for, the transaction:

Provided that where there is an interval between the agreement for any such transaction and the completion thereof, the date so shown shall be that of the agreement.

(3) The nature and extent of any interest or right in or over any shares or debentures recorded in relation to a director in the said register shall, if he so requires, be indicated in the register.

(4) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or be put upon inquiry as to, the rights of any person in relation to any shares or debentures.

(5) The said register shall, subject to the provisions of this section, be kept at the registered office of the company, and shall be open to inspection during business hours (subject to such reasonable restrictions as the company may, by its articles or in general meeting, impose, so that not less than two hours in each day are allowed for inspection) as follows:—

(a) during the period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and

(b) during that or any other period, it shall be open to the inspection of any person acting on behalf of the Central Government or of the Registrar.

In computing the fourteen days and the three days mentioned in this sub-section, any day which is a Saturday, a Sunday or a public holiday shall be disregarded.

(6) Without prejudice to the rights conferred by sub-section (5), the Central Government or the Registrar may, at any time, require a copy of the said register, or any part thereof.

(7) The said register shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.

* * If default is made in complying with this sub-section * * the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

(8) If default is made in complying with sub-section (1) or (2), or if any inspection required under this section is refused, or if any copy required thereunder is not sent within a reasonable

time, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees and also with a further fine which may extend to twenty rupees for every day during which the default continues.

(*9*) In the case of any such refusal, the Court may, by order, compel an immediate inspection of the register.

(*10*) For the purposes of this section—

(*a*) any person in accordance with whose directions or instructions the Board of directors of a company is accustomed to act, shall be deemed to be a director of the company; and

* * * * * * * * * * * * * * *

(*b*) a director of a company shall be deemed to hold, or to have an interest or a right in or over, any shares or debentures, if a body corporate other than the company holds them or has that interest or right in or over them, and either—

(*i*) that body corporate or its Board of directors is accustomed to act in accordance with his directions or instructions; or

(*ii*) he is entitled to exercise or control the exercise of one-third or more of the total voting power exercisable at any general meeting of that body corporate.

307. Duty of directors and persons deemed to be directors to make disclosure of shareholdings.—(*1*) Every director of a company, and every person deemed to be a director of the company by virtue of sub-section (*10*) of section 306, shall give notice to the company of such matters relating to himself as may be necessary for the purpose of enabling the company to comply with the provisions of that section.

(*2*) Any such notice shall be given in writing, and if it is not given at a meeting of the Board, the person giving the notice shall take all reasonable steps to secure that it is brought up and read at the meeting of the Board next after it is given.

(*3*) Any person who fails to comply with sub-section (*1*) or (*2*) shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

Remuneration of Directors

308. Remuneration of directors.—(*1*) The remuneration payable to the directors of a company, including the managing director, shall be determined, in accordance with the provisions of section 197 and this section, either by the articles of the company, or by a resolution or if the articles so require, by a special resolution, passed by the company in general meeting.

(*2*) A director may receive remuneration either by way of a monthly payment, or by way of a fee for each meeting attended, or partly by the one way and partly by the other.

(*3*) In lieu of or in addition to the remuneration specified in sub-section (*2*), remuneration may be paid to a director who is

either in the whole-time employment of the company or a managing director, at a specified percentage of the net profits of the company:

Provided that such percentage shall not exceed five for any one such director, or where there is more than one such director, ten for all of them together.

(4) In the case of a director who is neither in the whole-time employment of the company nor a managing director and whose remuneration does not include anything by way of a monthly payment, the company may, by special resolution, authorise, subject to the provisions of section 197, the payment, to such director, or where there is more than one such director, to all of them together—

(a) if the company has a managing or wholetime director, a managing agent or secretaries and treasurers, or a manager, of a commission not exceeding one per cent of the net profits of the company,

(b) in any other case, of a commission not exceeding three per cent of the net profits of the company.

(5) The net profits referred to in sub-sections (3) and (4) shall be computed in the manner referred to in section 197, sub-section (1).

(6) No director of a company who is in receipt of any commission from the company and who is neither * * * * in the whole-time employment of the company nor a managing director shall be entitled to receive any commission or other remuneration from any subsidiary of such company.

(7) The special resolution referred to in sub-section (4) shall not remain in force for a period of more than five years; but may be renewed, from time to time, by special resolution for further periods of not more than five years at a time:

Provided that no renewal shall take place except in the last of the years in which the resolution to be renewed is in force.

(8) The provisions of this section shall come into force immediately on the commencement of this Act or, where such commencement does not coincide with the end of a financial year of the company, with effect from the expiry of the financial year immediately succeeding such commencement.

(9) The provisions of this section shall not apply to a private company unless it is a subsidiary of a public company.

309. Increase in remuneration to require Government sanction.—In the case of a public company, or a private company which is a subsidiary of a public company, an amendment of any provision relating to the remuneration of a managing director or any other director, which purports to increase or has the effect of increasing, whether directly or indirectly, the amount thereof, whether that provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed

by the company in general meeting or by its Board of directors, shall not have any effect unless approved by the Central Government; and the amendment shall become void if, and in so far as, it is disapproved by that Government.

310. Increase in remuneration of managing director on re-appointment or appointment after Act to require Government sanction.—In the case of a public company, or a private company which is a subsidiary of a public company, if the terms of any re-appointment or appointment of a managing director made after the commencement of this Act, purport to increase or have the effect of increasing, whether directly or indirectly, the remuneration which the managing director or the previous managing director, as the case may be, was receiving immediately before such re-appointment or appointment, the re-appointment or appointment shall not have any effect unless approved by the Central Government; and shall become void if, and in so far as, it is disapproved by that Government.

Miscellaneous Provisions * * * * * * * * * *

311. Prohibition of assignment of office by director * *.—Any assignment of his office made after the commencement of this Act by any director * * of a company shall be void.

312. Appointment of alternate directors and their term of office.—(*1*) The Board of directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint an alternate director to act for a director (hereinafter in this section called "the original director") during his absence for a period of not less than three months from the State in which meetings of the Board are ordinarily held * * * * * *.

(*2*) An alternate director appointed under sub-section (*1*) shall vacate office if and when the original director returns to the State in which meetings of the Board are ordinarily held.

(*3*) If the term of office of the original director is determined before he so returns to the State aforesaid, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate, director.

* * * * * * * * * * * * *

313. Director etc. not to hold office or place of profit.—(*1*) Except with the previous consent of the company accorded by a special resolution, no director of a company, no partner of such a director, no firm in which such a director is a partner, no private company of which such a director is a director or member, and no director, managing agent, secretaries and treasurers, or manager of such a private company shall hold any office or place of profit, except that of * * managing director, * * managing agent, secretaries and treasurers, manager, * * * * legal or technical adviser, * * * * banker, or * * trustee for the holders of debentures of the company,—

(*a*) under the company, or

(*b*) under any subsidiary of the company, unless the remuneration received from such subsidiary in respect of such

office or place is paid over to the company or its holding company.

* * * * * * * * * * * * *

(2) If any office or place of profit under the company or a subsidiary thereof is held in contravention of the provisions of sub-section (1) the director concerned shall be deemed to have vacated his office as such.

(3) Any office or place in a company, * * * * * * * * * * * shall be deemed to be an office or place of profit under the company within the meaning of sub-section (1), if the director holding it obtains anything by way of remuneration over and above the remuneration to which he is entitled as such director, whether by way of salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise.

Restrictions on appointment of managing directors * * *

314. Application of sections 315 and 316.—Sections 315 and 316 shall not apply to a private company, unless it is a subsidiary of a public company.

315. Number of companies of which one person may be appointed managing director * *.—(1) No company shall, after the commencement of this Act, appoint or employ any person as managing director * * * *, if he is either the managing director or the manager of any other company, except as provided in sub-section (2).

(2) A company may appoint or employ a person as its managing director * *, if he is the managing director or manager of one, and of not more than one, other company:

Provided that such appointment or employment is made or approved by a resolution passed at a * * meeting of the Board with the consent of all the directors present at the meeting and of which meeting and of the resolution to be moved thereat specific notice has been given to all the directors then in India.

(3) Where, at the commencement of this Act, any person is holding the office either of managing director or of manager in more than two companies he shall, within one year from the commencement of this Act, choose not more than two of those companies as companies in which he wishes to continue to hold the office of managing director or manager, as the case may be; and the provisions of clauses (b) and (c) of sub-section (1) and of sub-sections (2) and (3) of section 275 shall apply *mutatis mutandis* in relation to this case, as those provisions apply in relation to the case of a director.

316. Managing director, * * not to be appointed for * * * more than five years at a time.—(1) Save as provided in sub-section (2), no company shall, after the commencement of this Act, appoint or employ,

* * any individual as its managing director; * * for a term exceeding five years at a time.

* * * * *

(2) Sub-section (1) shall not apply to the appointment or employment of a person as a technician or as a consultant, unless he is already—

(i) a managing agent of the company * *;

(ii) where the managing agent is a firm, a partner in the firm; * *

(iii) where the managing agent is a private company, a director or member of such company; or

(iv) where the managing agent is a public company, a director of such company.

(3) Any individual holding at the commencement of this Act the office of managing director * * in a company, * * * * * shall, unless his * * term expires earlier, be deemed to have vacated his * * office immediately on the expiry of five years from the commencement of this Act.

(4) Nothing contained in sub-section (1) shall be deemed to prohibit the re-appointment, re-employment, or the extension of the term of office, of any person by further periods not exceeding five years on each occasion:

Provided that any such re-appointment, re-employment or extension shall be sanctioned only in the last two years of the existing term.

* * * * * * * *

Compensation for loss of office

317. Compensation for loss of office not permissible except to managing directors and directors who are managers.—(1) Payment may be made by a company, except in the cases specified in sub-section (3) and subject to the limit specified in sub-section (4) to a managing director, or a director holding the office of manager or in the whole time employment of the company, by way of compensation for loss of office, or as consideration for retirement from office, or in connection with such loss or retirement.

(2) No such payment shall be made by the company to any other director.

(3) No payment shall be made to a managing or other director in pursuance of sub-section (1), in the following cases, namely:—

(a) where the director resigns his office in view of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing director, managing agent, secretaries and treasurers, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation;

(b) where the director resigns his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid;

(c) where the office of the director is vacated by virtue of section 202 section 279, or any of the clauses, (a) to (k) of sub-section (1) of section 282;

(*d*) where the company is being wound up, whether by or subject to the supervision of the Court or voluntarily, provided the winding up was due to the negligence or default of the director;

(*e*) where the director is guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary or holding company thereof;

(*f*) where the director has instigated, or has taken part directly or indirectly in bringing about the termination of his office.

(4) Any payment made to a managing or other director in pursuance of sub-section (*1*) shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term or for three years whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold the office, or where he held the office for a lesser period than three years, during such period:

Provided that no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before, or at any time within twelve months after, the date on which he ceased to hold office, if the assets of the company on the winding up, after deducting the expenses thereof, are not sufficient to repay to the share-holders the share capital (including the premium, if any,) contributed by them.

(5) Nothing in this section shall be deemed to prohibit the payment to a managing director or a director holding the office of manager of any remuneration for services rendered by him to the company in any other capacity.

318. Payment to director, etc., for loss of office etc., in connection with transfer of undertaking or property.—(*1*) No director of a company shall, in connection with the transfer of the whole or any part of any undertaking or property of the company, receive any payment, by way of compensation for loss of office or as consideration for * * * * * retirement from office, or in connection with such loss or retirement—

(*a*) from such company; or

(*b*) from the transferee of such undertaking or property or from any other person (not being such company), unless particulars with respect to the payment proposed to be made by such transferee or person (including the amount thereof) have been disclosed to the members of the company and the proposal has been approved by the company in general meeting.

(2) Where a director of a company receives payment of any amount in contravention of sub-section (*1*), the amount shall be deemed to have been received by him in trust for the company.

(3) Sub-sections (1) and (2) shall not affect in any manner the operation of section 317.

319. Payment to director for loss of office etc., in connection with transfer of shares.—(1) No director of a company shall, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from—

(i) an offer made to the general body of shareholders;

(ii) an offer made by or on behalf of some other body corporate with a view to the company becoming a subsidiary of such body corporate or a subsidiary of its holding company;

(iii) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise, or control the exercise of not less than one-third of the total voting power at any general meeting of the company; or

(iv) any other offer which is conditional on acceptance to a given extent;

receive any payment by way of compensation for loss of office, or as consideration for retirement from office, or in connection with such loss or retirement,—

(a) from such company; or

(b) except as otherwise provided in this section, from the transferees of the shares or from any other person (not being such company).

(2) In the case referred to in clause (b) of sub-section (1), it shall be the duty of the director concerned to take all reasonable steps to secure that particulars with respect to the payment proposed to be made by the transferees or other person (including the amount thereof) are included in, or sent with, any notice of the offer made for their shares which is given to any shareholders.

(3) If—

(a) any such director fails to take reasonable steps as aforesaid; or

(b) any person who has been properly required by any such director to include the said particulars in, or send them with, any such notice as aforesaid fails so to do;

he shall be punishable with fine which may extend to two hundred and fifty rupees.

(4) If—

(a) the requirements of sub-section (2) are not complied with in relation to any such payment as is governed by clause (b) of sub-section (1); or

(b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting, called for the purpose, of the holders of the shares to which the offer relates and other holders of shares of the same

class (other than shares already held at the date of the offer by, or by a nominee for, the offeror, or where the offeror is a company by, or by a nominee for, any subsidiary thereof) as any of the said shares;

any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made, and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

* * * * * * * * * * * * * * *

(5) If at a meeting called for the purpose of approving any payment as required by clause (*b*) of sub-section (4), a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall, for the purposes of that sub-section, be deemed to have been approved.

320. Provisions supplementary to sections 317, 318 and 319.—(1) Where in proceedings for the recovery of any payment as having, by virtue of sub-section (2) of section 318 or sub-section (4) of section 319, been received by any person in trust, it is shown that—

(*a*) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before, or within two years after, that agreement or the offer leading thereto; and

(*b*) the company or any person to whom the transfer was made was privy to that arrangement;

the payment shall be deemed, except in so far as the contrary is shown, to be one to which that sub-section applies.

(2) If in connection with any such transfer as is mentioned in section 318 or in section 319,—

(*a*) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares; or

(*b*) any valuable consideration is given to any such director;

the excess or the money value of the consideration, as the case may be, shall for the purposes of that section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for * * * * * retirement from office, or in connection with such loss or retirement.

(3) References in sections 317, 318, and 319 to payments made to any director of a company by way of compensation for loss of office, or as consideration for * * * * * retirement from office, or in connection with such loss or retirement, do not include any *bona fide* payment by way of damages for breach of contract or by

way of pension in respect of past services; and for the purposes of this sub-section the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in sections 318 and 319 shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are therein mentioned or with respect to any other like payments made or to be made to the directors of a company.

* * * * * * * * * * * * * *

Directors with unlimited liability

321. Directors, etc., with unlimited liability in limited company.—(1) In a limited company, the liability of the directors or of any director or of the managing agent, secretaries and treasurers or manager may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director, managing agent, secretaries and treasurers or manager is unlimited, the directors, the managing agent, secretaries and treasurers and the manager of the company and the member who proposes a person for appointment to the office of director, managing agent, secretaries and treasurers or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited; and before the person accepts the office or acts therein, notice in writing that his liability will be unlimited, shall be given to him by the following or one of the following persons, namely, the promotors of the company, its directors, its managing agent, secretaries and treasurers or manager, if any, and its officers.

(3) If any director, managing agent, secretaries and treasurers, manager or proposer makes default in adding such a statement or if any promoter, director, managing agent, secretaries and treasurers, manager or officer of the company makes default in giving such a notice, he shall be punishable with fine which may extend to one thousand rupees and shall also be liable for any damage which the person so appointed may sustain from the default, but the liability of the person appointed shall not be affected by the default.

322. Special resolution of limited company making liability of directors etc., unlimited.—(1) A limited company may, if so authorised by its articles, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or of any director or of its managing agent, secretaries and treasurers or manager.

(2) Upon the passing of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum:

Provided that no alteration of the memorandum making the liability of any of the officers referred to in sub-section (1) unlimited shall apply to such officer, if he was holding the office from before the date of the alteration, until the expiry of his then term, unless he has accorded his consent to his liability becoming unlimited.

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CHAPTER III

MANAGING AGENTS

Prohibition of appointment of managing agent in certain cases

323. Power of Central Government to notify that companies engaged in specified classes of industry or business shall not have managing agents.—(*1*) Subject to such rules as may be prescribed in this behalf, the Central Government may, by notification in the Official Gazette, declare that, as from such date as may be specified in the notification, the provisions of sub-section (*2*) shall apply to all companies, whether incorporated before or after the commencement of this Act, which are engaged on that date or may thereafter be engaged, wholly or in part, in such class or description of industry or business as may be specified in the notification.

(*2*) Thereupon,—

(*a*) where any such company has a managing agent on the specified date, the term of office of that managing agent shall, if it does not expire earlier, expire at the end of three years from the specified date or on the 15th day of August, 1960, whichever is later; and the company shall not re-appoint or appoint the same or any other managing agent; and

(*b*) where any such company has no managing agent on the specified date or where it is incorporated on or after that date, it shall not appoint a managing agent.

(*3*) Copies of all rules prescribed, and of all notifications issued, under sub-section (*1*) shall, as soon as may be after they have been prescribed or issued, be laid before each House of Parliament.

324. Managing agency company not to have managing agent.—(*1*) No company acting as the managing agent of any other company shall, after the commencement of this Act, appoint a managing agent for itself, whether it transacts any other kind of business in addition or not.

(*2*) No company having a managing agent shall, after the commencement of this Act, be appointed as the managing agent of any other company.

(*3*) Any appointment of managing agent made in contravention of sub-section (*1*) or (*2*) shall be void.

Appointment and term of office of managing agent in other cases

325. Central Government to approve of appointment, etc., of managing agent; and circumstances in which approval may be accorded.—(*1*) In respect of any company to which neither the prohibition specified in section 323 nor that specified in section 324 applies, a managing agent shall not be appointed or re-appointed,—

(*a*) except by the company in general meeting; and

(*b*) unless the approval of the Central Government has been obtained for such appointment or re-appointment.

(2) The Central Government shall not accord its approval under sub-section (1) in any case, unless it is satisfied—

(*a*) that it is not against the public interest to allow the company to have a managing agent;

(*b*) that the managing agent proposed is, in its opinion, a fit and proper person to be appointed or re-appointed as such, and that the conditions of the managing agency agreement proposed are fair and reasonable; and

(c) that the managing agent proposed has fulfilled any conditions which the Central Government require him to fulfil.

326. Application of sections 327 to 330.—The provisions of sections 327 to 330 shall apply only to—

(*a*) a public company, and

(*b*) a private company which is a subsidiary of a public company.

327. Term of office of managing agent.—(1) After the commencement of this Act, no company shall—

(a) in case it appoints a managing agent for the first time (that is to say, in case the company has had no managing agent at any time since its formation), make the appointment for a term exceeding fifteen years;

(*b*) in any other case, re-appoint or appoint a managing agent for a term exceeding ten years at a time;

(*c*) re-appoint a managing agent for a fresh term, when the existing term of the managing agent has two years or more to run:

Provided that the Central Government may, if satisfied that it is in the interest of the company so to do, permit the re-appointment of a managing agent at an earlier time than that specified in clause (c).

(2) For the purpose of sub-section (1), re-appointment does not include the re-appointment of any person on fresh, additional or changed conditions for any period not extending beyond his existing term, but otherwise includes—

(*a*) the renewal, or the extension of the term, of a previous appointment, or

(*b*) the appointment of any person or persons having an interest in the previous managing agency.

(3) Any appointment or re-appointment of a managing agent, made in contravention of the provisions of sub-sections (1) and (2) shall be void, in respect of the entire term for which the appointment or re-appointment is made.

Variation of Managing Agency Agreement

328. Variation of managing agency agreement * * * * *.—A resolution of the company in general meeting shall be required for varying the terms of a managing agency agreement; and before

such a resolution is passed, the previous sanction of the Central Government shall be obtained therefor.

Special provisions regarding existing managing agents.

329. Term of office of existing managing agents to terminate on 15th August, 1960.—Where a company has a managing agent at the commencement of this Act, the term of office of such managing agent shall, if it does not expire earlier in accordance with the provisions applicable thereto immediately before such commencement [including any provisions contained in the Indian Companies Act, 1913 (VII of 1913)], expire on the 15th day of August, 1960, unless before that date he is re-appointed for a fresh term in accordance with any provision contained in this Act.

* * * *

330. Application of Act to existing managing agents.—All * * provisions of this Act other than those relating to the term for which the office can be held shall apply to every managing agent holding office at the commencement of this Act, with effect from such commencement:

Provided that where the date of such commencement does not coincide with the end of the financial year of the company, the provisions of this Act relating to the remuneration payable to the managing agent shall apply to such agent with effect from the expiry of the financial year immediately succeeding the date of such commencement.

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Restrictions on Number of Managing Agencies

331. No person to be managing agent of more than ten companies after 15th August, 1960.—(*1*) After the 15th day of August, 1960, no person shall at the same time hold office as managing agent in more than ten companies.

(*2*) Where a person holding office as managing agent in more than ten companies before that date fails to comply with sub-section (*1*), the Central Government may permit him to hold office as managing agent with effect from that date in respect of such of those companies not exceeding ten in number, as it may determine.

(*3*) In calculating the number of companies of which a person may be a managing agent in pursuance of this section, the following companies shall be excluded, namely:—

(*a*) a private company which is neither a subsidiary nor a holding company of a public company;

(*b*) an unlimited company;

(c) an association which does not carry on business for profit or which prohibits the payment of a dividend.

(*4*) * * * * For the purposes of this section each of the following persons shall also be deemed to hold office * * * * * as managing agent of the company,—

(*a*) Where the managing agent of the company is a firm, every member of the firm;

(*b*) Where the managing agent of the company is itself a company, every person who is a director, the secretaries and treasurers or a manager, of the latter company, and every member thereof who is entitled to exercise not less than twenty per cent. of the total voting power therein.

(5) Any person who acts as a managing agent of more than ten companies in contravention of this section shall be punishable with fine which may extend to one thousand rupees in respect of each of those companies in excess of ten, for each day on which he so acts.

Right of Managing Agent to charge on assets

332. Right of managing agent to charge on company's assets.—A managing agent whose office stands terminated under section 328 or 331 shall be entitled to a charge on the assets of the company in respect of all moneys which are due to him from the company at the date of such termination, or which he may have to pay after that date in respect of any liability or obligation properly incurred by him on behalf of the company before such date, subject to all existing charges and incumbrances, if any, on such assets.

Vacation of office, etc., by managing agent

333. Vacation of office * * * on insolvency, dissolution or winding up, etc.—Subject to the provisions of section 339, the managing agent of a company shall be deemed to have vacated his office as such—

(*a*) in case the managing agent is an individual, if he is adjudged an insolvent;

(*b*) in the same case, if the managing agent applies to be adjudicated an insolvent;

(*c*) in case the managing agent is a firm, on its dissolution for any cause whatsoever, including the insolvency of a partner in the firm;

(*d*) in case the managing agent is a body corporate, on the commencement of its winding up whether by or subject to the supervision of the Court, or voluntarily;

(*e*) in all cases, on the commencement of the winding up of the company managed by the managing agent, whether by or subject to the supervision of the Court or voluntarily.

334. Suspension * * * * from office where receiver appointed * * *.—(*1*) The managing agent of a company shall be deemed to have been suspended from his office as such, if a receiver is appointed for his property—

(*a*) by a Court, or

(*b*) by or on behalf of the creditors of the managing agent, including the holders of debentures issued by the managing agent, in pursuance of any power conferred by an instrument executed by the managing agent:

Provided that the Court which appointed the receiver or which will have jurisdiction to wind up the managed company, as the case

may be, may, by order, direct that the managing agent shall continue to act as such for such period and subject to such restrictions and conditions, if any, as may be specified in the order.

(2) The Court may, at any time, cancel or vary any order passed by it under the proviso to sub-section (*1*).

335. **Vacation of office on conviction in certain cases.**—Subject to the provisions of section 339 and 340, the managing agent of a company shall also be deemed to have vacated his office as such, if—

(*a*) the managing agent, or

(*b*) in case the managing agent is a firm, any partner in the firm, or

(c) in case the managing agent is a body corporate, any director of, or any officer holding a general power of attorney from, such body corporate,

is convicted by a Court in India, after the commencement of this Act, of any offence, and sentenced therefor to imprisonment for a period of not less than six months.

336. **Removal for fraud or breach of trust.**—A company in general meeting may, by ordinary resolution, remove its managing agent from office—

(*i*) for fraud or breach of trust in relation to the affairs of the company or of any subsidiary or holding company thereof, whether committed before or after the commencement of this Act, * *

(*ii*) for fraud or breach of trust, whether committed before or after such commencement, in relation to the affairs of any other body corporate, * * * * * if a Court of Law, whether in or outside India, finds such fraud or breach of trust to have been duly established, or

(*iii*) subject to the provisions of sections 339 and 340, where the managing agent is a firm or body corporate, if any partner in the firm, or any director of, or any officer holding a general power of attorney from, the body corporate is guilty of any such fraud or breach of trust as is referred to in clause (*i*).

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337. **Removal for gross negligence or mismanagement.**—A company in general meeting may, by special resolution, remove its managing agent from office for gross negligence in, or for gross mismanagement of, the affairs of the company or of any subsidiary thereof.

338. **Power to call meetings for the purposes of sections 336 and 337 and procedure.**—(*1*) Without prejudice to any other provision contained in this Act or in the articles of the company for the calling of meetings, any two directors of the company may call a general meeting of the company for the purpose of considering any resolution of the nature referred to in section 336 or 337.

(2) On receipt of notice of any such resolution, a copy of the resolution shall be sent forthwith to the managing agent by the company.

(3) The managing agent shall have, in relation to any such resolution, all the rights which a director of the company has under section 283 in relation to any resolution for removing him from office, including, in particular, the right to make representations to the company in writing, to have such representations sent to members of the company and to have them read out at the meeting and also the right to be heard on the resolution at the meeting.

339. Time when certain disqualifications will take effect.—(1) The disqualifications imposed by clause (*a*) of section 333, by sub-section (1) of section 334, by section 335 and by any resolution passed in pursuance of clause (*ii*) of section 336 shall not take effect—

(*a*) for thirty days from the date of the order of adjudication, * * appointment of the receiver, * * * sentence, or of the finding of the Court * *, as the case may be, or

(*b*) where any appeal or petition is preferred within the thirty days aforesaid against the order, appointment, sentence, or conviction resulting in the sentence, or finding, * * * * * until the expiry of seven days from the date on which such appeal or petition is disposed of, or

(c) where within the seven days aforesaid, any further appeal or petition is preferred in respect of the order, appointment, sentence, conviction or finding, as the case may be, and the appeal or petition, if allowed, would result in the removal of the disqualification, or in making the resolution inapplicable, as the case may be, until such further appeal or petition is disposed of.

(2) In the cases referred to in sub-section (1), the Board may suspend the managing agent from office immediately on, or at any time after, the adjudication, appointment, * * sentence or finding referred to in clause (*a*) of that sub-section and until the disposal of the appeals and petitions, if any, referred to in clauses (*b*) and (c) thereof, or until the convicted partner, director or officer is expelled or dismissed in pursuance of section 340, as the case may be.

340. Conviction not to operate as disqualification if convicted partner, director etc., is expelled.—(1) In the cases referred to in clauses (*b*) and (c) of section 335, it shall be open to the managing agent, notwithstanding anything to the contrary in any other law or agreement, for the time being in force, to expel or dismiss the convicted partner, director or officer, within thirty days from the date of his sentence; and in that event, the disqualifications imposed by the clauses aforesaid shall cease to apply.

(2) Sub-section (1) shall not affect the operation of section 345 * * * in any case to which that section would otherwise apply.

341. Resignation of office by managing agent.—(*1*) Unless the managing agency agreement otherwise provides, a managing agent may, by notice to the Board, resign his office with effect from such date as may be specified in the notice.

(*2*) The managing agent shall cease to act as such with effect from the date so specified or from such later date, if any, as may be mutually agreed on between him and the Board but his resignation shall not be effective until it is considered as provided in sub-section (*3*).

(*3*) When notice of resignation is given as aforesaid, the Board shall—

(*a*) prepare a statement of the affairs of the company as at the date specified in the notice of resignation or such subsequent date [not being later than that on which the managing agent ceases to act as such under sub-section (*2*)] as the directors may think suitable, together with a balance sheet made out as at that date and a profit and loss account for the period subsequent to the date for which the last such account was prepared and laid before the company in general meeting, and ending on that date;

(*b*) obtain a report from the auditors of the company on such balance sheet and profit and loss account, in accordance with sections 226, 227 and 228; and

(c) place the managing agent's resignation together with the statement of affairs, balance sheet, profit and loss account and auditors' report mentioned above, before the company in general meeting.

(*4*) In relation to any report made by the auditors as aforesaid, sections 229, 230, 231 and 232 shall apply in like manner as they apply in relation to the auditors' report referred to therein.

(*5*) The company in general meeting may, by resolution, accept the resignation or take such other action with reference thereto as it may deem fit.

342. Transfer of office by managing agent.—A transfer of his office by the managing agent of a company shall not take effect unless it is approved both by the company in general meeting and by the Central Government.

343. Managing agency not to be heritable.—Any agreement made by a company with its managing agent after the commencement of this Act shall be void in so far as it provides for succession to the office by inheritance or devise.

344. Approval for succession to managing agency by inheritance or devise.—Where the office of the managing agent of a company is held by an individual at the commencement of this Act and the managing agency agreement provides for succession to the office by inheritance or devise, no person shall succeed to the office on the

death of the holder thereof, unless the succession of such person thereto is approved by the Central Government; and that Government shall not accord such approval unless, in its opinion such person is a fit and proper person to hold the office of managing agent of the company.

345. Changes in constitution of managing agency firm or corporation to be approved by Central Government.—(*1*) Notwithstanding anything to the contrary contained in any other provision of this Act, where the managing agent of a public company or a private company which is a subsidiary of a public company is a firm or body corporate and any change takes place in the constitution of the firm or body corporate, the managing agent shall cease to act as such on the expiry of six months from the date on which the change takes place or such further time as the Central Government may allow in that behalf, unless the approval of the Central Government has been accorded before such expiry to the changed constitution of the firm or body corporate.

Explanation.—For the purposes aforesaid, a change in the constitution of a body corporate means—

(*a*) its conversion from a private to a public company, or from a public to a private company;

(*b*) any change among the directors or managers of the corporation, whether caused by the death or retirement of a director or manager, the appointment of a new director or manager, or otherwise;

(*c*) any change in the ownership of shares in the body corporate or in the case of a body corporate not having a share capital, any change in its membership.

(*2*) Where a managing agent is a body corporate (other than a private company) the shares whereof are for the time being dealt in, or quoted by a recognised stock exchange, no change in the ownership of the shares of the company shall be deemed to be a change in its constitution within the meaning and for the purposes of sub-section (*1*), unless the Central Government, by notification in the Official Gazette, otherwise directs:

Provided that no such notification shall be issued in respect of any company, unless the Central Government is of opinion that any change in the ownership of its shares has taken place or is likely to take place, which has affected or is likely to affect prejudicially the affairs of any company which is being managed by the managing agent.

* * * * * * *

346. Application of Schedule VIII to certain managing agents.—(*1*) The provisions of Schedule VIII shall apply—

(*a*) to every firm or private company which acts as the managing agent of any company, whether public or private; and

(*b*) save as provided in sub-section (*2*), to every * * * other body corporate (not being a private company) which acts as the managing agent of any company, whether public or private.

(*2*) A body corporate (not being a private company) acting as managing agent shall, if and so long as its shares are dealt in, or quoted on, any recognised stock exchange * * *, be exempt from the operation of sub-section (*1*), unless the Central Government, by notification in the Official Gazette, otherwise directs:

Provided that the Central Government may, by order, modify or limit the operation of this sub-section in relation to any body corporate in such manner as that Government thinks fit.

(*3*) If default is made by a managing agent to which Schedule VIII applies in complying with the provisions thereof,—

(*a*) if the managing agent is a firm, every partner therein who is in default; and

(*b*) if the managing agent is a body corporate, the body corporate and every director or other officer thereof who is in default;

shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

Remuneration of managing agents

347. Remuneration of managing agent ordinarily not to exceed 10 per cent. of net profits.—Save as otherwise expressly provided in this Act, a company shall not pay to its managing agent, in respect of any financial year beginning at or after the commencement of this Act, by way of remuneration, whether in respect of his services as managing agent or in any other capacity, any sum in excess of ten per cent. of the annual net profits of the company.

348. Determination of net profits.—(*1*) In computing the net profits of a company for the purpose of section 347—

(*a*) credit shall be given to the sums specified in sub-section (*2*), and credit shall not be given to those specified in sub-section (*3*); and

(*b*) the sums specified in sub-section (*4*) shall be deducted, and those specified in sub-section (*5*) shall not be deducted.

(*2*) In making the computation aforesaid, credit shall be given to the following sums:—

bounties and subsidies received from any Government, or any public authority constituted or authorised in this behalf by any

Government, unless and except in so far as the Central Government otherwise directs.

(3) In making the computation aforesaid, credit shall not be given to the following sums:—

(a) profits, by way of premium, on shares or debentures of the company, which are issued or sold by the company;

(b) profits on sales by the company of forfeited shares;

(c) profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof; * *

(d) profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets.

(4) In making the computation aforesaid, the following sums shall be deducted:—

(a) all the usual working charges;

(b) directors' remuneration;

(c) bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis;

(d) any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits;

(e) any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf;

(f) interest on debentures issued by the company;

(g) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets;

(h) interest on unsecured loans and advances;

(i) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature;

(j) outgoings;

(k) depreciation to the extent specified in section 349;

(l) the loss (not including any loss of a capital nature) incurred in any year which begins at or after the commencement of this Act, in so far as it has not been taken into account in arriving at the net profits of that year or of any subsequent year preceding the year in respect of which the net profits have to be ascertained * * * ;

(m) any compensation or damages to be paid in virtue of any legal liability, including a liability arising from a breach of contract:

(*n*) any sum paid by way of insurance against the risk of meeting any liability such as is referred to in clause (*m*).

(5) In making the computation aforesaid, the following sums shall not be deducted:—

(*a*) the remuneration payable to the managing agent;

(*b*) income-tax and super-tax payable by the company under the Indian Income-tax Act, 1922 (XI of 1922), or any other tax on the income of the company not falling under clauses (d) and (*e*) of sub-section (*4*);

(*c*) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (*m*) of sub-section (*4*).

349. Ascertainment of depreciation.—The amount of depreciation to be deducted in pursuance of clause (*k*) of sub-section (*4*) of section 348—

(*a*) shall be the amount of normal depreciation allowable under the Indian Income-tax Act, 1922 (XI of 1922);

(*b*) shall not include any special, initial or other depreciation, whether allowable under that Act or otherwise;

(c) shall not include any arrears of depreciation:

Provided that arrears of depreciation may be taken into account in the first of the financial years referred to in section 347, in so far as these arrears have not been taken into account in arriving at the net profits of any financial year or years, preceding the first financial year aforesaid.

350. Special provision where there is a profit-sharing arrangement between two or more companies.—Where there is an arrangement between two or more companies to share their profits and not less than two of those companies have the same managing agent, any profits paid in pursuance of the arrangement by any of the companies having that managing agent to any other or others of them shall—

(*a*) be excluded from the net profits of the company making such payment; and

(*b*) be included in the net profits of the company receiving such payment, or where more than one company receives such payment, be included in the net profits of each of the receiving companies, to the extent of the payment received by it.

351. Payment of additional remuneration * * * *.—Additional remuneration in excess of the limit specified in section 347 may be paid to the managing agent if, and only if, such remuneration is sanctioned by a special resolution of the company and is approved by the Central Government as being in the public interest.

352. Minimum remuneration payable to managing agent to be provided for in articles or in resolution passed at annual general meeting.—(*1*) Notwithstanding anything contained in section 347 but subject to the provisions of section 197, if in any financial year, a company has no profits or its profits are inadequate, the company may

ance with the terms of a special resolution, passed by the company in that behalf.

(4) The special resolution referred to in sub-section (3) shall set out in sufficient detail the nature of the office maintained by the managing agent or associate outside India, the purposes for which it is maintained, the scale of its operations, the amount of the purchases likely to be made by the office in each year on behalf of the company and the proportion which such amount will bear to the total amount of the purchases made by the office, the expenses incurred in maintaining the office, and the proportion of those expenses which may be reasonably attributed to the work done on behalf of the company.

(5) The special resolution shall not remain in force for a term exceeding three years but may be renewed from time to time for a term not exceeding three years on each occasion:

Provided that such renewal shall be effected only in the last year of the existing term.

(6) Every resolution passed in pursuance of this section shall be entered in a register maintained by the company for the purpose.

359. Commission, etc., of managing agent as buying or selling agent of other concerns.—(1) A company in general meeting may, by resolution, authorise its managing agent or any associate of its managing agent to retain any commission or other remuneration earned or to be earned by such agent or associate as the managing agent, secretaries and treasurers, manager, agent, secretary or selling or buying agent of any firm, body corporate or other concern in respect of any goods, power, freight, repairs or other services, for the sale, purchase, supply or rendering of which a contract has been, or is to be, entered into by such firm, body or concern with the company, provided the prices or amounts charged to or received by the company are at rates which are not less favourable to the company than the market rates or which are otherwise reasonable.

(2) Every contract so entered into and all particulars relating thereto shall be entered in a separate register maintained by the company for the purpose.

360. Contracts between managing agent or associate and company for the sale or purchase of goods or the supply of services, etc.—(1) A company may, by special resolution, approve of any contract being entered into with its managing agent or an associate of its managing agent, * * * *—

(a) for the sale, purchase or supply of any property, movable or immovable, or for the supply or rendering of any service other than that of managing agent;

(b) for the underwriting of any shares or debentures to be issued or sold by the company.

(2) The special resolution aforesaid shall—

(a) set out the material terms of the contract proposed to be entered into, and

(*b*) provide specifically that for any property supplied or sold, or any services supplied or rendered, by the company, the managing agent or associate shall make payment to the company within one month from the date of the supply or sale of the goods, or the supply or rendering of the service, as the case may be.

(3) Every such contract and all particulars relating thereto shall be entered in a separate register maintained by the company for the purpose.

361. Existing contracts relating to matters dealt with in sections 356 to 360 to terminate on 1st March, 1957.—All contracts in force at the commencement of this Act, * * to which a company or the managing agent or an associate of the managing agent of a company is a party, shall, in so far as the contracts relate to any of the matters referred to in sections 356 to 360, be deemed to terminate on the first day of March, 1958, unless they terminate on an earlier date.

362. Registers to be open to inspection.—The registers referred to in sections 356 to 360 shall be open to inspection, and extracts may be taken therefrom and copies thereof may be required, by any member of the company, in the same manner, to the same extent and on payment of the same fees, as in the case of the register of members of the company.

363. Remuneration received in contravention of foregoing sections to be held in trust for company.—Where the managing agent of a company or an associate of the managing agent, receives any sum from the company, whether directly or indirectly, by way of remuneration, rebate, commission, expenses or otherwise,—

(*a*) in the case of a public company or a private company which is a subsidiary of a public company, in contravention of sections 347 to 354 and sections 356 to 361, or

(*b*) in the case of a private company which is not a subsidiary of a public company, in contravention of sections 356 to 361,

the managing agent or associate shall account to the company for such sum as if he held it in trust for the company.

Assignment of, or charge on, remuneration

364. Company not to be bound by assignment of, or charge on, managing agent's remuneration.—Any assignment of, or charge on, his remuneration or any part thereof effected by a managing agent shall be void as against the company.

This section shall not affect the rights *inter se* of the managing agent and any person other than the company.

* * * *Compensation for termination of office*

365. Prohibition of payment of compensation for loss of office * * * * in certain cases.—A company shall not pay or be liable to

pay to its managing agent any compensation for the loss of his office in the following cases:—

(*a*) where the managing agent resigns his office in view of the reconstruction of the company or of its amalgamation with any other body corporate or bodies corporate and is appointed as the managing agent, secretaries and treasurers, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation;

(*b*) where the managing agent resigns his office, otherwise than on the reconstruction of the company or its amalgamation as aforesaid;

(c) where the managing agent vacates his office in pursuance of section 323, 329 or 331;

(*d*) where the managing agent is deemed to have vacated his office in pursuance of clause (*a*), * * (*b*), * * (c) or (*d*) of section 333 or of section 335;

(*e*) where the managing agent is deemed to have vacated his office in pursuance of clause (*e*) of section 333, provided the winding up of the company was due to the negligence or default of the managing agent;

(*f*) where the managing agent is deemed to have been suspended, or is suspended, from his office in pursuance of section 334 or sub-section (2) of section 339;

(*g*) where the managing agent is * * * removed from office by a resolution in pursuance of section 336 or 337; and

(*h*) where the managing agent has instigated, or has taken part * * * in bringing about the termination of his office.

366. Limit of compensation for loss of office.—The compensation which may be paid by a company to its managing agent for loss of office shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term, or for three years, whichever is less, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which his office ceased or was terminated, or where he held the office for a lesser period, during such period:

Provided that in the event of the * * * winding up of the company commencing, whether before or, at any time within twelve months after, the date of the cessation or termination of the office of managing agent, no compensation shall be payable to him if the assets of the company on the winding up are not sufficient to repay the share capital (including premiums) contributed by the members of the company.

* * * * * * * *

Other rights and liabilities not affected on termination of office

367. Managing agent's rights and liabilities after termination of office.—Where the office of a managing agent ceases or is terminated—

(*a*) the managing agent and the company shall be entitled to enforce any claim or demand which each may have against the other, in respect of anything done or omitted to be done by either of them before the cessation or termination of the managing agency; and

(*b*) the rights and liabilities, in relation to the company, of the managing agent in any other capacity, shall not be affected.

Restrictions on powers

368. Restrictions on powers of managing agency to be subject to control of Board.—The managing agent of a company, whether appointed before or after the commencement of this Act, shall exercise his powers subject to the superintendence, control and direction of its Board of directors * * * * and subject also to the provisions of the memorandum and articles of the company and to the restrictions contained in Schedule VII.

369. Loans to managing agent.—(*1*) No public company, and no private company which is a subsidiary of a public company, shall make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by,—

(*a*) its managing agent or any associate of its managing agent; or

(*b*) any body corporate in respect of which the Central Government, by order, declares that it is satisfied that the Board of directors, managing director, managing agent, secretaries and treasurers or manager thereof is accustomed to act in accordance with the directions or instructions of the managing agent or associate of the managing agent, notwithstanding that the body corporate may not itself be an associate of the managing agent.

(*2*) Nothing contained in sub-section (*1*) or in section 294 shall apply to any credit given by the company to its managing agent for the purposes of facilitating the company's business and held by such agent in his own name in one or more current accounts, subject to limits previously approved by the directors of the company and on no account exceeding twenty thousand rupees in the aggregate.

370. Loans etc., to companies under the same management.—(*1*) No company (hereinafter in this section referred to as "the lending company") shall—

(*a*) make any loan to, or

(*b*) give any guarantee, or provide any security, in connection with a loan made by any other person to, or to any other person by,

any body corporate which is under the same management as the lending company, unless the making of such loan, the giving of

such guarantee or the provision of such security has been previously authorised by a special resolution of the lending company.

Explanation.—For the purposes of this sub-section, two bodies corporate shall be deemed to be under the same management—

(*i*) if the managing agent, managing director or manager of the one body, or where such managing agent is a firm, any partner in the firm, or where such managing agent is a private company, any director of such company, is—

(*a*) the managing agent, managing director or manager of the other body, or

(*b*) a partner in the firm acting as a managing agent of the other body, or

(c) a director of the private company acting as a managing agent of the other body, or

(*ii*) if a majority of the directors of the one body constitute, or at any time within the six months immediately preceding constituted, a majority of the directors of the other body.

(2) Nothing contained in sub-section (*1*) shall apply to any loan made, guarantee given or security provided—

(*a*) by a holding company to its subsidiary, or

(*b*) by the managing agent to any company under his management.

371. Penalty for contravention of section 369 or 370.—(*1*) Every person who is a party to any contravention of section 369 or 370, including in particular any person to whom the loan is made, or in whose interest the guarantee is given or the security is provided, shall be punishable with fine which may extend to five thousand rupees or with simple imprisonment for a term which may extend to six months:

Provided that where any such loan, or any loan in connection with which any such guarantee or security has been given or provided by the lending company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section; and where the loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be proportionately reduced.

(*2*) All persons who are parties to any such contravention shall be liable, jointly and severally, to the lending company for the repayment of the loan, or for making good the sum which the lending company may have been called upon to pay in virtue of the guarantee given or the security provided by such company.

372. Purchase by company of shares, etc., of other companies in same group.—(*1*) A company (hereinafter in this section and section 373 referred to as "the investing company") shall not be entitled to subscribe for, or purchase, the shares or debentures of any body corporate belonging to the same group as the investing company, except to the extent and except in accordance with the restrictions and conditions specified in this section.

(2) The Board of directors of the investing company shall be entitled to invest in any shares or debentures of any other body corporate in the same group up to not more than ten per cent. of the subscribed capital of such other body corporate:

Provided that the aggregate of the investments so made by the Board in all other bodies corporate in the same group shall not exceed twenty per cent. of the subscribed capital of the investing company.

(3) The investing company shall not make any investment in the shares or debentures of any other body corporate in the same group, in excess of the limits specified in sub-section (2) and the proviso thereto, unless the investment is sanctioned by a * * * resolution of the investing company and unless further, it is approved by the Central Government.

(4) No investment shall be made by the Board of directors of a company in pursuance of sub-section (2), unless it is sanctioned by a resolution passed at a * * * meeting of the Board with the consent of all the directors present at the meeting, and unless further notice of the meeting and of the resolution proposed to be moved thereat has been given to all the directors then in India, and also to other directors at their registered addresses in India.

(5) Every company shall keep a register of all investments made by it in shares and debentures of bodies corporate in the same group, showing, in respect of each investment, the following particulars:—

(a) the name of the body corporate in which the investment is made;

(b) the date on which the investment is made; and

(c) the nature and extent of the investment.

(6) Particulars of every investment to which sub-section (5) applies shall, within three days of the making thereof, be entered in the register aforesaid.

(7) If default is made in complying with the provisions of sub-section (5) or (6), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

(8) The register aforesaid shall be kept at the registered office of the company, and shall be open to inspection at such office, and extracts may be taken therefrom and copies thereof may be required, by any member of the company to the same extent, in the same manner, and on payment of the same fees as in the case of the register of members of the company; and the provisions of section 162 shall apply accordingly.

(9) Every company shall annex to each balance sheet prepared by it after the commencement of this Act, a list of the bodies corporate in the same group in the shares or debentures of which investments have been made by it, and * * the nature and extent of the investments so made in each such body corporate.

(*10*) For the purposes of this section, a body corporate shall be deemed to be in the same group as the investing company—

(*a*) if the body corporate * * is the managing agent of the investing company, or

(*b*) if the body corporate * * * and the investing company should, in virtue of the *Explanation* to sub-section (*1*) of section 370, be deemed to be under the same management.

(*11*) The provisions of this section [except sub-section (*9*)] shall apply to an investment company, that is to say, to a company whose principal business is the acquisition of shares, stock, debentures or other securities.

(*12*) This section shall not apply—

(*a*) to any banking or insurance company; * *

(*b*) to a private company, unless it is a subsidiary of a public company; * *

(*c*) to investments by a holding company in its subsidiary; or

(*d*) to investments by a managing agent in a company managed by him.

373. Investments made before commencement of Act.—* * Where any investments have been made by a company at any time after the first day of April, 1952, which, if section 372 had been then in force, could not have been made except on the authority of a * * * resolution passed by the investing company and the approval of the Central Government, the authority of the company by means of a * * resolution and the approval of the Central Government shall be obtained to such investments, within six months from the commencement of this Act; and if such authority and approval are not so obtained, the Board of directors of the company shall dispose of the investments, in so far as they may be in excess of the limits specified in sub-section (*2*) of section 372 and the proviso to that sub-section, within two years from the commencement of this Act.

374. Penalty for contravention of section 372 or 373.—If default is made in complying with the provisions of section 372 or 373, every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

375. Managing agent not to engage in business competing with business of managed company.—(*1*) A managing agent shall not engage on his own account in any business which is of the same nature as, and directly competes with, the business carried on by a company of which he is the managing agent or by a subsidiary of such company, unless such company by special resolution permits him to do so.

(*2*) For the purposes of sub-section (*1*), a managing agent shall be deemed to be engaged in business on his own account, if such business is carried on by—

(*a*) a firm in which he is a partner; or

(*b*) a private company at any general meeting of which not less than twenty per cent. of the total voting power may be exercised or controlled by any of the following persons, or by any two or more of them acting together, namely, (*i*) the managing agent aforesaid; (*ii*) where such managing agent is a firm, any partner in the firm; and (*iii*) where such managing agent is a body corporate, any officer of the body corporate;

(c) a body corporate (not being a private company) at any general meeting of which not less than seventy per cent. of the total voting power may be exercised or controlled by any of the following persons, or by any two or more of them acting together, namely, (*i*) the managing agent aforesaid; (*ii*) where such managing agent is a firm, any partner in the firm; and (*iii*) where such managing agent is a body corporate, any officer of such body corporate.

(*3*) If a managing agent engages in any business in contravention of this section, he shall be deemed to have received all profits and benefits accruing to him from such business, in trust for the company under his management or the subsidiary of such company, as the case may be; and where such profits and benefits are deemed to have been so received by the managing agent in trust for two or more such companies or subsidiaries, such profits and benefits shall be held by the managing agent in trust for each of them in such proportions as may be agreed upon between them or, failing such agreement, as may be decided by the Court.

376. Condition prohibiting reconstruction or amalgamation of company except on continuance of managing agent to become or be void.—Where any provision in the memorandum or articles of a company, or in any resolution passed in general meeting by, or by the Board of directors of, the company or in an agreement between the company and its managing agent, whether made before or after the commencement of this Act, prohibits the reconstruction of the company or its amalgamation with any other body corporate or bodies corporate, either absolutely or except on the condition that the managing director, managing agent, secretaries and treasurers, or manager of the company is appointed or re-appointed as secretaries and treasurers, managing director, managing agent, or manager of the reconstructed company or of the body resulting from amalgamation, as the case may be, shall become void with effect from the commencement of this Act, or be void, as the case may be.

377. Restrictions on right of managing agent to appoint directors.—(*1*) The managing agent of a company may, if so authorised by its articles, appoint not more than two directors where the total number of the directors exceeds five, and one director where the total number does not exceed five.

(*2*) The managing agent may, at any time, remove any director so appointed, and appoint another director in his place or in the place of a director so appointed who resigns or otherwise vacates his office.

(*3*) Any provision contained in the articles of, or in any agreement with, the company, authorising the managing agent to appoint

more than the number of directors authorised under sub-section (*1*), * * * * which is in force immediately before the commencement of this Act, shall, in regard to the excess * * *, be void, with effect from the expiry of one month from such commencement.

(4) Where at the commencement of this Act, the number of directors appointed by the managing agent exceeds the number authorised under sub-section (*1*), the managing agent shall determine which of them shall continue to hold office, and intimate the choice made by him to the company before the expiry of one month from such commencement; and only the director or directors so chosen shall continue to hold office as directors after such expiry.

(5) If no choice is made by the managing agent as aforesaid, all the directors appointed by him shall, with effect from the expiry of one month from the commencement of this Act, be deemed to have vacated their offices.

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CHAPTER IV

A. Secretaries and Treasurers

378. Appointment of secretaries and treasurers.—Subject to the provisions of this Chapter, a company may appoint a firm or body corporate as its secretaries and treasurers:

Provided that no company shall, at the same time, have both a managing agent and secretaries and treasurers.

379. Provisions applicable to managing agents to apply to secretaries and treasurers with the exceptions and modifications specified in sections 380 to 383.—Subject to the exceptions and modifications specified in sections 380 to 383

(*a*) all the provisions of this Act applicable to, or in relation to, a managing agent which is a firm or body corporate shall apply to secretaries and treasurers; and

(*b*) all the provisions of this Act applicable to, or in relation to, any person or persons connected or associated in any manner with such a managing agent shall apply to, or in relation to, any person or persons connected or associated with secretaries and treasurers in the like manner; and subject as aforesaid, all references in this Act to a managing agent or any person or persons connected or associated in any manner with a managing agent shall be construed accordingly, as including a reference to secretaries and treasurers or to the person or persons connected or associated with them in the like manner.

380. Sections 323, 329 and 331 not to apply.—Sections 323, 329 and 331 shall not apply to secretaries and treasurers.

381. Section 347 to apply subject to a modification.—Section 347 shall apply to secretaries and treasurers subject to the modification that for the words "ten per cent. of the net annual profits" occurring in the section, the words "seven and a half per cent. of the net annual profits" shall be substituted.

382. Secretaries and treasurers not to appoint directors.—Secretaries and treasurers shall have no right to appoint any director of the company; and sections 377 and 260 shall not apply to, or in relation to, secretaries and treasurers, or persons connected or associated with them in the manner in which the persons specified in section 260 are connected or associated with managing agents.

383. Secretaries and treasurers not to sell goods or articles produced by company, etc., unless authorised by Board.—Secretaries and treasurers shall have no right, unless, and except to the extent to which, they are authorised by the Board of directors, to sell any goods or articles manufactured or produced by the company, or to purchase, obtain, or acquire machinery, stores, goods or materials for the purposes of the company, or to sell the same when no longer required for those purposes.

B. MANAGERS

384. Firm or body corporate not to be appointed manager.—No public company, and no private company which is a subsidiary of a public company, shall, after the commencement of this Act, appoint or employ, or after the expiry of six months from such commencement continue the appointment or employment of, any firm, body corporate or association as its manager.

385. Certain persons not to be appointed managers.—(*1*) No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of, any person as its manager who—

(*a*) is an undischarged insolvent; or has at any time within the preceding five years been adjudged an insolvent; or

(*b*) suspends, or has at any time within the preceding five years suspended, payment to his creditors, or makes, or has at any time within the preceding five years made, a composition with them; or

(*c*) is, or has at any time within the preceding five years been, convicted by a Court in India of an offence involving moral turpitude.

(2) The Central Government may, by notification in the Official Gazette, remove the disqualification incurred by any person in virtue of clause (a), (b), or (c) of sub-section (1), either generally or in relation to any company or companies specified in the notification.

(3) This section shall not apply to a private company, unless it is a subsidiary of a public company.

386. Number of companies of which a person may be appointed manager.—(1) No company shall, after the commencement of this Act, appoint or employ any person as manager if he is either the manager or the managing director of any other company, except as provided in sub-section (2).

(2) A company may appoint or employ a person as its manager if he is the manager or managing director of one, and not more than one, other company:

Provided that such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting and of the resolution to be moved thereat specific notice has been given to all the members then in India.

(3) Where, at the commencement of this Act, any person is holding the office either of manager or of managing director in more than two companies, he shall, within one year from the commencement of this Act, choose not more than two of those companies as companies in which he wishes to continue to hold the office of manager or managing director, as the case may be; and the provisions of clause (b) and (c) of sub-section (1) and of sub-sections (2) and (3) of section 275 shall apply *mutatis mutandis* in relation to this case, as those provisions apply in relation to the case of a director.

387. Remuneration of manager.—The manager of a company may, subject to the provisions of section 197, receive remuneration either by way of a monthly payment, or by way of a specified percentage, not exceeding five, of the "net profits" of the company calculated in the manner laid down in sections 348, 349 and 350, or partly by the one way and partly by the other.

388. Application of sections 311 and 316 to managers.—(1) The provisions of section 311 shall apply in relation to a manager of a company as they apply in relation to a director thereof.

(2) The provisions of section 316 shall apply in relation to a manager of a company as if the word "manager" were substituted for the words "managing director" wherever they occur in that section.

CHAPTER V

Arbitration, Compromises, Arrangements and Reconstructions

389. Power for companies to refer matters to arbitration.—(1) A company may, by written agreement, refer to arbitration, in accord-

ance with the Arbitration Act, 1940 (X of 1940), an existing or future difference between itself and any other company or person.

(2) A company which is a party to an arbitration may delegate to the arbitrator power to settle any terms or to determine any matter, capable of being lawfully settled or determined by the company itself, or by its Board of directors, managing director, managing agent, secretaries and treasurers, or manager.

(3) The provisions of the Arbitration Act, 1940 (X of 1940), shall apply to all arbitrations in pursuance of this Act to which a company is a party.

390. Interpretation of sections 391 and 392.—In sections 391 and 392,—

(a) the expression "company" means any company liable to be wound up under this Act;

(b) the expression "arrangement" includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods; and

(c) unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

391. Power to compromise with creditors and members.—(1) Where a compromise or arrangement is proposed—

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them;

the Court may, on the application of the company or of any creditor or member of the company, or, in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

(2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or, where proxies are allowed, by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class, as the case may be, and also on the company, or, in the case of a company which is being wound up, on the liquidator and contributories of the company.

(3) An order made by the Court under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar. * *

(4) A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(5) If default is made in complying with sub-section (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ten rupees for each copy in respect of which default is made.

(6) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the company on such terms as the Court thinks fit, until the application is finally disposed of.

(7) An appeal shall lie from any order made by a Court exercising original jurisdiction under this section to the Court empowered to hear appeals from the decisions of that Court, or if more than one Court is so empowered, to the Court of inferior jurisdiction.

292. Information as to compromise with creditors and members.—(1) Where a meeting of creditors or any class of creditors or of members or any class of members is called under section 391,—

(a) with every notice calling the meeting which is sent to a creditor or member, there shall be sent also a statement setting forth the terms of the compromise or arrangement and explaining its effect; and in particular, stating any material interests of the directors, managing director, managing agent, secretaries and treasurers or manager of the company, whether in their capacity as such or as members or * * creditors of the company or otherwise, and the effect on those interests, of the compromise or arrangement, if, and in so far as, it is different from the effect on the like interests of other persons; and

(b) in every notiec calling the meeting which is given by advertisement, there shall be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like information and explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement setting forth the terms of the compromise or arrangement proposed and explaining its effect can be obtained by creditors or members entitled to attend the meeting, every * * * * creditor or member so entitled shall, on making an application in the manner indicated by the notice, be furnished by the company, free of charge, with a copy of the statement.

(4) Where default is made in complying with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees; and for the purpose of this sub-section any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be punishable under this sub-section if he shows that the default was due to the refusal of any other person, being a director, managing director, managing agent, secretaries and treasurers, manager or trustee for debenture holders, to supply the necessary particulars as to his material interests.

(5) * * * * Every director, managing director, managing agent, secretaries and treasurers or manager of the company and every trustee for debenture holders of the company, shall give notice to the company of such matters relating to himself as may be necessary for the purposes of this section; and if he fails to do so, he * * * * * * shall be punishable with fine which may extend to five hundred rupees.

393. Provisions for facilitating reconstruction and amalgamation of companies.—(*1*) Where an application is made to the Court under section 391 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court—

(*a*) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies; and

(*b*) that under the scheme the whole or any part of the undertaking, * * property or liabilities of any company concerned in the scheme (in this section referred to as a "transferor company") is to be transferred to another company (in this section referred to as "the transferee company"),

the Court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters:—

(*i*) the transfer to the transferee company of the whole or any part of the undertaking, * * * property or liabilities of any transferor company;

(*ii*) the allotment or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

(*iii*) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(*iv*) the dissolution, without winding up, of any transferor company;

(*v*) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement; and

(*vi*) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(*2*) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(*3*) Within fourteen days after the making of an order * * * under this section, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration.

If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

(*4*) In this section—

(*a*) "property" includes property, rights and powers of every description and "liabilities" includes duties of every description; and

(*b*) "transferee company" does not include any company other than a company within the meaning of this Act; but "transferor company" includes any body corporate, whether a company within the meaning of this Act or not.

394. Power and duty to acquire shares of shareholders dissenting from scheme or contract approved by majority.—(*1*) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company (in this section referred to as "the transferee company"), has, within four months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares; and when such a notice is given, the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company:

Provided that where shares in the transferor company of the same class as the shares whose transfer is involved are already held as aforesaid to a value greater than one-tenth of the aggregate of the

values of all the shares in the company of such class, the foregoing provisions of this sub-section shall not apply, unless—

(*a*) the transferee company offers the same terms to all holders of the shares of that class (other than those already held as aforesaid) whose transfer is involved; and

(*b*) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

(*2*) Where, in pursuance of any such scheme or contract as aforesaid, shares, or shares of any class in a company are transferred to another company or its nominee, and those shares together with any other shares or any other shares of the same class, as the case may be, in the first-mentioned company held at the date of the transfer by, or by a nominee for, the transferee company or its subsidiary comprise nine-tenths in value of the shares, or the shares of that class, as the case may be, in the first-mentioned company, then,—

(*a*) the transferee company shall, within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement), give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and

(*b*) any such holder may within three months from the giving of the notice to him require the transferee company to acquire the shares in question;

and where a shareholder gives notice under clause (*b*) with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the Court on the application of either the transferee company or the shareholder thinks fit to order.

(*3*) Where a notice has been given by the transferee company under sub-section (*1*) and the Court has not, on an application made by the dissenting shareholder, made an order to the contrary, the transferee company shall, on the expiry of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which, by virtue of this section, that company is entitled to acquire; and the transferor company shall thereupon register the transferee company as the holder of those shares:

Provided that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

(4) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(5) In this section—

(*a*) "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract;

(*b*) "transferor company" and "transferee company" shall have the same meaning as in section 393.

(6) In relation to an offer made by the transferee company to shareholders of the transferor company before the commencement of this Act, this section shall have effect—

(*a*) with the substitution, in sub-section (*1*), for the words "the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary)," of the words "the shares affected" and with the omission of the proviso to that sub-section;

(*b*) with the omission of sub-section (*2*); * *

(c) with the omission in sub-section (*3*) of the words "together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company" and of the proviso to that sub-section; and

(*d*) with the omission of clause (*b*) of sub-section (*5*).

395. Power of Central Government to provide for amalgamation of companies in national interest.—(*1*) Where the Central Government is satisfied that it is essential in the national interest that two or more companies should amalgamate, then, notwithstanding anything contained in sections 393 and 394 but subject to the provisions of this section, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution; with such property, powers, rights, interests, authorities and privileges; and with such liabilities, duties, and obligations; as may be specified in the order.

(2) The order aforesaid may contain such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.

(3) Every member or creditor (including a debenture holder) of each of the companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the company resulting from the amalgamation as he had in the company of which he was originally a member or creditor; and to the extent to which the interest or rights of such member or creditor in or against the company resulting from the amalgamation are less than his interest in or rights against the original company, he shall be entitled to

compensation which shall be assessed by such authority as may be prescribed.

The compensation so assessed shall be paid to the member or creditor concerned by the company resulting from the amalgamation.

(4) No order shall be made under this section, unless—

(a) a copy of the proposed order has been sent in draft to each of the companies concerned; and

(b) the Central Government has considered, and made such modifications, if any, in the draft order as may seem to it desirable in the light of, any suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by that company, * * * * * or from any class of shareholders therein, or from any creditors or any class of creditors thereof.

(5) Copies of every order made under this section shall, as soon as may be after it has been made, be laid before both Houses of Parliament.

CHAPTER VI

* *PREVENTION OF OPPRESSION AND MISMANAGEMENT

A. Powers of Court

396. Application to Court for * * * relief in cases of oppression.—(1) Any members of a company who complain that the affairs of the company are being conducted in a manner oppressive to any member or members (including any one or more of themselves) may apply to the Court for an order under this section, provided such members have a right so to apply in virtue of section 398.

(2) If, on any application under sub-section (1), the Court is of opinion—

(a) that the company's affairs are being conducted in a manner oppressive to any member or members, and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up,

the Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

397. Application to Court for * * relief in cases of mismanagement.—(1) Any members of a company who complain—

(a) that the affairs of the company are being conducted in a manner prejudicial to the interests of the company, or

(b) that a material change (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company, whether by an alteration in its Board of directors, or of its managing

agent, secretaries and treasurers, or in the constitution or control of the firm or body corporate acting as its managing agent, secretaries and treasurers, or in the ownership of the company's shares or, if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to the interests of the company,

may apply to the Court for an order under this section, provided such members have a right so to apply in virtue of section 398.

(2) If, on any application under sub-section (1), the Court is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the Court may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.

398. Right to apply under sections 396 and 397.—(1) The following members of a company shall have the right to apply under section 396 or 397—

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, provided that * * * the applicant or applicants have paid all calls and other sums due on their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

(2) For the purposes of sub-section (1), where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(3) Where any members of a company are entitled to make an application in virtue of sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

(4) The Central Government may, if in its opinion circumstances exist which make it just and equitable so to do, authorise any member or members of the company to apply to the Court under section 396 or 397, notwithstanding that the requirements of clause (a) or clause (b), as the case may be, of sub-section (1) are not fulfilled.

(5) The Central Government may, before authorising any member or members as aforesaid, require such member or members to give security for such amount as the Central Government may deem reasonable, for the payment of any costs which the Court dealing with the application may order such member or members to pay to any other person or persons who are parties to the application.

399. Notice to be given to Central Government of applications under section 396 and 397.—The Court shall give notice of every application made to it under section 396 or 397 to the Central Government, and shall take into consideration the representations, if any,

made to it by that Government before passing a final order under that section.

400. Right of Central Government to apply under sections 396 and 397.—In cases falling under section 242, the Central Government may itself cause an application to be made to the Court for an order under section 396 or 397.

401. Powers of Court on application under section 396 or 397.—Without prejudice to the generality of the powers of the Court under section 396 or 397, any order under either section may provide for—

(*a*) the regulation of the conduct of the company's affairs in future;

(*b*) the purchase of the shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(*d*) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other, namely:—

(*i*) the managing director,
(*ii*) any other director,
(*iii*) the managing agent, * *
(*iv*) the secretaries and treasurers, and
(*v*) the manager,

upon such terms and conditions as may, in the opinion of the Court, be just and equitable in all the circumstances of the case.

* * * * * * * * * *

(*e*) the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (*d*), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned;

(*f*) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under section 396 or 397, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(*g*) any other matter for which in the opinion of the Court it is just and equitable that provision should be made.

402. Interim order by Court.—Pending the making by it of a final order under section 396 or 397, as the case may be, the Court may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's

affairs, upon such terms and conditions as appear to it to be just and equitable.

403. Effect of alteration of memorandum or articles of company by order under section 396 or 397.—(*1*) Where an order under section 396 or 397 makes any alteration in * * * * the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make without the leave of the Court, any alteration * * * whatsoever which is inconsistent with the order, * * * * either in the memorandum or in the articles.

(*2*) Subject to the provisions of sub-section (*1*), the alterations * * * made by the order shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act; and the said provisions shall apply accordingly to the memorandum or articles as so altered * * *.

(*3*) A certified copy of every order altering, * * * or giving leave to alter, * * * a company's memorandum or articles, shall within fifteen days after the making thereof, be filed by the company with the Registrar who shall register the same.

(*4*) If default is made in complying with the provisions of sub-section (*3*), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

404. Addition of respondents to application under section 396 or 397.—If the managing director or any other director, the managing agent, secretaries and treasurers or the manager, of a company or any other person, who has not been impleaded as a respondent to any application under section 396 or 397 applies to be added as a respondent thereto, the Court shall, if it is satisfied that there is sufficient cause for doing so, direct that he may be added as a respondent accordingly.

405. Application of sections 536 to 541 to proceedings under sections 396 and 397.—In relation to an application under section 396 or 397, sections 536 to 541, both inclusive, shall apply in the form set forth in Schedule XI.

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406. Consequences of termination or modification of certain agreements.—(*1*) Where an order of a Court made under section 396 or 397 terminates, sets aside, or modifies an agreement such as is referred to in clause (*d*) or (*e*) of section 401,—

(*a*) * * * * * * * * * * * * * * * * the * * * order shall not give rise to any claim whatever against the company by any person for damages or for compensation for loss of office or in any other respect, either in pursuance of the agreement or otherwise;

(*b*) no managing or other director, managing agent, secretaries and treasurers, or manager whose agreement is so terminated or set aside and no person who, at the date of the order terminating or setting aside the agreement was, or subsequently

becomes, an associate of such managing agent, or secretaries and treasurers shall, for a period of five years from the date of the order terminating the agreement, without the leave of the Court, be appointed, or act, as the managing or other director, managing agent, secretaries and treasurers, or manager of the company.

(2) (a) Any person who knowingly acts as a managing or other director, managing agent, secretaries and treasurers, or manager of a company in contravention of clause (b) of sub-section (1);

(b) where the person so acting as managing agent or as secretaries and treasurers is a firm or body corporate, every partner in the firm, or every director of the body corporate who is knowingly a party to such contravention; and

(c) every other director or every director, as the case may be, of the company, who is knowingly a party to such contravention;

shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(3) No Court shall grant leave under clause (b) of sub-section (1) unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given an opportunity of being heard in the matter.

B. Powers of Central Government

407. Powers of Government to prevent oppression or mismanagement.—Notwithstanding anything contained in this Act, the Central Government may appoint not more than two persons, being members of the company, to hold office as directors thereof for such period not exceeding three years as it may think fit, if the Central Government, on the application of members of the company holding not less than one-tenth of the total voting power therein, is satisfied that it is necessary to make the appointment or appointments in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of the company.

408. Power of Central Government to prevent change in Board of directors likely to affect company prejudicially.—(1) Where a complaint is made to the Central Government by the managing director or any other director, the managing agent, or secretaries and treasurers, of a company that as a result of a change which has taken place or is likely to take place in the ownership of any shares held in the company, a change in the Board of directors is likely to take place which (if allowed) would affect prejudicially the affairs of the company, the Central Government may, if satisfied, after such inquiry as it thinks fit to make that it is just and proper so to do, by order direct that no resolution passed or action taken to effect a change in the Board of directors after the date of the complaint shall have effect unless confirmed by the Central Government; and any such order shall have effect notwithstanding anything

to the contrary contained in any other provision of this Act or in the memorandum or articles of the company, or in any agreement with, or any resolution passed in general meeting by, or by the Board of directors of, the company.

(2) The Central Government shall have power when any such complaint is received by it, to make an interim order to the effect set out in sub-section (1), before making or completing the inquiry aforesaid.

(3) Nothing contained in sub-sections (1) and (2) shall apply to a private company, unless it is a subsidiary of a public company.

CHAPTER VII

CONSTITUTION AND POWERS OF ADVISORY COMMISSION

409. Appointment of Advisory Commission.—For the purpose of advising the Central Government on any matter arising out of the provisions of this Act referred to in clause (*a*) of section 410 or on such other matters as the Central Government may think fit, the Central Government shall—

(*a*) constitute a Commission (hereinafter called the "Advisory Commission") consisting of not more than five persons with suitable qualifications; and

(*b*) appoint one of those persons to be the Chairman of the Commission.

410. Duties of Advisory Commission.—It shall be the duty of the Advisory Commission to inquire into and advise the Central Government—

(*a*) on all applications made to the Central Government under section 258, 259, 266, 267, 309, 310, 325, 327, 328, 331, 344, 345, 351, 407, or 408;

(*b*) on all other matters which may be referred to the Commission by the Central Government.

411. Forms and procedure in cases referred to Advisory Commission.—(1) Every application made to the Central Government under any of the sections referred to in clause (*a*) of section 410 shall be in such form as may be prescribed.

(2) (*a*) Before any application is made to the Central Government under any of the sections aforesaid, there shall be issued by or on behalf of the company a general notice to the members thereof, indicating the nature of the application proposed to be made.

(*b*) Such notice shall be published at least once in a newspaper in the principal language of the district in which the registered office of the company is situate and circulating in that district, and at least once in English in an English newspaper circulating in that district.

(c) Copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

(*d*) Nothing in clause (*a*), (*b*) or (*c*) shall apply to a private company which is not the managing agent of a public company.

412. Powers of Advisory Commission.—For the purpose of making any inquiry under section 410, the Advisory Commission may—

(*a*) require the production before it of any books or other documents in the possession, custody or control of the company, relating to any matter under inquiry;

(*b*) call for any further information or explanation, if the Commission is of opinion that such information or explanation is necessary in order that the books or other documents produced before it may afford full particulars of the matter to which they purport to relate;

(c) with such assistants as it thinks necessary, inspect any books or other documents so produced and make copies thereof or take extracts therefrom;

(*d*) require any managing director or any other director, managing agent, secretaries and treasurers, manager or other officer of the company, or any shareholder or any other person who, in the opinion of the Commission, is likely to furnish information with respect to the affairs of the company relating to any matter under inquiry, to appear before it and examine such person on oath or require him to furnish such information as may be required; and administer an oath accordingly to the person for the purpose.

413. Penalties.—If any person refuses or neglects to produce any book or other document in his possession or custody which he is required to produce under section 412 or to answer any question put to him relating to any matter under inquiry, he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.

414. Immunity for action taken in good faith.—No suit or other legal proceeding shall lie against the Commission or the Chairman or any member thereof or aganist the Central Government, in respect of anything which is in good faith done or intended to be done in pursuance of this Chapter or of the provisions referred to in section 409 or of any rules or orders made thereunder.

CHAPTER VIII

Miscellaneous Provisions

Contracts where company is undisclosed principal

415. Contracts by agents of company in which company is undisclosed principal.—(*1*) Every person, being the managing agent, secretaries and treasurers, manager or other agent of a public company or of a private company which is a subsidiary of a public company, who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the terms of the contract, and specify therein the person with whom it is entered into.

(2) Every such person who enters into a contract as aforesaid, shall forthwith deliver the memorandum to the company and send copies thereof to each of the directors; and such memorandum shall be filed in the office of the company and laid before the Board of directors at its next meeting of the Board of directors.

(3) If default is made in complying with the requirements of this section—

(a) the contract shall, at the option of the company, be voidable as against the company; and

(b) the person who enters into the contract, or every officer of the company who is in default, as the case may be, shall be punishable with fine which may extend to two hundred rupees.

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Employees' securities and provident funds

416. Employees' securities to be deposited in Scheduled Bank.—(1) All moneys or securities deposited with a company by its employees in pursuance of their contracts of service with the company shall be kept or deposited by the company in a special account to be opened by the company for the purpose in a Scheduled Bank.

(2) No portion of such moneys or securities shall be utilised by the company except for the purposes agreed to in the contracts of service.

(3) A receipt for moneys deposited with a company by its employee shall not be deemed to be a security within the meaning of this section; and the moneys themselves shall accordingly be deposited with a Scheduled Bank as provided in sub-section (1).

417. Provisions applicable to provident funds of employees.—(1) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or accruing by way of interest or otherwise to such fund, shall be either deposited in a Post Office Savings Bank account or invested in the securities mentioned or referred to in clauses (a) to (e) of section 20 of the Indian Trusts Act, 1882 (II of 1882):

Provided that where one-tenth part of the whole amount of the moneys belonging to such fund exceeds the maximum amount which may be deposited in a Post Office Savings Bank account under the rules regulating such deposits for the time being in force, the amount of such excess may be kept or deposited in a special account to be opened for the purpose in a Scheduled Bank.

(2) Notwithstanding anything to the contrary in the rules of any provident fund to which sub-section (1) applies or in any contract between a company and its employees, no employee shall be entitled to receive, in respect of such portion of the amount to his credit in such fund as in invested in accordance with the provisions of sub-section (1), interest at a rate exceeding the rate of interest yielded by such investment.

(3) Nothing in sub-section (1) shall affect any rights of an employee under the rules of a provident fund to obtain advances from or to withdraw money standing to his credit in the fund, where the fund is a recognised provident fund within the meaning of clause (a) of section 58A of the Indian Income-tax Act, 1922 (XI of 1922), or where the rules of the fund contain provisions corresponding to rules 4, 5, 6, 7, 8, and 9 of the Indian Income-tax (Provident Funds Relief) Rules.

(4) Where a separate trust has been created by a company with respect to any provident fund referred to in sub-section (1), the company shall be bound to collect the contributions of the employees concerned and pay such contributions as well as its own contributions, if any, to the trustees; but in other respects, the obligations laid on the company by this section shall devolve on the trustees and shall be discharged by them instead of by the company.

418. Right of employee to see bank's receipt for moneys or securities referred to in section 416 or 417.—An employee shall be entitled, on request made in this behalf to the company or to the trustees referred to in sub-section (4) of section 417, as the case may be, to see the bank's receipt for any money or security such as is referred to in sections 416 and 417.

419. Penalty for contravention of sections 416, 417 and 418.—Any officer of a company, or any such trustee of a provident fund as is referred to in sub-section (4) of section 417 who, knowingly, contravenes or authorises or permits the contravention of the provisions of section 416, 417 or 418, shall be punishable with fine which may extend to five hundred rupees.

Receivers and Managers

420. Filing of accounts of receivers.—Every receiver of the property of a company who has been appointed under a power conferred by any instrument and who has taken possession, shall once in every half year while he remains in possession, and also on ceasing to act as receiver, file with the Registrar an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates.

421. Invoices, etc., to refer to receiver where there is one.—Where a receiver of the property of a company has been appointed, every invoice, order for goods, or business letter issued by or on behalf of the company, or the receiver of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.

422. Penalty for non-compliance with sections 420 and 421.—If default is made in complying with the requirements of section 420 or 421, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to two hundred rupees.

For the purposes of this section, the receiver shall be deemed to be an officer of the company.

423. Application of sections 420 to 422 to receivers and managers appointed by Court and managers appointed in pursuance of an instrument.—The provisions of sections 420, 421 and 422 shall apply to the receiver of, or any person appointed to manage, the property of a company, appointed by a Court or to any person appointed to manage the property of a company appointed under any powers contained in an instrument, in like manner as they apply to a receiver appointed under any powers contained in an instrument.

PART VII
WINDING UP
CHAPTER I
**PRELIMINARY

Modes of winding up

424. Modes of winding up.—(*1*) The winding up of a company may be either—

(*a*) by the Court; or

(*b*) voluntary; or

(c) subject to the supervision of the Court.

(*2*) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

Contributories

425. Liability as contributories of present and past members.—(*1*) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of section 426 and subject also to the following qualifications, namely:—

(*a*) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;

(*b*) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) a past member shall not be liable to contribute unless it appears to the Court that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(*d*) in the case of a company limited by shares, no contribution shall be required from any past or present member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as such member;

(*e*) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of sub-section (*2*), be

required from any member exceeding the amount, if any, undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(*f*) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

(*g*) a sum due to any past or present member of the company in his character as such, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member, in a case of competition between himself and any other creditor who is not a past or present member of the company; but any such sum shall be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(*2*) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him.

426. Obligations of directors, managing agents and managers whose liability is unlimited.—In the winding up of a limited company, any director, managing agent, secretaries and treasurers or manager, whether past or present, whose liability is, under the provisions of this Act, unlimited, shall, in addition to his liability, if any, to contribute as an ordinary member, be liable to make a further contribution as if he were, at the commencement of the winding up, a member of an unlimited company:

Provided that—

(*a*) a past dirtctor, managing agent, secretaries and treasurers or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;

(*b*) a past director, managing agent, secretaries and treasurers or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;

(*c*) subject to the articles of the company, a director, managing agent, secretaries and treasurers or manager shall not be liable to make such further contribution unless, the Court deems it necessary to require the contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

427. Definition of "contributory".—The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up and includes the holder of any shares which are fully paid up; and for the purposes of all proceedings for

determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

428. Nature of liability of contributory.—(*1*) The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the times specified in calls made on him for enforcing the liability.

(*2*) No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes sitting outside the presidency-towns.

429. Contributories in case of death of member.—(*1*) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives shall be liable in a due course of administration, to contribute to the assets of the company in discharge of his liability, and shall be contributories accordingly.

(*2*) If the legal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and compelling payment thereout of the money due.

(*3*) For the purposes of this section, where the deceased contributory was a member of a Hindu joint family governed by the Mitakshara School of Hindu Law, his legal representatives shall be deemed to include the surviving coparceners.

430. Contributories in case of insolvency of member.—If a contributory is adjudged insolvent, either before or after he has been placed on the list of contributories,—

(*a*) his assignees in insolvency shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company; and

(*b*) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made.

CHAPTER II

* * WINDING UP BY THE COURT

Cases in which company may be wound up by the Court

431. Circumstances in which company may be wound up by Court.—A company may be wound up by the Court.—

(*a*) if the company has, by special resolution, resolved that the company be wound up by the Court;

(*b*) if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;

(c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

(d) if the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two;

(e) if the company is unable to pay its debts;

(f) if the Court is of opinion that it is just and equitable that the company should be wound up.

432. Company when deemed unable to pay its debts.—(1) A company shall be demeed to be unable to pay its debts—

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or

(b) if execution or other process issued on a decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

(2) The demand referred to in clause (a) of sub-section (1) shall be deemed to have been duly given under the hand of the creditor if it is signed by any agent or legal adviser duly authorised on his behalf, or in the case of a firm, if it is signed by any such agent or legal adviser or by any member of the firm * * *.

Transfer of Proceedings

433. Transfer of winding up proceedings to District Court.—Where a High Court makes an order for winding up a company under this Act, the High Court may, if it thinks fit, direct all subsequent proceedings to be had in a District Court; and thereupon for the purposes of winding up the company, such District Court shall be deemed to be "the Court" within the meaning of this Act, and shall have all the jurisdiction and powers of the High Court.

434. Withdrawal and transfer of winding up from one District Court to another.—If during the progress of a winding up in a District Court, it appears to the High Court that the same could be more conveniently proceeded within the High Court or in any other District Court, the High Court may, as the case may require,—

(a) withdraw the case and proceed with the winding up itself; or

(*b*) transfer the case to such other District Court, whereupon the winding up shall proceed in that District Court.

435. Power of High Court to retain winding up proceedings in District Court * * * .—The High Court may direct that a District Court in which proceedings for winding up a company have been commenced, shall retain and continue the proceedings, although it may not be the Court in which they ought to have been commenced.

436. Jurisdiction of High Court under sections 433, 434 and 435 to be exercised at any time and at any stage.—The High Court shall have jurisdiction to pass orders under section 433, 434 or 435 at any time and at any stage and either on the application of or without application from, any of the parties to the proceedings.

Petition for winding up

437. Provisions as to applications for winding up.—(*1*) An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section,—

(*a*) by the company; or

(*b*) by any creditor or creditors, including any contingent or prospective creditor or creditors; or

(c) by any contributory or contributories; or

(*d*) by all or any of the parties specified in clauses (*a*), (*b*) and (*c*), whether together or separately; or

(*e*) by the Registrar; or

(*f*) in a case falling under section 242, by any person authorised by the Central Government in that behalf.

(*2*) A contributory shall not be entitled to present a petition for winding up a company unless—

(*a*) either the number of members is reduced, in the case of a public company, below seven, and, in the case of a private company, below two; or

(*b*) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up, or have devolved on him through the death of a former holder.

(*3*) Except in the case where he is authorised in pursuance of in clause (*f*) of sub-section (*1*), the Registrar shall * * be entitled to present a petition for winding up a company only on the grounds specified in clauses (*b*), (*c*) and (*e*) of section 431:

Provided that the Registrar shall not present a petition on the ground specified in clause (*e*) aforesaid, unless it appears to him either from the financial condition of the company as disclosed in

its balance-sheet or from the report of an inspector appointed under section 234 ir 236 that the company is unable to pay its debts:

Provided further that the Registrar shall obtain the previous sanction of the Central Government to the presentation of the petition on any of the grounds aforesaid.

(4) The Central Government shall not accord its sanction in pursuance of the foregoing proviso, unless the company has first been afforded an opportunity of making its representations, if any.

(5) A petition for winding up a company on the ground specified in clause (b) of section 431 shall not be presented—

(a) except by the Registrar or by a contributory; or

(b) before the expiration of fourteen days after the last day on which the statutory meeting referred to in clause (b) aforesaid ought to have been held.

(6) The Court shall not give a hearing to a petition for winding up a company presented by a contingent or prospective creditor,—

(a) unless, in the opinion of the Court, there is a *prima facie* case for winding up the company; and

(b) until such security for costs has been given as the Court thinks reasonable.

438. Right to present winding up petition where company is being wound up voluntarily or subject to Court's supervision.—(1) Where a company is being wound up voluntarily or subject to the supervision of the Court, a * * petition for its winding up by Court may be presented by—

(a) any person authorised to do so under section 437, and subject to the provisions of that section; or

(b) the Official Liquidator * * * * * * *.

(2) The Court shall not make a winding up order on a petition presented to it under sub-section (1), unless it is satisfied that the voluntary winding up or winding up subject to the supervision of the Court cannot be continued with due regard to the interests of the creditors or contributories or both.

Commencement of winding up

439. Commencement of winding up by Court.—(1) Where, before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Court, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Powers of Court hearing application

440. Power of Court to stay or restrain proceedings against company.—At any time after the presentation of a winding up petition and before a winding up order has been made, the company, or any creditor or contributory, may—

(*a*) where any suit or proceeding against the company is pending in the Supreme Court or in any High Court, apply to the Court in which the suit or proceeding is pending for a stay of proceedings therein; and

(*b*) where any suit or proceeding is pending against the company in any other Court, apply to the Court having jurisdiction to wind up the company to restrain further proceedings in the suit or proceeding;

and the Court to which application is so made may stay or restrain the proceedings accordingly, on such terms as it thinks fit.

441. Powers of Court on hearing petition.—(*1*) On hearing a winding up petition, the Court may—

(*a*) dismiss it, with or without costs; or

(*b*) adjourn the hearing conditionally or unconditionally; or

(c) make any interim order that it thinks fit; or

(d) make any other order that it thinks fit:

Provided that the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(*2*) Where the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the Court, if it is of opinion—

(*a*) that the petitioners are entitled to relief either by the winding up of the company or by some other means; and

(*b*) that in the absence of any other remedy it would be just and equitable that the company should be wound up;

shall make a winding up order, unless it is also of the opinion of both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(*3*) Where the petition is presented on the ground of default in delivering the statutory report to the Registrar, or in holding the statutory meeting, the Court may—

(*a*) instead of making a winding up order, direct that the statutory report shall be delivered or that a meeting shall be held; and

(*b*) order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

Consequences of Winding up Order

442. Order for winding up to be communicated to Official Liquidator.—Where the Court makes an order for the winding up of a company, it shall * * * * * * forthwith cause intimation thereof to be sent to the Official Liquidator.

443. Copy of winding up order to be filed with Registrar.—(*1*) On the making of a winding up order, it shall be the duty of the petitioner in the winding up proceedings and of the company to file with the Registrar a copy of the order, within one month from the date of the making of the order.

(*2*) On the filing of a copy of a winding up order, the Registrar shall make a minute thereof in his books relating to the company, and shall notify in the Official Gazette that such an order has been made.

(*3*) Such order shall be deemed to be notice of discharge to the servants of the company, except when the business of the company is continued.

444. Suits stayed on winding up order.—(*1*) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, * * * no suit or other legal proceeding shall be proceeded with or commenced against the company, except by leave of the Court and subject to such terms as the Court may impose.

(2) The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of, any suit or proceeding by or against the company.

(*3*) Any suit or proceeding by or against the company which is pending in any Court other than that in which the winding up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by that Court.

445. Effect of winding up order.—An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if it had been made on the joint petition of a creditor and of a contributory.

Official Liquidators

446. Appointment of Official Liquidator.—(*1*) For the purposes of this Act, so far as it relates to the winding up of companies by the Court,—

(*a*) there shall be attached to each High Court, an Official Liquidator appointed by the Central Government, who shall be a whole-time officer, unless the Central Government considers that there will not be sufficient work for a whole-time officer in which case a part-time officer may be appointed; and

(*b*) the Official Receiver attached to a District Court for insolvency purposes, or if there is no such Official Receiver, then, such person as the Central Government may, by notification in the Official Gazette appoint for the purpose, shall be the Official Liquidator attached to the District Court.

(*2*) All references to the "Official Liquidator" in this Act shall be construed as references to the Official Liquidator referred to in clause (*a*) or clause (*b*), as the case may be, of sub-section (*1*).

* *

447. Official Liquidator to be liquidator. * * * * * * On a winding up order being made in respect of a company, the Official Liquidator shall, by virtue of his office, become the liquidator of the company.

* * * * * * * * *

448. Appointment and powers of provisional liquidator.— (*1*) At any time after the presentation of a winding up petition and before the making of a winding up order, the Court may appoint the Official Liquidator * * * * to be liquidator provisionally.

(*2*) Before appointing a provisional liquidator, the Court shall give notice to the company and give a reasonable opportunity to it to make its representations, if any, unless, for special reasons to be recorded in writing, the Court thinks fit to dispense with such notice.

(*3*) Where a provisional liquidator is appointed by the Court, the Court may limit and restrict his powers by the order appointing him or by a subsequent order; but otherwise he shall have the same powers as a liquidator.

(*4*) The Official Liquidator shall cease to hold office as provisional liquidator, and shall become the liquidator, of the company on a winding up order being made.

* * * * * * * * *

449. General provisions as to liquidators.— * * (*1*) The liquidator * * * shall conduct the proceedings in winding up the company and perform such duties in reference thereto as the Court may impose.

* * * * * * * * *

(*2*) Where the Official Liquidator becomes or acts as liquidator, there shall be paid to the Central Government out of the assets of the company such fees as may be prescribed.

(*3*) The acts of a liquidator shall be valid, notwithstanding any defect that may afterwards be discovered in his appointment or qualification:

Provided that nothing in this sub-section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid.

* * * * * * * * *

450. Style, etc., of liquidator.—A liquidator shall be described * * * * * * * * by the style of "The Official Liquidator" * * of the particular company in respect of which he acts * * * * * and not by his individual name.

451. Receiver not to be appointed of assets with liquidator.—A receiver shall not be appointed of assets in the hands of a liquidator.

452. Statement of affairs to be made to Official Liquidator.—(1) Where the Court has made a winding up order or appointed the Official Liquidator as provisional liquidator, unless the Court in its discretion otherwise orders, there shall be made out and submitted to the Official Liquidator a statement as to the affairs of the company in the prescribed form, verified by an affidavit, and containing the following particulars, namely:—

(a) the assets of the company, stating separately the cash balance in hand and at the bank, if any;

(b) its debts and liabilities;

(c) the names, residences and occupations of its creditors, stating separately the amount of secured and unsecured debts; and in the case of secured debts, particulars of the securities given, their value and the dates on which they were given;

(d) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;

(e) such further or other information as may be prescribed, or as the Official Liquidator may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the manager, secretary or other chief officer of the company, or by such of the persons hereinafter in this sub-section mentioned, as the Official Liquidator, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons—

(a) who are or have been officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company, or have been in the employment of the company within the said year, and are in the opinion of the Official Liquidator capable of giving the information required;

(d) who are or have been within the said year officers of, or in the employment of, a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within twenty-one days from the relevant date, or within such extended time not exceeding three months from that date as the Official Liquidator or the Court may, for special reasons, appoint.

(4) Any person making, or concurring in making, the statement and affidavit required by this section shall be allowed, and shall be paid by the Official Liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Official Liquidator may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, makes default in complying with any of the requirements of this section, he shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Indian Penal Code (Act XLV of 1860), and shall, on the application of the Official Liquidator * * * *, be punishable accordingly.

(8) In this section, the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment, and in a case where no such appointment is made, the date of the winding up order.

453. Report by Official Liquidator.—(1) In a case where a winding up order is made, the Official Liquidator shall, as soon as practicable after receipt of the statement to be submitted under section 452 and not later than * * * * * six months from the date of the order, or in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court—

(a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities, giving separately, under the heading of assets, particulars of (*i*) cash and negotiable securities; (*ii*) debts due from contributories; (*iii*) debts due to the company and securities, if any, available in respect thereof; (*iv*) movable and immovable properties belonging to the company; and (*v*) unpaid calls; and

(b) if the company has failed, as to the causes of the failure; and

(c) whether, in his opinion, further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The Official Liquidator may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was promoted or formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any officer of the company in relation to the company since the formation thereof, and any other matters which, in his opinion, it is desirable to bring to the notice of the Court.

(3) If the Official Liquidator states in any such further report that in his opinion a fraud has been committed as aforesaid, the Court shall have the further powers provided in section 475.

454. Custody of company's property.—(1) Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator * * * * shall take into his custody or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.

(2) All the property and effects of the company shall be deemed to be in the custody of the Court as from the date of the order for the winding up of the company.

455. Powers of liquidator.—(1) The liquidator in a winding up by the Court shall have power, with the sanction of the Court,—

(a) to institute or defend any suit, prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company;

(b) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;

(c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer the whole thereof to any person or body corporate or to sell to the same in parcels;

(d) to raise on the security of the assets of the company any money requisite;

(e) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(2) The liquidator in a winding up by the Court shall have power—

(i) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;

(ii) to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;

(iii) to draw, accept, make and indorse any bill of exchange, hundi or promissory note in the name and on behalf of the

company, with the same effect with respect to the liability of the company as if the bill, hundi, or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;

(*iv*) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself: Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges of any Administrator-General;

(*v*) to appoint an agent to do any business which the liquidator is unable to do himself. * *

(*3*) The exercise by the liquidator in a winding up by the Court of the powers conferred by this section shall be subject to the control of the Court; and any creditor or contributory may apply to the Court with respect to the exercise or proposed exercise of any of the powers conferred by this section.

456. Discretion of liquidator.—The Court may, by order, provide that the liquidator may exercise any of the powers referred to in sub-section (*1*) of section 455 without the sanction or intervention of the Court:

Provided always that the exercise by the liquidator of such powers shall be subject to the control of the Court.

457. Provision for legal assistance to liquidator.—The liquidator may, with the sanction of the Court, appoint an advocate, attorney or pleader entitled to appear before the Court to assist him in the performance of his duties.

* * * * * * * *

458. Exercise and control of liquidator's powers.—(*1*) Subject to the provisions of this Act, the liquidator * * * * * * * * shall, in the administration of the assets of the company and the distribution thereof among its creditors, have regard to any directions which may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection.

(*2*) Any directions given by the creditors or contributories at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.

(*3*) The liquidator—

(*a*) may summon general meetings of the creditors or contributories, whenever he thinks fit, for the purpose of ascertaining their wishes;

(*b*) shall summon such meetings at such times as the creditors or contributories, as the case may be, may, by resolution,

direct, or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories, as the case may be.

(4) The liquidator may apply to the Court in the manner prescribed, if any, for directions in relation to any particular matter arising in the winding up.

(5) Subject to the provisions of this Act, the liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors.

(6) Any person aggrieved by any act or decision of the liquidator may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such further order as it thinks just in the circumstances.

459. Books to be kept by liquidator.—(1) The liquidator * * * * * * * * * * * shall keep, in the manner prescribed, proper books in which he shall cause entries or minutes to be made of proceedings at meetings and of such other matters as may be prescribed.

(2) Any creditor or contributory may, subject to the control of the Court, inspect any such books, personally or by his agent.

460. Audit of liquidator's accounts.—(1) The liquidator * * * * * * * * * shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Court an account of his receipts and payments as liquidator.

(2) The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form.

(3) The Court shall cause the account to be audited in such manner as it thinks fit; and for the purpose of the audit, the liquidator shall furnish the Court with such vouchers and information as the Court may require, and the Court may, at any time, require the production of, and inspect, any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the Court, and the other copy shall be delivered to the Registrar for filing; and each copy shall be open to the inspection of any creditor, contributory or * * person interested.

(5) The liquidator shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and to every contributory:

Provided that the Court may in any case dispense with compliance with this sub-section.

Committee of Inspection

461. * * * * * * Appointment and composition of committee of inspection.—(1) The

liquidator shall, within two months from the date of the order for the winding up of a company, convene a meeting of its creditors (as ascertained from its books and documents) for the purpose of determining whether or not a committee of inspection shall be appointed to act with the liquidator, and who are to be members of the committee, if one is appointed.

(2) The liquidator shall, within fourteen days from the date of the creditors' meeting or such further time as the Court in its discretion may grant for the purpose, convene a meeting of the contributories to consider the decision of the creditors' meeting and to express the views of the contributories on the matters specified in subsection (1); and it shall be open to the meeting to accept the decision of the creditors' meeting with or without modifications or to reject it.

(3) Except in the case where the meeting of the contributories accepts the decision of the creditors' meeting in its entirety, it shall be the duty of the liquidator to apply to the Court for directions as to whether there shall be a committee of inspection; and, if so, what the composition of the committee shall be, and who shall be members thereof.

462. Constitution and proceedings of committee of inspection.—(1) A committee of inspection appointed in pursuance of section 461 shall consist of not more than twelve members, being creditors and contributories of the company or persons holding general or special powers of attorney from creditors or contributories, in such proportions as may be agreed on by the meetings of creditors and contributories, or in case of difference of opinion between the meetings, as may be determined by the Court.

(2) The committee of inspection shall have the right to inspect the accounts of the liquidator at all reasonable times.

(3) The committee shall meet at such times as it may from time to time appoint, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(4) The quorum for a meeting of the committee shall be one-third of the total number of the members, or two, whichever is higher.

(5) The committee may act by a majority of its members present at a meeting, but shall not act unless a * * * * quorum is present.

(6) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(7) If a member of the committee is adjudged an insolvent or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who, together with himself, represent the creditors or contributories, as the case may be, his office shall * * become vacant.

(8) A member of the committee may be removed at a meeting of creditors if he represents creditors, or at a meeting of contributories

if he represents contributories, by an ordinary resolution of which seven days' notice has been given, stating the object of the meeting.

(*9*) On a vacancy occurring in the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy, and the meeting may, by resolution, re-appoint the same, or appoint another, creditor or contributory to fill the vacancy:

Provided that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled, he may apply to the Court and the Court may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(*10*) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

General powers of Court in case of winding up by Court

463. Power of Court to stay winding up.—(*1*) The Court may at any time after making a winding up order, * * * * on the application either of the Official Liquidator * * * * or of any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

(*2*) On any application under this section, the Court may, before making an order, require the Official Liquidator to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application.

(*3*) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.

464. Settlement of list of contributories and application of assets.—(*1*) As soon as may be after making a winding up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities:

Provided that, where it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(*2*) In settling the list of contributories, the Court shall distinguish between those who are contributories in their own right and those who are contributories as being representatives of, or liable for the debts of, others.

465. Delivery of property to liquidator.—The Court may, at any time after making a winding up order, require any contributory for the time being on the list of contributories and any trustee, receiver, banker, agent, or officer of the company, to pay, deliver, surrender

or transfer forthwith, or within such time as the Court directs, to the liquidator, any money, property or books and papers in his hands to which the company is *prima facie* entitled.

466. Payment of debts due by contributory and extent of set-off.—(1) The Court may, at any time after making a winding up order, make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due to the company, from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The Court, in making such an order, may—

(*a*) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

(*b*) in the case of a limited company, make to any director, managing agent, secretaries and treasurers or manager whose liability is unlimited or to his estate, the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors have been paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

467. Power of Court to make calls.—(1) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company,—

(*a*) make calls on all or any of the contributories for the time being on the list of the contributories, to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and

(*b*) make an order for payment of any calls so made.

(2) In making a call, the Court may take into consideration the probability that some of the contributories may, partly or wholly, fail to pay the call.

* * * * * * *

468. Payment into bank of moneys due to company.—(1) The Court may order any contributory, purchaser or other person from whom any money is due to the company to pay the money into the public account of India in the Reserve Bank of India instead of to the liquidator.

(2) Any such order may be enforced in the same manner as if the Court had directed payment to the liquidator.

469. Moneys and securities paid into Bank to be subject to order of Court.—All moneys, bills, hundis, notes and other securities paid

or delivered into the Reserve Bank of India * * * in the course of the winding up of a company by the Court, shall be subject in all respects to the orders of the Court.

470. Order on contributory to be conclusive evidence.—(*1*) An order made by the Court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(*2*) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings whatsoever.

471. Power to exclude creditors not proving in time.—The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts or claims are proved.

472. Adjustment of rights of contributories.—The Court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

473. Power to order costs.—The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order for the payment, out of the assets, of the costs, charges and expenses incurred in the winding up, in such order of priority *inter se* as the Court thinks just.

474. Power to summon persons suspected of having property of company, etc.—(*1*) The Court may, at any time after the appointment of a provisional liquidator or the making of a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property, or books or papers, of the company, or known or suspected to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company.

(*2*) The Court may examine any officer or person so summoned on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories; and may in the former case reduce his answers to writing and require him to sign them.

(*3*) The Court may require any officer or person so summoned to produce any books and papers in his custody or power relating to the company; but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any officer or person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

475. Power to order public examination of promoters, directors etc.—(1) When an order has been made for winding up a company by the Court, and the Official Liquidator has made a report to the Court under this Act, stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation, the Court may, after considering the report, direct that that person or officer shall attend before the Court on a day appointed by it for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as officer thereof.

(2) The Official Liquidator shall take part in the examination, and for that purpose may, if specially authorised by the Court in that behalf, employ such legal assistance as may be sanctioned by the Court.

(3) * * * Any creditor or contributory may also take part in the examination either personally or by any advocate, attorney or pleader entitled to appear before the Court.

(4) The Court may put such questions to the person examined as it thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him.

(6) A person ordered to be examined under this section—

(*a*) shall, before his examination, be furnished at his own cost with a copy of the Official Liquidator's report * * *; and

(*b*) may at his own cost employ an advocate, attorney or pleader entitled to appear before the Court, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him.

(7) (*a*) If any such person applies to the Court to be exculpated from any charges made or suggested against him, it shall be the duty of the Official Liquidator to appear on the hearing of the application and call the attention of the Court to any matters which appear to the Official Liquidator to be relevant.

(*b*) If the Court, after hearing any evidence given or witnesses called by the Official Liquidator, grants the application, the Court may allow the applicant such costs as it may think fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him * * *, and shall be open to the inspection of any creditor or countributory at all reasonable times.

(*9*) The Court may, if it thinks fit, adjourn the examination from time to time.

(*10*) An examination under this section may, if the Court so directs and subject to any rules made in this behalf, be held before any District Judge or before any officer of the High Court, being an Official Referee, Master, Registrar or Deputy Registrar.

(*11*) The powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the Judge or officer before whom the examination is held in pursuance of sub-section (*10*).

476. Power to arrest absconding contributory.—At any time either before or after making a winding up order, the Court may, on proof of probable cause for believing that a contributory is about to quit India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, cause—

(*a*) the contributory to be arrested and safely kept until such time as the Court may order; and

(*b*) his books and papers and movable property to be seized and safely kept until such time as the Court may order.

477. Saving of existing powers of Court.—Any powers conferred on the Court by this Act shall be in addition to, and not in derogation of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

478. Dissolution of company.—(*1*) When the affairs of a company have been completely wound up, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(*2*) A copy of the order shall, within fourteen days from the date thereof, be forwarded by the liquidator to the Registrar who shall make in his books a minute of the dissolution of the company.

(*3*) If the liquidator makes default in forwarding a copy as aforesaid, he shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

Enforcement of and Appeal from Orders

479. Order made in any Court to be enforced by other Courts.—Any order made by a Court for or in the course of winding up a company shall be enforceable at any place in India other than that over which such Court has jurisdiction, by the Court which would have had jurisdiction in respect of the company if its registered office had been situate at such other place, and in the same manner in all respects as if the order had been made by that Court.

480. Mode of dealing with orders to be enforced by other Courts.—(*1*) Where any order made by one Court is required to be enforced by another Court, a certified copy of the order shall be produced to the proper officer of the Court required to enforce the order.

(2) The production of such certified copy shall be sufficient evidence of the order.

(3) Upon the production of such certified copy, the Court shall take the requisite steps for enforcing the order, in the same manner as if it had been made by itself.

481. Appeals from orders.—Appeals from any order made or decision given in the matter of the winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction.

CHAPTER III

VOLUNTARY WINDING UP

Resolutions for, and commencement of, voluntary winding up

482. Circumstances in which company may be wound up voluntarily.—(*1*) A company may be wound up voluntarily—

(*a*) when the period, if any, fixed for the duration of the company by the articles has expired, or the event, if any, has occurred, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting passes a resolution requiring the company to be wound up voluntarily;

(*b*) if the company passes a special resolution that the company be wound up voluntarily.

* * * * * * * * * *

(*2*) In this Act, the expression "a resolution for voluntary winding up" means a resolution passed under clause (*a*) or (*b*) of sub-section (*1*).

483. Publication of resolution to wind up voluntarily.—(*1*) When a company has passed a resolution for voluntary winding up, it shall, within fourteen days of the passing of the resolution, give notice of the resolution by advertisement in the Official Gazette, and also in some newspaper circulating in the district where the registered office of the company is situate.

(*2*) If default is made in complying with sub-section (*1*), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

For the purposes of this sub-section, a liquidator of the company shall be deemed to be an officer of the company.

484. Commencement of voluntary winding up.—A voluntary winding up shall be deemed to commence at the time when the resolution for voluntary winding up is passed.

Consequences of voluntary winding up

485. Effect of voluntary winding up on status of company.—In the case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business,

except so far as may be required for the beneficial winding up thereof:

Provided that the corporate state and corporate powers of the company shall continue until it is dissolved.

Declaration of solvency

486. Declaration of solvency in case of proposal to wind up voluntarily.—(*1*) Where it is proposed to wind up a company voluntarily its directors * * * * , or in case the company has more than two directors, the majority of the directors, may, at a meeting of the Board, make a declaration verified by an affidavit, to the effect that they have made a full inquiry into the affairs of the company, and that, having done so, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding three years from the commencement of the winding up as may be specified in the declaration.

(*2*) A declaration made as aforesaid shall have no effect for the purposes of this Act, unless—

(*a*) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the Registrar for registration before that date; and

(*b*) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(*3*) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees, or with both.

(*4*) If the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period specified in the declaration, it shall be presumed, until the contrary is shown, that the director did not have reasonable grounds for his opinion.

(*5*) A winding up in the case of which a declaration has been made and delivered in accordance with this section * * * * * * * is in this Act referred to as "a members' voluntary winding up" and a winding up in the case of which a declaration has not been so made and delivered * * * * * * is in this Act referred to as "a creditors' voluntary winding up".

* * * * * * * * * *

Provisions applicable to a Members' Voluntary Winding Up

487. Provisions applicable to a members' voluntary winding up.—The provisions contained in sections 488 to 496, both inclusive, shall, subject to the provisions of section 496, apply in relation to a members' voluntary winding up.

488. Power of company to appoint and fix remuneration of liquidators.—(*1*) The company in general meeting shall—

(*a*) appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company; and

(*b*) fix the remuneration, if any, to be paid to the liquidator or liquidators * * * * * * * * * * * *

(*2*) Any remuneration so fixed shall not be increased in any circumstances whatever, whether with or without the sanction of the Court.

(*3*) Before the remuneration of the liquidator or liquidators is fixed as aforesaid, the liquidator or any of the liquidators, as the case may be, shall not take charge of his office.

489. Board's powers to cease on appointment of liquidator.—On the appointment of a liquidator, all the powers of the Board of directors shall cease, except so far as the company in general meeting or the liquidator may sanction the continuance thereof.

490. Power to fill vacancy in office of liquidator.—(*1*) If a vacancy occurs by death, resignation or otherwise in the office of any liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(*2*) For that purpose, a general meeting may be convened by any contributory, or by the continuing liquidator or liquidators, if any.

(*3*) The meeting shall be held in the manner provided by this Act or by the articles, or in such other manner as the Court may, on application by any contributory or by the continuing liquidator or liquidators, determine.

491. Notice of appointment of liquidator to be given to Registrar.—(*1*) The company shall give notice to the Registrar of the appointment of a laquidator or liquidators made by it under section 488, of every vacancy occurring in the office of liquidator, and of the name of the liquidator or liquidators appointed to fill every such vacancy under section 490.

(*2*) The notice aforesaid shall be given by the company within ten days of the event to which it relates.

(*3*) If default is made in complying with sub-section (*1*) or (*2*), the company, and every officer of the company (including every liquidator or continuing liquidator) who is in default, shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.

492. Power of liquidator to accept shares, etc., as consideration for sale of property of company.—(*1*) Where—

(*a*) a company (in this section called "the transferor company") is proposed to be, or is in course of being, wound up altogether voluntarily; and

(*b*) the whole or any part of its business or property is proposed to be transferred or sold to another company, whether

a company within the meaning of this Act or not (in this section called "the transferee company"),

the liquidator of the * * * * transferor company may, with the sanction of a special resolution of that company conferring on the liquidator either a general authority or an authority in respect of any particular arrangement,—

(*i*) receive, by way of compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company; or

(*ii*) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company.

(*2*) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(*3*) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either—

(*a*) to abstain from carrying the resolution into effect; or

(*b*) to purchase his interest at a price to be determined by agreement or by arbitration in the manner provided by this section.

(*4*) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(*5*) A special resolution shall not be invalid for the purposes of this section by reason only that it is passed before or concurrently with a resolution or voluntary winding up or for appointing liquidators; but if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless it is sanctioned by the Court.

(*6*) The provisions of the Arbitration Act, 1940 (X of 1940), other than those restricting the application of that Act in respect of the subject matter of the arbitration, shall apply to all arbitrations in pursuance of this section.

493. Duty of liquidator to call creditors' meeting in case of insolvency.—(*1*) If, in the case of a winding up commenced after the commencement of this Act, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 486, or that period has expired without the debts having been paid in full, he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

(*2*) If the liquidator fails to comply with sub-section (*1*), he shall be punishable with fine which may extend to five hundred rupees.

494. Duty of liquidator to call general meeting at end of each year.—(*1*) Subject to the provisions of section 496, in the event of the winding up continuing for more than one year, the liquidator shall—

(*a*) call a general meeting of the company at the end of the first year from the commencement of the winding up, and at the end of each succeeding year, or as soon thereafter as may be convenient within three months from the end of the year or such longer period as the Central Government may allow; and

(*b*) lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year, together with a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation.

(*2*) If the liquidator fails to comply with sub-section (*1*), he shall be punishable, in respect of each failure, with fine which may extend to one hundred rupees.

495. Final meeting and dissolution.—(*1*) Subject to the provisions of section 496, as soon as the affairs of the company are fully wound up, the liquidator shall—

(*a*) make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and

(*b*) call a general meeting of the company for the purpose of laying the account before it, and giving any explanation thereof.

(*2*) The meeting shall be called by advertisement—

(*a*) specifying the time, place and object of the meeting; and

(*b*) published not less than one month before the meeting in the Official Gazette, and also in some newspaper circulating in the district where the registered office of the company is situate.

(*3*) Within one week after the meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meeting and of the date thereof.

If the copy is not so sent or the return is not so made, the liquidator shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(*4*) If a quorum is not present at the meeting aforesaid, the liquidator shall, in lieu of the return referred to in sub-section (*3*), make a return that the meeting was duly called and that no quorum was present thereat.

Upon such a return being made within one week after the date fixed for the meeting, the provisions of sub-section (*3*) as to the making of the return shall be deemed to have been complied with.

(*5*) The Registrar, on receiving the account and either the return mentioned in sub-section (*3*) or the return mentioned in sub-section (*4*), shall forthwith register them and on the expiration of three months from their registration, the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested,

make an order deferring the date at which the dissolution of the company is to take effect, for such time as the Court thinks fit.

(6) It shall be the duty of the person on whose application an order of the Court under the foregoing proviso is made, within twenty-one days after the making of the order, to deliver to the Registrar a certified copy of the order for registration, and if that person fails so to do, he shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.

(7) If the liquidator fails to call a general meeting of the company as required by this section, he shall be punishable with fine which may extend to five hundred rupees.

496. Alternative provisions as to annual and final meetings in case of insolvency.—Where section 493 has effect, sections 506 and 507 shall apply to the winding up, to the exclusion of sections 494 and 495, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up:

Provided that the liquidator shall not be required to call a meeting of creditors under section 506 at the end of the first year from the commencement of the winding up, unless the meeting held under section 493 has been held more than three months before the end of that year.

Provisions applicable to a Creditors' Voluntary Winding Up

497. Provisions applicable to a creditors' voluntary winding up.—The provisions contained in sections 498 to 507, both inclusive, shall apply in relation to a creditors' voluntary winding up.

498. Meeting of creditors.—(1) The company shall cause a meeting of the creditors of the company to be called for the day, or the day next following the day, on which there is to be held the general meeting of the company at which the resolution for voluntary winding up is to be proposed, and shall cause notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once at least in the Official Gazette and once at least in two newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The Board of directors of the company shall—

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at

the meeting of the creditors held in pursuance of sub-section (*1*) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(*6*) If default is made—

(*a*) by the company, in complying with sub-sections (*1*) and (*2*);

(*b*) by its Board of directors * * *, in complying with sub-section (*3*);

(*c*) by any director of the company, in complying with sub-section (*4*);

the company, each of the directors, or the director, as the case may be, shall be punishable with fine which may extend to one thousand rupees and, in the case of default by the company, every officer of the company who is in default, shall be liable to the like punishment.

499. Notice of resolutions passed by creditors' meeting to be given to Registrar.—(*1*) Notice of any resolution passed at a creditors' meeting in pursuance of section 497 shall be given by the company to the Registrar, within ten days of the passing thereof.

(*2*) If default is made in complying with sub-section (*1*), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

For the purposes of this section, a liquidator of the company shall be deemed to be an officer of the company.

500. Appointment of liquidator.—(*1*) The creditors and the company at their respective meetings mentioned in section 498 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company.

(*2*) If the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator:

Provided that any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing the Official Liquidator or some other person to be liquidator instead of the person appointed by the creditors.

(*3*) If no person is nominated by the creditors, the person, if any, nominated by the company shall be liquidator.

(*4*) If no person is nominated by the company, the person, if any, nominated by the creditors shall be liquidator.

501. Appointment of committee of inspection—(*1*) The creditors at the meeting to be held in pursuance of section 498 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons.

(*2*) If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any subsequent general meeting, appoint such number

of persons (not exceeding five) as they think fit to act as members of the committee:

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection.

(*3*) If the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee.

(*4*) On any application to the Court for a direction under sub-section (*3*), the Court may, if it thinks fit, appoint other persons to act as members of the committee of inspection in the place of the persons mentioned in the creditors' resolution.

(*5*) Subject to the provisions of sub-sections (*1*) to (*4*) and to such rules as may be made by the Central Government, the provisions of section 462 [except sub-section (*1*) thereof] shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the Court.

502. Fixing of liquidators' remuneration.—(*1*) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(*2*) Where the remuneration is not so fixed, it shall be determined by the Court.

(*3*) Any remuneration fixed under sub-section (*1*) or (*2*) shall not be increased in any circumstances whatever, whether with or without the sanction of the Court.

503. Directors' powers to cease on appointment of liquidator.—On the appointment of a liquidator, all the powers of the Board of directors shall cease, except in so far as the committee of inspection, or if there is no such committee, the creditors in general meeting, may sanction the continuance thereof.

504. Power to fill vacancy in office of liquidator.—If a vacancy occurs by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by, or by the direction of, the Court), the creditors in general meeting may fill the vacancy.

505. Application of section 492 to a creditors' voluntary winding up.—The provisions of section 492 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under that section shall not be exercised except with the sanction either of the Court or of the committee of inspection.

506. Duty of liquidator to call meetings of company and of creditors at end of each year.—(*1*) In the event of the winding up continuing for more than one year, the liquidator shall—

(*a*) call a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up and at the end of each succeeding year, or as soon thereafter as may be convenient within three months

from the end of the year or such longer period as the Central Government may allow, and

(b) lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year, together with a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the winding up.

(2) If the liquidator fails to comply with sub-section (1), he shall be punishable, in respect of each failure, with fine which may extend to one hundred rupees.

507. Final meeting and dissolution.—(1) As soon as the affairs of the company are fully wound up, the liquidator shall—

(a) make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and

(b) call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement—

(a) specifying the time, place and object thereof; and

(b) published not less than one month before the meeting in the Official Gazette and also in some newspaper circulating in the district where the registered office of the company is situate.

(3) Within one week after the date of the meetings, or if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of the date or dates on which they were held.

If the copy is not so sent or the return is not so made, the liquidator shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

(4) If a quorum (which for the purposes of this section shall be two persons) is not present at either of such meetings, the liquidator shall, in lieu of the return referred to in sub-section (3), make a return that the meeting was duly called and that no quorum was present thereat.

Upon such a return being made within one week after the date fixed for the meeting, the provisions of sub-section (3) as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(5) On receiving the account and also, in respect of each such meeting, either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), the Registrar shall forthwith register them, and on the expiration of three months from their registration, the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make

an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(6) It shall be the duty of the person on whose application an order is made by the Court under the foregoing proviso, within twenty-one days after the making of the order, to deliver to the Registrar a certified copy of the order for registration, and if that person fails so to do, he shall be punishable with fine which may extend to one hundred rupees or every day during which the default continues.

(7) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be punishable, in respect of each such failure, with fine which may extend to five hundred rupees.

Provisions applicable to every voluntary winding up

508. Provisions applicable to every voluntary winding up.—The provisions contained in sections 509 to 518, both inclusive, shall apply to every voluntary winding up, whether a members' or a creditors' winding up.

509. Distribution of property of company.—Subject to the provisions of this Act as to preferential payments, the assets of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

510. Powers and duties of liquidator in voluntary winding up.—(1) The liquidator may—

(a) in the case of a members' voluntary winding up, with the sanction of a special resolution of the company, and in the case of a creditors' voluntary winding up, with the sanction of the Court or the committee of inspection or (if there is no such committee) of a meeting of the creditors, exercise any of the powers given by clauses (*i*) to (*iv*) of sub-section (2) of section 455 to a liquidator in a winding up by the Court;

(b) without the sanction referred to in clause (a), exercise any of the other powers given by this Act to the liquidator in a winding up by the Court;

(c) exercise the power of the Court under this Act of settling a list of contributories (which shall be *prima facie* evidence of the liability of the persons named therein to be contributories);

(d) exercise the power of the Court of making calls;

(e) call general meetings of the company for the purpose of obtaining the sanction of the company by ordinary or special resolution, as the case may require, or for any other purpose he may think fit.

(2) The exercise by the liquidator of the powers given by clause (*a*) of sub-section (*1*) shall be subject to the control of the Court and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of the powers conferred by this section.

(*3*) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(*4*) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two.

511. Body corporate not to be appointed as liquidator.—(*1*) A body corporate shall not be qualified for appointment as liquidator of a company in a voluntary winding up.

(*2*) Any appointment made in contravention of sub-section (*1*) shall be void.

(*3*) Any body corporate which acts as liquidator of a company, and every director, the managing agent, secretaries and treasurers, or a manager thereof, shall be punishable with fine which may extend to one thousand rupees.

512. Corrupt inducement affecting appointment as liquidator.—Any person who gives, or agrees or offers to give, to any member or creditor of a company any gratification whatever with a view to—

(*a*) securing his own appointment or nomination as the company's liquidator; or

(*b*) securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator,

shall be punishable with fine which may extend to one thousand rupees.

513. Power of Court to appoint and remove liquidator in voluntary winding up.—(*1*) If from any cause whatever, there is no liquidator acting, the Court may appoint a liquidator.

(*2*) The Court may, on cause shown, remove a liquidator and appoint another liquidator.

514. Notice by liquidator of his appointment.—(*1*) The liquidator shall, within twenty-one days after his appointment, publish in the Official Gazette, and deliver to the Registrar for registration, a notice of his appointment in the form prescribed.

(*2*) If the liquidator fails to comply with * * * sub-section (*1*), he shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

515. Arrangement when binding on company and creditors.—(*1*) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company and

on the creditors if it is sanctioned by a special resolution of the company and acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary, confirm or set aside the arrangement.

516. Power to apply to Court to have questions determined or powers exercised.—(1) The liquidator or any contributory or creditor may apply to the Court—

(a) to determine any question arising in the winding up of a company, or

(b) to exercise, as respects the enforcing of calls, the staying of proceedings or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The liquidator or any creditor or contributory may apply to the Court specified in sub-section (3) for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

(3) An application under sub-section (2) shall be made—

(a) if the attachment, distress or execution is levied or put into force by a High Court, to such High Court, and

(b) if the attachment, distress or execution is levied or put into force by any other Court, to the Court having jurisdiction to wind up the company.

(4) The Court, if satisfied on an application under sub-section (1) or (2) that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(5) A copy of an order staying the proceedings in the winding up, made by virtue of this section, shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.

517. Costs of voluntary winding up.—All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall, subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

518. Saving for rights of creditors and contributories.—The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, but in the case of an application by a contributory, the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

CHAPTER IV

* * WINDING UP SUBJECT TO SUPERVISION OF COURT

519. Power to order winding up subject to supervision.—At any time after a company has passed a resolution for voluntary winding up, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions, as the Court thinks just.

520. Effect of petition for winding up subject to supervision.—A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits and legal proceedings, be deemed to be a petition for winding up by the Court.

521. Power of Court to appoint or remove liquidators.—(*1*) Where an order is made for a winding up subject to supervision, the Court may, by that or any subsequent order, appoint an additional liquidator or liquidators.

(*2*) The Court may remove any liquidator so appointed or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal, or by death or resignation.

522. Powers and obligations of liquidator appointed by Court.—A liquidator appointed by the Court under * * section 521 shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been duly appointed in accordance with the provisions of this Act with respect to the appointment of liquidators in a voluntary winding up.

523. Effect of supervision order.—(*1*) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily.

(*2*) Except as provided in sub-section (*1*) and save for the purposes of section 475, any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court.

(*3*) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the liquidator, the expression "liquidator" shall be deemed to mean the liquidator conducting the winding up, subject to the supervision of the Court.

524. Appointment in certain cases of voluntary liquidators to office of liquidators.—Where an order has been made for winding up a company subject to supervision, and an order is afterwards made for winding up by the Court, the Court may, by the last-mentioned or any subsequent order, appoint any person or persons who are then liquidators, either provisionally or permanently to be liquidator or liquidators in the winding up by the Court in addition to, and subject to the control of, the Official Liquidator.

CHAPTER V

* * PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Proof and ranking of claims

525. Debts of all descriptions to be admitted to proof.—In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of insolvency), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency, or may sound only in damages, or for some other reason may not bear a certain value.

526. Application of insolvency rules in winding up of insolvent companies.—(*1*) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to—

(*a*) debts provable;

(*b*) the valuation of annuities and future and contingent liabilities; and

(c) the respective rights of secured and unsecured creditors;

as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent.

(*2*) All persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section.

527. Preferential payments.—(*1*) In a winding up, there shall be paid in priority to all other debts—

(*a*) all revenues, taxes, cesses and rates * * due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (c) of sub-section (*8*), and having become due and payable within the twelve months next before that date;

(*b*) all wages or salary (including wages payable for time or piece work and salary earned wholly or in part by way of commission) of any employee, in respect of services rendered to the company and due for a period not exceeding four months within the twelve months next before the relevant date, subject to the limit specified in sub-section (*2*);

* * * *

(c) all accrued holiday remuneration becoming payable to any employee, * * * * or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution;

(d) unless the company is being wound up voluntarily merely for the purposes of the reconstruction or of amalgamation with another company, all amounts due, in respect of contributions payable during the twelve months next before the relevant date, by the company as the employer of any persons, under the Employees' State Insurance Act, 1948 (XXXIV of 1948), or any other law for the time being in force;

(e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (VIII of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company;

(f) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees, maintained by the company; and

(g) the expenses of any investigation held in pursuance of section 234 or 236, in so far as they are payable by the company.

(2) The sum to which priority is to be given under clause (b) * * * * of sub-section (1), shall not, in the case of any one claimant, exceed one thousand rupees:

Provided that where a claimant * * * * is a labourer in husbandry who has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the relevant date.

(3) Where any compensation under the Workmen's Compensation Act, 1923 (VIII of 1923) is a weekly payment, the amount due in respect thereof shall, for the purposes of clause (e) of sub-section (1), be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

(4) Where any payment has been made to any employee of a company,—

(i) on account of wages or salary; or

(ii) to him, or in the case of his death, to any other person in his right, on account of accrued holiday remuneration,

out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a

right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which * * * * the employee or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(5) The foregoing debts shall—

(*a*) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(*b*) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given by clause (*d*) of sub-section (*1*), formal proof thereof shall not be required except in so far as may be otherwise prescribed.

(7) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(8) For the purposes of this section—

(*a*) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period;

(*b*) the expression "accrued holiday remuneration" includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any enactment), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday; and

(*c*) the expression "the relevant date" means—

(*i*) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound up voluntarily before that date; and

(ii) in any case where sub-clause (i) does not apply, the date of the passing of the resolution for the voluntary winding up of the company.

(9) This section shall not apply in the case of a winding up where the date referred to in sub-section (5) of section 230 of the Indian Companies Act, 1913 (VII of 1913), occurred before the commencement of this Act, and in such a case, the provisions relating to preferential payments which would have applied if this Act had not been passed, shall be deemed to remain in full force.

Effect of Winding Up on antecedent and other Transactions

528. Fraudulent preference.—(1) Any transfer of property, moveable or immovable, delivery of goods, payment, execution or other act relating to property made, taken or done by or against a company within six months before the commencement of its winding up which, had it been made, taken or done by or against an individual within three months before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference, shall in the event of the company being wound up, be deemed a fraudulent preference of its creditors and be invalid accordingly:

Provided that, in relation to things made, taken or done before the commencement of this Act, this sub-section shall have effect with the substitution, for the reference to six months, of a reference to three months.

(2) For the purposes of sub-section (1), the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the Court, and the passing of a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond to the act of insolvency in the case of an individual.

529. Transfers for benefit of all creditors to be void.—Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

530. Liabilities and rights of certain fraudulently preferred persons.—(1) Where, in the case of a company which is being wound up, anything made, taken or done after the commencement of this Act is invalid under section 528 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision), the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt, to the extent of the mortgage or charge on the property or the value of his interest, whichever is less.

(2) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all incumbrances other than those to which the mortgage or charge for the company's debt was then subject.

(3) On any application made to the Court with respect to any payment on the ground that the payment was a fraudulent preference

of a surety or guarantor, the Court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of a suit for the recovery of the sum paid.

This sub-section shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments of money.

531. Effect of floating charge.—Where a company is being wound up, a floating charge on the undertaking or property of the company created within the twelve months immediately preceding the commencement of the winding up, shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum or such other rate as may for the time being be notified by the Central Government in this behalf in the Official Gazette:

Provided that in relation to a charge created more than three months before the commencement of this Act, this section shall have effect with the substitution, for references to twelve months of references to three months.

532. Disclaimer of onerous property in case of a company which is being wound up.—(*1*) Where any part of the property of a company which is being wound up consists of—

(*a*) land of any tenure, burdened with onerous covenants;

(*b*) shares or stock in companies;

(*c*) any other property which is unsaleable or is not readily saleable, by reason of its binding the possessor thereof either to the performance of any onerous act or to the payment of any sum of money; or

(*d*) unprofitable contracts;

the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, or done anything in pursuance of the contract, may, with the leave of the Court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks just.

(4) The liquidator shall not be entitled to disclaim any property in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such extended period as may be allowed by the Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim; and in case the property is a contract, if the liquidator, after such an application as aforesaid, does not within the said period or extended period disclaim the contract, the company shall be deemed to have adopted it.

(5) The Court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just; and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and after hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a lease-hold nature, the Court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee or holder of a charge by way of demise, except upon the terms of making that person—

(*a*) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(*b*) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order; and any

mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Court shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants, in the lease, freed and discharged from all estates, incumberances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the compensation or damages payable in respect of the injury, and may accordingly prove the amount as a debt in the winding up.

533. Avoidance of transfers, etc., after commencement of winding up.—(1) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by or subject to the supervision of the Court, any disposition of the property (including actionable claims) of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.

534. Avoidance of certain attachments, executions, etc., in winding up by or subject to supervision of Court.—(1) Where any company is being wound up by or subject to the supervision of the Court—

(a) any attachment, distress or execution put in force without leave of the Court against the estate or effects of the company, after the commencement of the winding up, or

(b) any sale held without leave of the Court of any of the properties or effects of the company after such commencement, shall be void.

(2) Nothing in this section applies to proceedings by the Government.

Offences antecedent to or in course of winding up

535. Offences by officers of companies in liquidation.—(1) If any person, being a past or present officer of a company which at the time of the commission of the alleged offence is being wound up, whether by or subject to the supervision of the Court or voluntarily, or which is subsequently ordered to be wound up by the Court or which subsequently passes a resolution for voluntary winding up—

(a) does not, to the best of his knowledge and belief, fully and truly discover to the liquidator all the property, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company; * *

(b) does not deliver up to the liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control, and which he is required by law to deliver up; * *

(c) does not deliver up to the liquidator, or as he directs, all such books and papers of the Company as are in his custody or under his control * * * * * and which he is required by law to deliver up; * *

(d) within the twelve months next before the commencement of the winding up or at any time thereafter, conceals any part of the property of the company to the value of one hundred rupees or upwards, or conceals any debt due to or from the company; or

(e) within the twelve months next before the commencement of the winding up or at any time thereafter, fraudulently removes any part of the property of the company to the value of one hundred rupees or upwards; * *

(f) makes any material omission in any statement relating to the affairs of the company; * *

(g) knowing or believing that a false debt has been proved by any person under the winding up, fails for a period of one month to inform the liquidator thereof; * *

(h) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the property or affairs of the company; * *

(i) within the twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to, the property or affairs of the company; * *

(j) within the twelve months next before the commencement of the winding up or at any time thereafter makes, or is privy to the making of, any false entry in any book or paper affecting or relating to, the property or affairs of the company; * *

(k) within the twelve months next before the commencement of the winding up or at any time thereafter, fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making of any omission in, any book or paper affecting or relating to the property or affairs of the company; * *

(l) after the commencement of the winding up or at any meeting of the creditors of the company within the twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses; * *

(m) * * within the twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; * *

(*n*) within the twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; * *

(*o*) within the twelve months next before the commencement of the winding up or at any time thereafter, pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary course of the business of the company; or

(*p*) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them, to an agreement with reference to the affairs of the company or to the winding up;

he shall be punishable, in the case of any of the offences mentioned in clauses (*m*), (*n*) and (*o*), with imprisonment for a term which may extend to five years, or with fine, or with both, and, in the case of any other offence, with imprisonment for a term which may extend to two years, or with fine, or with both:

Provided that it shall be a good defence—

(*i*) to a charge under any of the clauses, (*b*), (*c*), (d), (*f*), (*n*) and (*o*), if the accused proves that he had no intent to defraud; and

(*ii*) to a charge under any of the clauses, (*a*), (*h*), (*i*) and (*j*), if he proves that he had no intent to conceal the true state of affairs of the company or to defeat the law.

(*2*) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under clause (*o*) of sub-section (*1*), every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid, shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(*3*) For the purposes of this section, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

536. Penalty for falsification of books.—If with intent to defraud or deceive any person, any officer or contributory of a company which is being wound up—

(*a*) destroys, mutilates, alters, falsifies or secretes, or is privy to the destruction, mutilation, alteration, falsification or secreting of any books, papers or securities, or

(*b*) makes, or is privy to the making of, any false or fraudulent entry in any register, book of account or document belonging to the company,

he shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

537. Penalty for frauds by officers* * * * * .—If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Court or which subsequently passes a resolution for voluntary winding up,—

(*a*) has, by false pretences or by means of any other fraud, induced any person to give credit to the company; or

(*b*) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or

(*c*) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company, or within two months before that date,

he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.

538. Liability where proper accounts not kept.—(*1*) * * Where a company is being wound up, if it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, be punishable with imprisonment for a term which may extend to one year.

(*2*) For the purposes of sub-section (*1*), * * * it shall be deemed that proper books of account have not been kept in the case of any company, if there have not been kept—

(*a*) such books or accounts as are necessary to exhibit and explain the transactions and financial position of the business of the company, including books containing entries made from day to day in sufficient detail of all cash received and all cash paid; and

(*b*) where the business of the company has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

539. Liability for fraudulent conduct of business.—(*1*) If in the course of the winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company, or * * * any other persons, or for any fraudulent purpose, the Court, on the application of the Official Liquidator, or the liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any persons

who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court may direct.

On the hearing of an application under this sub-section, the Official Liquidator or the liquidator, as the case may be, may himself give evidence or call witnesses.

(2) (a) Where the Court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.

(b) In particular, the Court may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any * * * person on his behalf, or any * * * person claiming as assignee from or through the person liable or any * * * person acting on his behalf.

(c) The Court may, from time to time, make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.

(d) For the purpose of this sub-section, the expression "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

(4) This section shall apply, notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

540. Power of Court to assess damages against delinquent directors, etc.—(1) If in the course of winding up a company, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, managing agent, secretaries and treasurers, manager or liquidator, or any officer of the company—

(a) has misapplied or retained or become liable or accountable for any money or property of the company, or

(b) has been guilty of any misfeasance or breach of trust in relation to the company

the Court may, on the application of the Official Liquidator, of the

liquidator, or of any creditor or contributory, made within the time specified in that behalf in sub-section (2), examine into the conduct of the person, director, managing agent, secretaries and treasurers, manager, liquidator or officer aforesaid, and compel him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) An application under sub-section (1) shall be made within five years from the date of the order for winding up, or of the first appointment of the liquidator in the winding up, or of the mis-application, retainer, misfeasance or breach of trust, as the case may be, whichever is longer.

(3) This section shall apply notwithstanding that the matter is one for which the person concerned may be criminally liable.

541. Liability under sections 539 and 540 to extend to partners or directors in * * * *, firm or company.—Where * * * a declaration under section 539 or an order under section 540 is or may be made in respect of a firm or body corporate, * * * * the Court shall also have power to make a declaration under section 539 or an order under section 540, as the case may be, in respect of any person who was at the relevant time a partner in that firm or a director of that body corporate.

542. Prosecution of delinquent officers and members of company.—(1) If it appears to the Court in the course of a winding up by, or subject to the supervision of, the Court, that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the Registrar.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any books and papers, being information or books and papers in the possession or under the control of the liquidator and relating to the matter in question, as the Registrar may require.

(3) Where any report is made under sub-section (2) to the Registrar, he may, if he thinks fit, refer the matter to the Central Government for further inquiry.

The Central Government shall thereupon investigate the matter and may if it thinks it expedient, apply to the Court for an order conferring on any person designated by the Central Government for the purpose, with respect to the company concerned, all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court.

(4) If on any report to the Registrar under sub-section (2), it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the Court, the liquidator may * * himself take proceedings against the offender * * * * * *.

(5) If it appears to the Court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Registrar under sub-section (2), the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of sub-section (2).

(6) If, where any matter is reported or referred to the Registrar under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall report the matter to the Central Government; and that Government may, after taking such legal advice as it thinks fit, direct the Registrar to institute proceedings:

Provided that no report shall be made by the Registrar under this sub-section without first giving the accused person an opportunity of making a statement in writing to the Registrar and of being heard thereon.

(7) When any proceedings are instituted under this section, it shall be the duty of the liquidator and of every officer and agent of the company past and present, (other than the defendant in the proceedings), to give all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this sub-section, the expression "agent", in relation to a company, shall be deemed to include any banker or legal adviser of the company and any person employed by the company as auditor.

(8) If any person fails or neglects to give assistance in the manner required by sub-section (7), the Court may, on the application of the Registrar, direct that person to comply with the requirements of that sub-section.

(9) Where any such application is made with respect to a liquidator, the Court may, unless it appears that the failure or neglect was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

* * * * * * * * * *

Miscellaneous Provisions

543. Liquidator to exercise certain powers subject to sanction.— (1) The liquidator may—

(*a*) with the sanction of the Court, when the company is being wound up by or subject to the supervision of the Court, and

(b) with the sanction of a special resolution of the company, in the case of a voluntary winding up,—

(i) pay any classes of creditors in full;

(ii) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable; or

(iii) compromise any call or liability to call, debt, and liability capable of resulting in a debt and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) In the case of a voluntary winding up, the exercise by the liquidator of the powers conferred by sub-section (1) shall be subject to the control of the Court.

(3) Any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any such power.

544. Books and papers of company to be evidence—Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

545. Inspection of books and papers by creditors and contributories.—(1) At any time after the making of an order for the winding up of a company by or subject to the supervision of the Court, any creditor or contributory of the company may, if the Central Government, by rules prescribed so permit and in accordance with and subject to such rules but not further or otherwise, inspect the books and papers of the company.

(2) Nothing in sub-section (1) shall be taken as excluding or restricting any rights conferred by any law for the time being in force—

(a) on the Central or a State Government; or

(b) on any authority or officer thereof; or

(c) on any person acting under the authority of any such Government or of any such authority or officer.

546. Disposal of books and papers of company.—(1) When the affairs of a company have been completely wound up and it is about to be dissolved, its books and papers * * * and those of the liquidator may be disposed of as follows, that is to say:—

(a) in the case of a winding up by or subject to the supervision of the Court, in such manner as the Court directs;

(b) in the case of a members' voluntary winding up, in such manner as the company by special resolution directs; and

(c) in the case of a creditors' voluntary winding up, in such manner as the committee of inspection or, if there is no such committee, as the creditors of the company, may direct.

(2) After the expiry of five years from the dissolution of the company, no responsibility shall rest on the company, the liquidator, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) The Central Government may, by rules,—

(a) * * prevent for such period (not exceeding five years from the dissolution of the company) as the Central Government thinks proper, the destruction of the books and papers of a company which has been wound up and of its liquidator; and

(b) ** enable any creditor or contributory of the company to make representations to the Central Government in respect of the matters specified in clause (a) and to appeal to the Court from any direction which may be given by the Central Government in the matter.

(4) If any person acts in contravention of any such rules or of any direction of the Central Government thereunder, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

547. Information as to pending liquidations.—(1) If the winding up of a company * * is not concluded within one year after its commencement, the liquidator shall, within one month of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in the prescribed form and containing the prescribed particulars, with respect to the proceedings in, and position of, the liquidation—

(a) in the case of a winding up * * by or subject to the supervision of the Court, in Court, and

(b) in the case of a voluntary winding up, with the Registrar.

(2) When the statement is filed in Court under clause (a) of sub-section (1), a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

(3) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or an extract therefrom.

(4) Any person untruthfully stating himself to be a creditor or contributory for the above purpose shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code (Act XLV of 1860), and shall, on the application of the liquidator, be punishable accordingly.

(5) If a liquidator fails to comply with any of requirements of this section, he shall be punishable with fine which may extend to five hundred rupees for every day during which the failure continues.

548. Official Liquidator to make payments into the public account of India.—Every Official Liquidator shall, in such manner and at such times as may be prescribed, pay the monies received by him as liquidator of any company, into the public account of India in the Reserve Bank of India.

549. Voluntary liquidator to make payments into Scheduled Bank.—(*1*) Every liquidator of a company, not being an Official Liquidator, shall, in such manner and at such times as may be prescribed, pay the monies received by him in his capacity as such into a Scheduled Bank to the credit of a special banking account opened by him in that behalf, and called "the Liquidation Account of .....Company":

Provided that if the Court is satisfied that for the purpose of carrying on the business of the company or of obtaining advances or for any other reason, it is to the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Court may authorise the liquidator to make his payments into or out of such other bank as the Court may select; and thereupon those payments shall be made in the prescribed manner and at the prescribed times into or out of such other bank.

(*2*) If any such liquidator at any time retains for more than ten days a sum exceeding five hundred rupees or such other amount as the Court may on the application of the liquidator in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall—

(*a*) pay interest on the amount so retained in excess at the rate of twelve per cent. per annum and also pay such penalty as may be determined by the Registrar;

(*b*) be liable to pay any expenses occasioned by reason of his default; and

(*c*) also be liable to have all or such part of his remuneration as the Court may think just, disallowed, and to be removed from his office by the Court.

550. Liquidator not to pay moneys into private banking account.—Neither the Official Liquidator nor any other liquidator of a company * * * * * shall * * pay any moneys received by him in his capacity as such into any private banking account.

551. Unclaimed dividends and undistributed assets to be paid into the Companies Liquidation Account.—(*1*) Where any company is being wound up, if the liquidator has in his hands or under his control any money representing unclaimed dividends payable to any creditor or undistributed assets refundable to any contributory, which have remained unclaimed or undistributed for six months after the date on which they became payable or refundable, the liquidator shall forthwith pay the said money into the public account of India in the Reserve Bank of India.

(*2*) The liquidator shall, on the dissolution of the company, similarly pay into the said account any money representing unclaimed dividends or undistributed assets in his hands at the date of dissolution.

(*3*) The liquidator shall, when making any payment referred to in sub-sections (*1*) and (*2*), furnish to such officer as the Central Government may appoint in this behalf a statement in the prescribed form, setting forth in respect of all sums included in such payment, the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed.

(*4*) The liquidator shall be entitled to a receipt from the Reserve Bank of India for any money paid to it under sub-sections (*1*) and (*2*) and such receipt shall be an effectual discharge of the liquidator in respect thereof.

(*5*) Where the company is being wound up by the Court, the liquidator shall make the payments referred to in sub-sections (*1*) and (*2*) by transfer from the * * * * account referred to in * * section 548.

(*6*) Where the company is being wound up voluntarily or subject to the supervision of the Court, the liquidator shall, when filing a statement in pursuance of sub-section (*1*) of section 547, indicate the sum of money which is payable to the Reserve Bank of India under sub-sections (*1*) and (*2*) of this section which he has had in his hands or under his control during the six months preceding the date to which the said statement is brought down, and shall, within fourteen days of the date of filing the said statement, pay that sum into the Companies Liquidation Account.

(*7*) (*a*) Any person claiming to be entitled to any money paid into the Companies Liquidation Account (whether paid in pursuance of this section or under the provisions of any previous companies law) may apply to the Court for an order for payment thereof, and the Court, if satisfied that the person claiming is entitled, may make an order for the payment to that person of the sum due:

Provided that before making such an order, the Court shall cause a notice to be served on such officer as the Central Government may appoint in this behalf, calling on the officer to show cause within one month from the date of the service of the notice why the order should not be made.

(*b*) Any person claiming as aforesaid may, instead of applying to the Court, apply to the Central Government for an order for

payment of the money claimed; and the Central Government may, if satisfied whether on a certificate by the liquidator or the Official Liquidator or otherwise, that such person is entitled to the whole or any part of the money claimed and that no application made in pursuance of clause (*a*) is pending in the Court, make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.

(*8*) Any money paid into the Companies Liquidation Account in pursuance of this section, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Central Government; but a claim to any money so transferred may be preferred under sub-section (7) and shall be dealt with as if such transfer had not been made, the order, if any, for payment on the claim being treated as an order for refund of revenue.

(*9*) Any liquidator retaining any money which should have been paid by him into the Companies Liquidation Account under this section shall—

(*a*) pay interest on the amount retained at the rate of twelve per cent. per annum, and also pay such penalty as may be determined by the Registrar;

(*b*) be liable to pay any expenses occasioned by reason of his default; and

(*c*) where the winding up is by or under the supervision of the Court, also be liable to have all or such part of his remuneration as the Court may think just to be disallowed and to be removed from his office by the Court.

* * * * * *

Supplementary Powers of Court

552. Meetings to ascertain wishes of creditors or contributories.—(*1*) In all matters relating to the winding up of a company, the Court may—

(*a*) have regard to the wishes of creditors or contributories of the company, as proved to it by any sufficient evidence;

(*b*) if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs; and

(*c*) appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(*2*) When ascertaining the wishes of creditors, regard shall be had to the value of each creditor's debt

(*3*) When ascertaining the wishes of contributories, regard shall be had to the number of votes which may be cast by each contributory.

553. Court or person before whom affidavit may be sworn.—(*1*) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn—

(*a*) in India, before any Court, Judge or person lawfully authorised to take and receive affidavits, and

(*b*) in any other country, either before any Court, Judge or person lawfully authorised to take and receive affidavits in that country or before an Indian Consul or Vice-Consul.

Explanation.—In this sub-section, "India" includes the State of Jammu and Kashmir.

(*2*) All Courts, Judges, Justices, Commissioners and persons acting judicially in India shall take judicial notice of the seal, stamp or signature, as the case may be, of any such Court, Judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Part.

Provisions as to Dissolution

554. Power of Court to declare dissolution of company void.—(*1*) Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, on application by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void; and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(*2*) It shall be the duty of the person on whose application the order was made, within twenty-one days after the making of the order or such further time as the Court may allow, to file a certified copy of the order with the Registrar who shall register the same; and if such person fails so to do, he shall be punishable with fine which may extend to fifty rupees for every day during which the default continues.

555. Power of Registrar to strike defunct company off register.—(*1*) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(*2*) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiry of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Official Gazette with a view to striking the name of the company off the register.

(*3*) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Official Gazette, and send to the company by registered post, a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company have been completely wound up, and any returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Official Gazette and send to the company or the liquidator, if any, a like notice as is provided in sub-section (3).

(5) At the expiry of the time mentioned in the notice referred to in sub-section (3) or (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette; and on the publication in the Official Gazette of this notice, the company shall stand dissolved:

Provided that—

(a) the liability, if any, of every director, the managing agent, secretaries and treasurers, manager or other officer exercising any power of management and of every member of the company shall continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this sub-section shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(6) If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the Court, on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register; and the Court may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) Upon a certified copy of the order under sub-section (6) being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off. * * * * *

(8) A letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director, the managing agent, secretaries and treasurers, manager or other officer of the company, or, if there is no director, managing agent, secretaries and treasurers, manager or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

(9) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business.

PART VIII

Application of Act to companies formed or registered under previous companies laws

556. Application of Act to companies formed and registered under previous companies laws.—This Act shall apply to existing companies as follows:—

(*a*) in the case of a limited company other than a company limited by guarantee, this Act shall apply in the same manner as if the company had been formed and registered under this Act as a company limited by shares;

(*b*) in the case of a company limited by guarantee, this Act shall apply in the same manner as if the company had been formed and registered under this Act as a company limited by guarantee; and

(c) in the case of a company other than a limited company, this Act shall apply in the same manner as if the company had been formed and registered under this Act as an unlimited company:

Provided that—

(*i*) nothing in Table A in Schedule I shall apply to a company formed and registered under Act XIX of 1857 and Act VII of 1860, or either of them, or under the Indian Companies Act, 1866 (X of 1866), or the Indian Companies Act, 1882 (VI of 1882);

(*ii*) reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the previous companies law concerned.

557. Application of Act to companies registered but not formed under previous companies laws.—This Act shall apply to every company registered but not formed under any previous companies law in the same manner as it is in Part IX of this Act declared to apply to companies registered but not formed under this Act:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the previous companies law concerned.

558. Application of Act to unlimited companies re-registered under previous companies laws.—This Act shall apply to every unlimited company registered as a limited company in pursuance of any previous companies law, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the previous companies law concerned.

559. Mode of transferring shares in the case of companies registered under Acts XIX of 1857 and VII of 1860.—A company registered under Act XIX of 1857 and Act VII of 1860 or either of them may cause its shares to be transferred in the manner hitherto in use, or in such other manner as the company may direct.

PART IX

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT

560. Companies capable of being registered.—(*1*) With the exceptions and subject to the provisions contained in this section,—

(*a*) any company consisting of seven or more members, which was in existence on the first day of May, 1882, including any company registered under Act No. XIX of 1857 and Act No. VII of 1860 or either of them or under any laws or law in force in a Part B State, corresponding to those Acts or either of them; and

(*b*) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other Indian law (including a law in force in a Part B State), or of any Act of Parliament of the United Kingdom or Letters Patent in force in India, or being otherwise duly constituted according to law, and consisting of seven or more members;

may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason only that it has taken place with a view to the company's being wound up:

Provided that—

(*i*) a company registered under the Indian Companies Act, 1882 (VI of 1882), or under the Indian Companies Act, 1913 (VII of 1913), shall not register in pursuance of this section;

(*ii*) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other Indian law (including a law in force in a Part B State) or by any Act of Parliament of the United Kingdom or Letters Patent in force in India, and not being a joint stock company as defined in section 561, shall not register in pursuance of this section;

(*iii*) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other Indian law (including a law in force in a Part B State), or any Act of Parliament of the United Kingdom or Letters Patent in force in India, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;

(*iv*) a company that is not a joint stock company as defined in section 561 shall not register in pursuance of this section as a company limited by shares;

(*v*) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are

present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;

(*vi*) where a company not having the liability of its members limited by any Act of Parliament or any other Indian law (including a law in force in a Part B State) or by any Act of Parliament of the United Kingdom or Letters Patent in force in India, is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting;

(*vii*) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(*2*) In computing any majority required for the purposes of sub-section (*1*) when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

(*3*) Nothing in this section shall be deemed to apply to any company the registered office whereof at the commencement of this Act is in Burma, Aden or Pakistan, or in the State of Jammu and Kashmir.

561. Definition of "joint-stock company".—(*1*) For the purposes of this Part, so far as it relates to the registration of companies as companies limited by shares, a joint-stock company means a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons.

(*2*) Such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

562. Requirements for registration of joint-stock companies.—Before the registration in pursuance of this Part of a joint-stock company, there shall be delivered to the Registrar the following documents:—

(*a*) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than

six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;

(*b*) a copy of any Act of Parliament or other Indian law, Act of Parliament of the United Kingdom, Royal Charter, Letters Patent, deed of settlement, deed of partnership or other instrument constituting or regulating the company; and

(*c*) if the company is intended to be registered as a limited company, a statement specifying the following particulars:—

(*i*) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists;

(*ii*) the number of shares taken and the amount paid on each share;

(*iii*) the name of the company, with the addition of the word "Limited" or "Private Limited", as the case may require, as the last word or words thereof; and

(*iv*) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

563. Requirements for registration of companies not being joint-stock companies.—Before the registration in pursuance of this Part of any company not being a joint-stock company, there shall be delivered to the Registrar the following documents:—

(*a*) a list showing the names, addresses and occupations of the directors, the managing agent, if any, and the manager, if any, of the company;

(*b*) a copy of any Act of Parliament or other Indian law, Act of Parliament of the United Kingdom, Letters Patent, deed of settlement, deed of partnership or other instrument constituting or regulating the company; and

(c) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

564. Authentication of statements of existing companies.—The lists of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be duly verified by the declaration of any two or more directors or other principal officers of the company.

565. Power of Registrar to require evidence as to nature of company.—The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint-stock company as defined in section 561.

566. Notice to customers on registration of banking company with limited liability.—(*1*) Where a banking company which was in existence on the first day of May, 1882, proposes to register as a limited company under this Part, it shall, at least thirty days before so registering, give notice of its intention so to register, to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(*2*) If the banking company omits to give the notice required by sub-section (*1*), then, as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

567. Change of name for purposes of registration.—Where the name of a company seeking registration under this Part is one which in the opinion of the Central Government is undesirable, the company may, with the approval of the Central Government signified in writing, change its name with effect from the date of its registration under this Part:

Provided that the like assent of the members of the company shall be required to the change of name as is required by section 560 to the registration of the company under this Part.

568. Addition of "Limited" or "Private Limited" to name.—When a company registers in pursuance of this Part with limited liability, the word "Limited" or the words "Private Limited", as the case may be, shall form, and be registered as, the last word or words of its name:

Provided that this section shall not be deemed to exclude the operation of section 24.

569. Certificate of registration of existing companies.—On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under Schedule X the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited and thereupon the company shall be so incorporated.

570. Vesting of property on registration.—All property, movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

571. Saving for existing liabilities.—The registration of a company in pursuance of this Part shall not affect its rights or liabilities in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration

572. Continuation of pending legal proceedings.—All suits and other legal proceedings taken by or against the company, or any public officer or member thereof, which are pending at the time of the registration of a company in pursuance of this Part, * * * * * * * * * * may be continued in the same manner as if the registration had not taken place:

Provided that execution shall not issue against the property or person of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

573. Effect of registration under Part.—(*1*) When a company is registered in pursuance of this Part, sub-sections (*2*) to (*7*) shall apply.

(*2*) All provisions contained in any Act of Parliament or other Indian law, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(*3*) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows:—

(*a*) Table A in Schedule I shall not apply unless and except in so far as it is adopted by special resolution;

(*b*) the provisions of this Act relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered;

(*c*) subject to the provisions of this section, the company shall not have power to alter any provision contained in any Act of Parliament or other Indian law relating to the company;

(*d*) subject to the provisions of this section, the company shall not have power, without the sanction of the Central Government, to alter any provision contained in any Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, relating to the company;

(*e*) the company shall not have power to alter any provision contained in any Act of Parliament or other Indian law or in any Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, with respect to the objects of the company;

(*f*) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;

(*g*) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

(4) The provisions of this Act with respect to—

(*a*) the registration of an unlimited as a limited company;

(*b*) the powers of an unlimited company on registration as a limited company, to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up;

shall apply, notwithstanding any provisions contained in any Act of Parliament or other Indian law, or other instrument constituting or regulating the company.

(5) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(6) None of the provisions of this Act (apart from those of section 403) shall derogate from any power of altering its constitution or regulations which may be vested in the company, by virtue of any Act of Parliament or other Indian law, or other instrument constituting or regulating the company.

(7) In this section, the expression "instrument" includes deed of settlement, deed of partnership, Act of Parliament of the United Kingdom, Royal Charter, and Letters Patent.

574. Power to substitute memorandum and articles for deed of settlement.—(1) Subject to the provisions of this section, a company registered in pursuance of this Part may, by special resolution, alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of sections 17 to 19 with respect to an alteration of the objects of a company shall, so far as applicable, apply to any alteration under this section, with the following modifications:—

(a) there shall be substituted for the printed copy of the altered memorandum required to be filed with the Registrar a printed copy of the substituted memorandum and articles; and

(b) on the registration of the alteration being certified by the Registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section, the expression "deed of settlement" includes any deed of partnership, Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, or other instrument constituting or regulating the company, not being an Act of Parliament or other Indian law.

575. Power of Court to stay or restrain proceedings.—The provisions of this Act with respect to staying and restraining suits and other legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and other legal proceedings against any contributory of the company.

576. Suits stayed on winding-up order.—Where an order has been made for winding up, or a provisional liquidator has been appointed for, a company registered in pursuance of this Part, no suit or other legal proceeding shall be proceeded with or commenced against the company or any contributory of the company in respect of any debt of the company, except by leave of the Court and except on * * such terms as the Court may impose.

PART X

WINDING UP OF UNREGISTERED COMPANIES

577. Meaning of "unregistered company".—For the purposes of this Part, the expression "unregistered company"—

(*a*) shall not include—

(*i*) a railway company incorporated by any Act of Parliament or other Indian law or any Act of Parliament of the United Kingdom;

(*ii*) a company registered under this Act; or

(*iii*) a company registered under any previous companies law and not being a company the registered office whereof was in Burma, Aden or Pakistan immediately before the separation of that country from India or in the State of Jammu and Kashmir immediately before the 26th January, 1950; and

(*b*) save as aforesaid, shall include any partnership, association or company consisting of more than seven members.

578. Winding up of unregistered companies.—(*1*) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in sub-sections (*2*) to (*5*).

(*2*) For the purpose of determining the Court having jurisdiction in the matter of the winding up, an unregistered company shall be deemed to be registered in the State where its principal place of business is situate or, if it has a principal place of business situate in more than one State, then, in each State where it has a principal place of business; and the principal place of business situate in that State in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company.

(*3*) No unregistered company shall be wound up under this Act voluntarily or subject to the supervision of the Court.

(*4*) The circumstances in which an unregistered company may be wound up are as follows:—

(*a*) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(*b*) if the company is unable to pay its debts;

(*c*) if the Court is of opinion that it is just and equitable that the company should be wound up.

(*5*) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(*a*) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, managing agent, secretaries and treasurers,

manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has, for three weeks after the service of the demand, neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(*b*) if any suit or other legal proceeding has been instituted against any member for any debt or demand due or claimed to be due, from the company or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, managing agent, secretaries and treasurers, manager or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct, the company has not, within ten days after service of the notice,—

(*i*) paid, secured or compounded for the debt or demand, or

(*ii*) procured the suit or other legal proceeding to be stayed, or

(*iii*) indemnified the defendant to his satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(c) if execution or other process issued on a decree or order of any Court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied in whole or in part;

(d) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

579. Power to wind up foreign companies, although dissolved.— Where a body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under this Part, notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it was incorporated.

580. Contributories in winding up of unregistered company.—(*1*) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory, who is liable to pay, or contribute to the payment of,—

(a) any debt or liability of the company, or

(b) any sum for the adjustment of the rights of the members among themselves, or

(c) the costs, charges and expenses of winding up the company.

(*2*) Every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any * * liability to pay or contribute as aforesaid.

(3) In the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

581. Power to stay or restrain proceedings.—The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

582. Suits etc. stayed on winding up order.—Where an order has been made for winding up an unregistered company, no suit or other legal proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court and except on such terms as the Court may impose.

583. Directions as to property in certain cases.—(1) If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the winding up order or by any subsequent order, direct that all or any part of the property, movable or immovable (including auctionable claims), belonging to the company or held by trustees on its behalf, shall vest in the Official Liquidator by his official name; and thereupon the property or the part thereof specified in the order shall vest accordingly.

(2) The Official Liquidator may, after giving such indemnity, if any, as the Court may direct, bring or defend in his official name any suit or * * legal proceeding relating to that property, or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

584. Provisions of Part cumulative.—(1) The provisions of this Part with respect to unregistered companies shall be in addition to, and not in derogation of, any provisions hereinbefore in this Act contained with respect to the winding up of companies by the Court.

(2) The Court or Official Liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by the Court or Official Liquidator in winding up companies formed and registered under this Act:

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

585. Saving and construction of enactments conferring power to wind up partnership, association or company in certain cases.—Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under the Indian Companies Act, 1913 (VII of 1913) or any Act repealed by that Act:

Provided that references in any such * * enactment to any provision contained in the Indian Companies Act, 1913 (VII of 1913) or

in any Act repealed by that Act shall be read as references to the corresponding provision, if any contained in this Act.

PART XI

COMPANIES INCORPORATED OUTSIDE INDIA

Provisions as to Establishment of Places of Business in India

586. Application of sections 587 to 597 to foreign companies.—Sections 587 to 597, both inclusive, shall apply to all foreign companies, that is to say, companies falling under the following two classes, namely:—

(*a*) companies incorporated outside India which, after the commencement of this Act, establish a place of business within India; and

(*b*) companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act.

587. Documents etc. to be delivered to Registrar by foreign companies carrying on business in India.—(*1*) Foreign companies which, after the commencement of this Act, establish a place of business within India shall, within one month of the establishment of the place of business, deliver to the Registrar for registration:—

(*a*) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, and, if the instrument is not in the English language, a certified translation thereof;

(*b*) the full address of the registered or principal office of the company;

(*c*) a list of the directors and secretary of the company, containing the particulars mentioned in sub-section (*2*);

(*d*) the name and address or the names and addresses of some one or more persons resident in India, authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;

(*e*) the full address of the office of the company in India which is to be deemed its principal place of business in India.

(*2*) The list referred to in clause (*c*) of sub-section (*1*) shall contain the following particulars, that is to say:—

(*a*) with respect to each director,—

(*i*) in the case of an individual, his present name and surname in full, any former name or names and surname or surnames in full, his usual residential address, his nationality, and if that nationality is not the nationality of origin, his nationality of origin, and his business occupation, if any, or if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships; and

(*ii*) in the case of a body corporate, its corporate name and registered or principal office, and the full name, address, nationality, and nationality of origin, if different from that nationality, of each of its directors;

(*b*) with respect to the secretary, or where there are joint secretaries, with respect to each of them:—

(*i*) in the case of an individual, his present name and surname, any former name or names and surname or surnames, and his usual residential address; and

(*ii*) in the case of a body corporate, its corporate name and registered or principal office:

Provided that, where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in clause (*b*) of this sub-section.

(*3*) Clauses (*2*) and (*3*) of the *Explanation* to sub-section (*1*) of section 302 shall apply for the purpose of the construction of references in sub-section (*2*) to present and former names and surnames as they apply for the purposes of the construction of such references in sub-section (*1*) of section 302.

(*4*) Foreign companies, other than those mentioned in sub-section (*1*), shall, if they have not delivered to the Registrar before the commencement of this Act the documents and particulars specified in sub-section (*1*) of section 277 of the Indian Companies Act, 1913 (VII of 1913), continue to be subject to the obligation to deliver those documents and particulars in accordance with that Act.

588. Return to be delivered to Registrar by foreign company where documents, etc., altered.—If any alteration is made or occurs in—

(*a*) the charter, statutes, or memorandum and articles of a foreign company or other instrument constituting or defining the constitution of a foreign company; or

(*b*) the registered or principal office of a foreign company; or

(*c*) the directors or secretary of a foreign company or the particulars contained in the list of the directors and secretary; or

(*d*) the name or address of any of the persons authorised to accept service on behalf of a foreign company; or

(*e*) the principal place of business of the company in India; the company shall, within the prescribed time, deliver to the Registrar for registration a return containing the prescribed particulars of the alteration.

589. Accounts of foreign company.—(*1*) Every foreign company shall, in every calendar year,—

(*a*) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having annexed or attached thereto such documents (including, in particular documents relating to every subsidiary of the foreign company) as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been

required to make out and lay before the company in general meeting; and

(*b*) deliver three copies of those documents to the Registrar:

Provided that the Central Government may, by notification in the Official Gazette, direct that, in the case of any foreign company or class of foreign company * * the requirements of clause (*a*) shall not apply or shall apply subject to such exceptions and modifications as may be specified in the notification.

(*2*) If any such document as is mentioned in sub-section (*1*) is not in the English language, there shall be annexed to it a certified translation thereof.

(*3*) Every foreign company shall send to the Registrar with the documents required to be delivered to him under sub-section (*1*) three copies of a list in the prescribed form of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in sub-section (*1*) is made out.

590. Obligation to state name of foreign company, whether limited, and country where incorporated.—Every foreign company shall—

(*a*) in every prospectus inviting subscriptions in India for its shares or debentures, state the country in which the company is incorporated;

(*b*) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters and also, in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;

(c) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill-heads and letter paper, and in all notices, advertisements and other official publications of the company; and

(*d*) if the liability of the members of the company is limited, cause notice of that fact—

(*i*) to be stated in every such prospectus as aforesaid and in all bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters, and

(*ii*) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate.

591. Service on foreign company.—Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name has been delivered to the Registrar under the foregoing provisions of this Part and left at, or sent by post to, the address which has been so delivered:

Provided that—

(*a*) where any such company makes default in delivering to the Registrar the name and address of a person resident in India who is authorised to accept on behalf of the company service of process, notices or other documents; or

(*b*) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason, cannot be served;

a document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in India.

592. Office where documents to be filed.—(*1*) Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi, and references to the Registrar in this Part [except in sub-section (*2*)] shall be construed accordingly.

(*2*) Any such document as is referred to in sub-section (*1*) shall also be delivered to the Registrar of the State in which the principal place of business of the company is situate.

(*3*) If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.

593. Penalties.—If any foreign company fails to comply with any of the foregoing provisions of this Part, the company, and every officer or agent of the company who is in default, shall be punishable with fine which may extend to one thousand rupees, and in the case of a continuing offence, with an additional fine which may extend to one hundred rupees for every day during which the default continues.

594. Company's failure to comply with Part not to affect its liability under contracts etc.—Any failure by a foreign company to comply with any of the foregoing provisions of this Part shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof; but the company shall not be entitled to bring any suit, claim any set off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until it has complied with the provisions of this Part.

595. Registration of charges, appointment of receiver and books of account.—(*1*) The provisions of Part V (sections 123 to 144), shall apply *mutatis mutandis* to:—

(*a*) charges on properties in India which are created by a foreign company after the 15th day of January, 1937; and

(*b*) charges on property in India which is acquired by any foreign company after the day aforesaid:

Provided that where a charge is created, or the completion of the acquisition of the property takes place, outside India, sub-section (5) of section 124 and the proviso to sub-section (*1*) of section 126 shall have effect as if the property, wherever situated, were situated outside India.

(*2*) The provisions of section 117 shall apply *mutatis mutandis* to a foreign company.

(*3*) The provisions of section 208 shall apply to a foreign company to the extent of requiring it to keep at its principal place of business in India the books of account referred to in that section, with respect to moneys received and expended, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India.

(*4*) In applying the sections referred to in sub-sections (*1*), (*2*) and (*3*) to a foreign company as aforesaid, references in those sections to the Registrar shall be deemed to be references to the Registrar of Joint Stock Companies having jurisdiction over New Delhi, and references to the registered office of the foreign company shall be deemed to be references to its principal place of business in India.

596. Fees for registration of documents under Part.—There shall be paid to the Registrar for registering any document required by the foregoing provisions of this Part to be registered by him, such fees as may be prescribed.

597. Interpretation of foregoing sections of Part.—For the purposes of the foregoing provisions of this Part—

(*a*) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation;

(*b*) the expression "director", in relation to a company, includes any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;

(c) the expression "place of business" includes a share transfer or share registration office;

(*d*) the expression "prospectus" has the same meaning as when used in relation to a company incorporated under this Act; and

(*e*) the expression "secretary" includes any person occupying the position of secretary, by whatever name called.

Prospectuses

598. Dating of prospectus and particulars to be contained therein.—(*1*) No person shall issue, circulate or distribute in India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will

not establish, a place of business in India, unless the prospectus is dated; and

(*a*) contains particulars with respect to the following matters:—

(*i*) the instrument constituting or defining the constitution of the company;

(*ii*) the enactments or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(*iii*) an address in India where the said instrument, enactments, or provisions, or copies thereof, and if the same are not in English, a translation thereof certified in the prescribed manner, can be inspected;

(*iv*) the date on which and the country in which the company was incorporated;

(*v*) whether the company has established a place of business in India, and, if so, the address of its principal office in India;

(*b*) subject to the provisions of this section, states the matters specified in Part I of Schedule II and sets out the reports specified in Part II of that Schedule, subject always to the provisions contained in Part III of that Schedule:

Provided that sub-clauses (*i*), (*ii*) and (*iii*) of clause (*a*) shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business; and in the application of Part I of Schedule II for the purposes of this sub-section, clause 2 thereof shall have effect with the substitution, for references to the articles, of references to the constitution of a company.

(*2*) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of clause (*a*) or (*b*) of sub-section (*1*) or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(*3*) No person shall issue to any person in India a form of application for shares in or debentures of such a company or intended company as is mentioned in sub-section (*1*), unless the form is issued with a prospectus which complies with the provisions of this Part and the issue whereof in India does not contravance the provisions of section 599:

Provided that this sub-section shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(*4*) In the event of non-compliance with or contravention of any of the requirements imposed by clauses (*a*) and (*b*) of sub-section (*1*), a director or other person responsible for the prospectus shall

not incur any liability by reason of the non-compliance or contravention, if—

(*a*) as regards any matter not disclosed, he proves that he had no knowledge thereof; or

(*b*) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial, or was otherwise such as ought in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in clause 18 of Schedule II, no director or other person shall incur any liability in respect of the failure, unless it be proved that he had knowledge of the matters not disclosed.

(5) This section—

(*a*) shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; and

(*b*) except in so far as it requires a prospectus to be dated, shall not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange. * * *

* * * * *

but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or under this Act apart from this section.

599. Provisions as to expert's consent and allotment.—(*1*) No person shall issue, circulate or distribute in India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India—

(*a*) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or

(*b*) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions (other than penal provisions) of sections 71, 72 and 73, so far as applicable.

(2) In this section, the expression "expert" includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him; and for the purposes of this section a statement shall be deemed to be included in a prospectus if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

600. Registration of prospectus.—No person shall issue, circulate or distribute in India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairman and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy—

(*a*) any consent to the issue of the prospectus required by section 599;

(*b*) a copy of any contract required by clause 16 of Schedule II to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(c) where the persons making any report required by Part II of Schedule II have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) The references in clause (*b*) of sub-section (*1*) to the copy of a contractor required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English, be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts which are not in English, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

601. Penalty for contravention of sections 598, 599 and 600.—Any person who is knowingly responsible—

(*a*) for the issue, circulation or distribution of a prospectus, or

(*b*) for the issue of a form of application for shares or debentures, in contravention of any of the provisions of sections 598, 599 and 600, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

602. Civil liability for mis-statements in prospectus.—Section 61 shall extend to every prospectus offering for subscription shares in

or debentures of a company incorporated or to be incorporated outside India whether the company has or has not established, or when formed will or will not establish, a place of business in India, with the substitution for references in section 61 to section 59 of this Act, of references to section 599 thereof.

603. Interpretation of provisions as to prospectuses.—(*1*) Where any document by which any shares in or debentures of a company incorporated outside India are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 63, to be a prospectus issued by the company, that document shall be deemed, for the purposes of this Part, to be a prospectus issued by the company offering such shares or debentures for subscription.

(*2*) An offer of shares or debentures for subscription or sale to any person whose ordinary business it is to buy or sell shares or debentures, whether as principal or as agent, shall not be deemed to be an offer to the public for the purposes of this Part.

(*3*) In this Part, the expressions "prospectus", "shares" and "debentures" have the same meanings as when used in relation to a company incorporated under this Act.

PART XII

Registration Offices and Officers and Fees

604. Registration Offices.—(*1*) For the purposes of the registration of companies under this Act, there shall be offices at such places as the Central Government thinks fit.

(2) The Central Government may appoint such Registrars and Assistant Registrars as it thinks necessary for the registration of companies under this Act, and may make regulations with respect to their duties.

(*3*) The salaries of the persons appointed under this section shall be fixed by the Central Government.

(*4*) The Central Government may direct a seal or seals to be prepared for the authentication of documents required for, or connected with, the registration of companies.

(*5*) Whenever any act is by this Act directed to be done to or by the Registrar, it shall, until the Central Government otherwise directs, be done to or by the existing Registrar of companies or joint-stock companies, or in his absence, to or by such person as the Central Government may for the time being authorise:

Provided that in the event of the Central Government altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place, with reference to the local situation of the registered offices of the companies concerned, as the Central Government may appoint.

605. Inspection, production and evidence of documents kept by Registrar.—(*1*) Any person may—

(*a*) inspect the documents kept by the Registrar, on payment for each inspection, of a fee of one rupee;

(*b*) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment of a fee of five rupees in the case of a certificate of incorporation and of six annas for every one hundred words or fractional part thereof required to be copied in the case of a certified copy of extract:

Provided that the rights conferred by this sub-section shall be exercisable—

(*i*) in relation to documents delivered to the Registrar with a prospectus in pursuance of sub-clause (*i*) of clause (*b*) of sub-section (*1*) of section 59, only during the fourteen days beginning with the date of publication of the prospectus; and at other times, only with the permission of the Central Government; and

(*ii*) in relation to documents so delivered in pursuance of clause (*b*) of sub-section (*1*) of section 600, only during the fourteen days beginning with the date of the prospectus; and at other times, only with the permission of the Central Government.

(*2*) No process for compelling the production of any document kept by the Registrar shall issue from any Court except with the leave of that Court; and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the Court.

(*3*) A copy of, or extract from, any document kept and registered at any of the offices for the registration of companies under this Act, certified to be a true copy under the hand of the Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document.

(*4*) Any person untruthfully stating himself in writing for the purposes of clause (*ii*) of the proviso to sub-section (*1*), to be a member or creditor of a company shall be punishable with fine which may extend to five hundred rupees.

606. Fees in Schedule X to be paid.—In respect of the several matters mentioned in * * * Schedule X, there shall, subject to the limitations imposed by that Schedule, be paid to the Registrar the several fees therein specified:

Provided that no fees shall be charged in respect of the registration in pursuance of Part IX of a company, if it is not registered as a limited company, or if, before its registration as a limited company, the liability of the shareholders was limited by some other Act of Parliament or any other Indian law or by an Act of Parliament of the United Kingdom, Royal charter or Letters Patent in force in India.

607. Fees etc. paid to Registrar and other officers to be accounted for to Central Government.—All fees, charges, and other sums paid to any Registrar, Assistant Registrar or other officer of the Central Government in pursuance of * * * * * * * this Act shall be paid into the public account of India in the Reserve Bank of India.

608. Power of Central Government to reduce fees, charges, etc.—(*1*) The Central Government may, by order notified in the Official Gazette, reduce the amount of any fee, charge or other sum specified in any provision contained in this Act, as payable in respect of any matter, either to the Central Government or to any Registrar, Assistant Registrar or other officer of the Central Government; and thereupon such provision shall, during the period for which the order is in force, have effect as if the reduced fee had been substituted for the fee specified in such provision.

(*2*) Any order notified under sub-section (*1*) may, by a like order, be cancelled or varied at any time by the Central Government.

(*3*) Nothing in this section shall be deemed to affect the power of the Central Government under section 632 to alter any of the fees specified in * * Schedule X.

609. Enforcement of duty of company to make returns etc. to Registrar.—(*1*) If a company, having made default in complying with any provision of this Act which requires it to file or register with, deliver or send to the Registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the Court may, on an application made to it by any member or creditor of the company or by the Registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(*2*) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(*3*) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a company or its officers in respect of any such default as aforesaid.

PART XIII

General

*Application of Act to * * Companies governed by Special Acts*

610. Application of Act to insurance, banking, electricity supply and other companies governed by special Acts.—The provisions of this Act shall apply—

(*a*) to insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 (IV of 1938);

(*b*) to banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Companies Act, 1949 (X of 1949);

(c) to companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Supply Act, 1948 (LIV of 1948);

(*d*) to any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions * of such special Act.

Application of Act to Government Companies

611. Definition of "Government Company".—For the purposes of sections 612, 613 and 614, Government company means any company in which not less than fifty-one per cent. of the * * share capital is held by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments.

612. Future Government Companies not to have managing agents.—No Government company formed after the commencement of this Act shall appoint a managing agent.

613. Application of sections 223 to 232 to Government companies.—(*1*) In the case of a Government company, the following provisions shall apply, notwithstanding anything contained in sections 223 to 232.

(*2*) The Comptroller and Auditor-General of India shall have power—

(*a*) to direct the manner in which the company's accounts shall be audited by the auditor appointed in pursuance of sections 223, 224 and 225 and to give such auditor instructions in regard to any matter relating to the performance of his functions as such;

(*b*) to conduct a supplementary or test audit of the company's accounts by such persons as he may authorise in this behalf.

(*3*) The auditor aforesaid shall submit a copy of his audit report to the Comptroller and Auditor-General of India who shall have the right to comment upon or supplement the audit report in such manner as he may think fit.

(*4*) Any such comments upon, or supplement to, the audit report shall be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

614. Power to modify Act in relation to Government companies.—(*1*) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act (other than sections 612 and 613) specified in the notification:—

(*a*) shall not apply to any Government company; or

(*b*) shall apply to any Government company, only with such exceptions, modifications and adaptations, as may be specified in the notification.

(*2*) A copy of every notification issued under sub-section (*1*) shall, as soon as may be after such issue, be laid before both Houses of Parliament.

* * * * * * * * * * *

Offences

615. Offences against Act to be cognizable only on complaint by Registrar, shareholder or Government.—(*1*) No Court shall take cognizance of any offence against this Act (other than an offence with respect to which proceedings are instituted under section 542), which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, or of a shareholder of the company, or of a person authorised by the Central Government in that behalf:

Provided that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

(*2*) Sub-section (*1*) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters included in Part VII (sections 424 to 555) or in any other provision of this Act relating to the winding up of companies.

(*3*) A liquidator of a company shall not be deemed to be an officer of the company, within the meaning of sub-section (*1*).

616. * * Jurisdiction to try offences.—No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.

617. Certain offences triable summarily in Presidency towns.—If any offence against this Act which is punishable with fine only is committed by any person within a Presidency-town, such person may be tried summarily and punished by any Presidency Magistrate of that Presidency-town * * *.

618. Offences to be non-cognizable.—Notwithstanding anything in the Code of Criminal Procedure, 1898 (V of 1898), every offence against this Act shall be deemed to be non-cognizable within the meaning of the said Code.

619. Payment of compensation in cases of frivolous or vexatious prosecution.—(*1*) In respect of any case instituted upon the complaint

of a shareholder against the company or any officer thereof in pursuance of section 615, the provisions of section 250 of the Code of Criminal Procedure, 1898 (V of 1898), shall not apply; and the following provisions shall apply instead.

(2) If the Magistrate by whom any such case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was frivolous or vexatious. the Magistrate may, by his order of discharge or acquittal, if the shareholder upon whose complaint the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there is more than one, or if such shareholder is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(3) The Magistrate shall record and consider any cause which such shareholder may show; and if the Magistrate is satisfied that the accusation was frivolous or vexatious, he may, for reasons to be recorded, direct that compensation to such amount as he may determine be paid by such shareholder to the accused or to each or any of them, not exceeding one thousand rupees in all.

(4) The Magistrate may, by the order directing payment of the compensation under sub-section (3), further order that, in default of payment, the shareholder ordered to pay such compensation shall suffer simple imprisonment for a term not exceeding two months.

(5) When any person is imprisoned under sub-section (4), the provisions of sections 68 and 69 of the Indian Penal Code, (XLV of 1860) shall, so far as may be, apply.

(6) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made by him:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(7) A complainant who has been ordered to pay compensation under sub-section (3) by a Magistrate may appeal from the order, in so far as it relates to the payment of compensation, as if such complainant had been convicted on a trial held by such Magistrate.

(8) Where an order for payment of compensation to an accused person is made, the compensation shall not be paid to him before the period allowed for the presentation of the appeal under sub-section (7) has elapsed; or, if an appeal is presented, before the appeal has been decided.

* * * * * * * * * * *

620. Application of fines.—The Court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information or at whose instance the fine is recovered.

621. Production and inspection of books where offence suspected.—(*1*) If, on an application made to a Judge of a High Court in chambers by the Public Prosecutor of the State or by the Central Government, it is shown that there is reasonable cause to believe that any person has, while he was an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made—

(*i*) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating, and obtaining evidence of the commission of, the offence; or

(*ii*) requiring the managing agent, secretaries and treasurers or manager of the company or such other officer thereof as may be named in the order, to produce the said books or papers or any of them to a person, and at a place, named in the order.

(*2*) Sub-section (*1*) shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in clause (*ii*) thereof shall be made by virtue of this sub-section.

(*3*) No appeal shall lie from the decision of a Judge of the High Court under this section.

622. Penalty for false statements.—If in any return, report, certificate, balance sheet, prospectus, statement or other document, required by or for the purposes of any of the provisions of this Act, any person makes a statement—

(*a*) which is false in any material particular, knowing it to be false; or

(*b*) which omits any material fact knowing it to be material;

he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine.

623. Penalty for false evidence.—If any person intentionally gives false evidence—

(*a*) upon any examination upon oath or solemn affirmation, authorised under this Act; or

(*b*) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act;

he shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

624. Penalty for wrongful withholding of property.—(*1*) If any officer or employee of a company—

(*a*) wrongfully obtains possession of any property of a company, or

(*b*) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by this Act,

he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to one thousand rupees.

(*2*) The Court trying the offence may also order such officer or employee to deliver up or refund within a time to be fixed by the Court any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term which may extend to two years.

625. Penalty for improper use of words "Limited" and "Private Limited".—If any person or persons trade or carry on business under any name or title of which the word "Limited" or the words "Private Limited", or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, be punishable with fine which may extend to fifty rupees for every day upon which that name or title has been used.

Legal Proceedings

626. Power to require limited company to give security for costs.—Where a limited company is plaintiff or petitioner in any suit or other legal proceeding, any Court having jurisdiction in the matter may, if there is reason to believe that the company will be unable to pay the costs of the defendant if he is successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

627. Power of Court to grant relief in certain cases.—(*1*) If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, * * * * * * it appears to the Court hearing the case that * * * * * he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, * * * * * * * * the Court may relieve him, either wholly or partly, from his liability on such terms as it may think fit.

(2) Where any such officer * * * has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as it would have had under this section if it had been a Court before which proceedings against that person for negligence, default, breach of duty, misfeasance or breach of trust had been brought.

* * * * * * * * * * *

628. Power to enforce orders.—Any order made by a Court under this Act may be enforced in the same manner as a decree made by the Court in a suit pending therein.

Reduction of fees payable to company

629. Power of company to reduce fees, charges, etc. payable to it.—(*1*) A company which is entitled to any specified fee, charge or other sum by virtue of any provision contained in this Act or in its articles, may reduce the amount thereof to such extent as it thinks fit; and thereupon such provision shall, so long as the reduction is in force, have effect as if the reduced amount had been substituted for the fee, charge or sum specified in such provision.

(*2*) Any reduction made under sub-section (*1*) may, at any time, be cancelled or varied by the company.

Delegation of powers and functions of Central Government

630. Delegation by Central Government of its powers and functions under Act.—(*1*) The Central Government may, by notification in the Official Gazette, delegate any of its powers or functions under this Act, other than those specified in sub-section (*2*), to such authority or officer, and subject to such conditions, restrictions and limitations, as may be specified in the notification.

(*2*) The Central Government shall not delegate its powers or functions under the following provisions of this Act, namely, sections 10; 88 (4); 210 (*3*) and (4), 211, 212, 225, 234, 236, 238, 240, 241, 242, 243, 244, 246, 247, 248, 249, 258, 267, 268, 294, 299, 309, 310, 323, 325, 327, 328, 331, 342, 344, 345, 348, 351, 369, 372, 395, 398(*4*) and (5), 400, 407, 408, 409, 446, 604, 614, 632 and 633.

(*3*) A copy of every notification issued under sub-section (*1*) shall, as soon as may be after it is issued, be placed before both Houses of Parliament.

Annual Report on Working of Act

631. Annual report by Central Government.—The Central Government shall cause a general annual report on the working and administration of this Act to be prepared and laid before both Houses of Parliament, within one year of the close of the year to which the report relates.

Schedules, Forms and Rules

632. Power to alter or add to Schedules.—(*1*) Subject to the provisions of this section, the Central Government may, by notification in the Official Gazette, alter * * any of the regulations, rules, tables, forms and other provisions contained in any of the Schedules to this Act, except Schedules XI and XII.

(2) Any alteration notified under sub-section (*1*) shall have effect as if enacted in this Act and shall come into force on the date of the notification, unless the notification otherwise directs:

Provided that no such alteration in Table A of Schedule I shall apply to any company registered before the date of such alteration or addition.

(3) All rules made by the Central Government under sub-section (1) shall, as soon as may be after they are made, be laid before both Houses of Parliament.

* * * * * * * * *

633. Power of Central Government to make rules.—(1) In addition to the powers conferred by section 632, the Central Government may, by notification in the Official Gazette, make rules—

(a) for all or any of the matters which by this Act are to be, or may be, prescribed by the Central Government; and

(b) generally to carry out the purposes of this Act.

(2) Every rule so notified shall have effect as if enacted in this Act, and shall come into force on the date of the notification, unless the notification otherwise directs.

(3) All rules made by the Central Government under sub-section (1) shall, as soon as may be after they are made, be laid before each House of Parliament.

634. Power of Supreme Court to make rules.—(1) The Supreme Court, after consulting the High Courts,—

(a) shall make rules providing for all matters relating to the winding up of companies which, by this Act, are to be prescribed and may make rules providing for all such matters as may be prescribed, except those reserved to the Central Government by sub-section (3) of section 546; and

(b) may make rules consistent with the Code of Civil Procedure, 1908 (V of 1908)—

(i) as to the mode of proceedings to be had for winding up a company in High Courts and in Courts subordinate thereto;

(ii) for the voluntary winding up of companies, whether by members or by creditors;

(iii) for the holding of meetings of creditors and members in connection with proceedings under section 391;

(iv) for giving effect to the provisions of this Act as to the reduction of the capital and the sub-division of the shares of a company; and

(v) generally for all applications to be made to the Court under the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, the Supreme Court may, by such rules, enable or require all or any

of the powers and duties conferred and imposed on the Court by this Act, in respect of the following matters, that is to say—

(*a*) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(*b*) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;

(c) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(d) the making of calls; and

(*e*) the fixing of a time within which debts and claims shall be proved;

to be exercised or performed by the Official Liquidator or any other liquidator as an officer of the Court, and subject to the control of the Court:

Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members or make any call.

(3) Until rules are made by the Supreme Court as aforesaid, all rules made by any High Court on the matters referred to in this section and in force at the commencement of this Act shall continue to be in force in so far as they are not inconsistent with the provisions of this Act in that High Court and in courts subordinate thereto.

Repeals and savings

* * * * * * *

635. **Repeal of Acts specified in Schedule XII.**—* * The enactments mentioned in Schedule XII are hereby repealed to the extent specified in the fourth column thereof.

636. **Saving of orders, rules, etc., in force at commencement of Act.**—Nothing in this Act shall affect any order, rule, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done, under or in pursuance of any previous companies law; but any such order, rule, regulation, appointment, conveyance, mortgage, deed, document, agreement, fee, resolution, direction, proceeding, instrument or thing shall, if in force at the commencement of this Act, continue to be in force, and so far as it could have been made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act, shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act.

637. **Saving of operation of section 138 of Act VII of 1913.**—Nothing in this Act shall affect the operation of section 138 of the Indian Companies Act, 1913 (VII of 1913), as respects inspectors or as respects the continuation of an inspection begun by inspectors appointed before the commencement of this Act; and the provisions of this Act shall apply to or in relation to a report of inspectors appointed under the said section 138 as they apply to or in relation to a report of inspectors appointed under section 234 or 236 of this Act.

638. Saving of pending proceedings for winding up.—Where the winding up of a company has commenced before the commencement of this Act—

(*i*) sub-section (7) of section 551 shall apply in respect of any moneys paid into the Companies Liquidation Account whether before or after such commencement; and

(*ii*) the other provisions with respect to winding up contained in this Act shall not apply * * * * * * but the company shall be wound up in the same manner and with the same incidents as if this Act had not been passed.

639. Saving of prosecutions instituted by liquidator or Court under section 237 of Act VII of 1913.—Nothing in this Act shall affect any prosecution instituted or ordered by the Court to be instituted under section 237 of the Indian Companies Act, 1913 (VII of 1913); and the Court shall have the same power of directing how any costs, charges, and expenses properly incurred in any such prosecution are to be defrayed as it would have had, if this Act had not been passed.

640. Construction of references to former enactments in documents.—Any document referring to any former enactment relating to companies shall be construed as referring to the corresponding enactment of this Act.

641. Construction of "registrar of joint stock companies" in Act XXI of 1860.—In sections 1 and 18 of the Societies Registration Act, 1860 (XXI of 1860), the words "registrar of joint stock companies" shall be construed to mean the Registrar under this Act.

642. Construction of references to "extraordinary resolution" in articles etc.—Any reference to an extraordinary resolution in the articles of a company, or in any resolution passed in general meeting by the company, or in any other instrument, or in any law in force immediately before the commencement of this Act shall, with effect on and from such commencement, be construed as a reference to a special resolution.

643. Appointment under previous companies laws to have effect as if made under Act.—Any person appointed to any office under or by virtue of any previous companies law shall be deemed to have been appointed to that office under or by virtue of this Act.

644. Former registration offices continued.—The offices existing at the commencement of this Act for the registration of companies shall be continued as if they had been established under this Act.

645. Registers under previous companies laws to be deemed to be part of registers under Act.—Any register kept under the provisions of any previous companies law shall be deemed to be part of the register to be kept under the corresponding provisions of this Act.

646. Funds and accounts under Act to be in continuation of funds and accounts under previous companies laws.—All funds constituted and accounts kept under this Act shall be deemed to be in continuation of the corresponding funds constituted and accounts kept under the previous companies laws.

647. Saving of incorporation under repealed Acts.—Nothing in this Act shall affect the incorporation of any company registered under any enactment hereby repealed.

648. Saving of certain Tables under previous companies laws.—Nothing in this Act shall affect—

(*a*) Table B in the Schedule annexed to Act No. XIX of 1857, or any part thereof, so far as the same applies to any company existing at the commencement of this Act;

(*b*) Table A in the First Schedule annexed to the Indian Companies Act, 1882 (VI of 1882), or any part thereof, so far as the same applies to any company existing at the commencement of this Act;

(c) Table A in the First Schedule to the Indian Companies Act, 1913 (VII of 1913), either as originally contained in that Schedule or as altered in pursuance of section 151 of that Act, so far as the same applies to any company existing at the commencement of this Act.

649. Section 6 of the General Clauses Act, 1897 (X of 1897) to apply in addition to sections 636 to 648 of Act.—The mention of particular matters in sections 636 to 648 or in any other provision of this Act shall not prejudice the general application of section 6 of the General Clauses Act, 1897 (X of 1897), with respect to the effect of repeals.

THE FIRST SCHEDULE

* * *

[*See section* 2 (2), 13, 14, 27 (1), 28 and 222]

TABLE A

Regulations for management of a company limited by shares.

Interpretation.

1. (*1*) In these regulations—

(a) "the Act" means the Companies Act, 1955.

(b) "the seal" means the common seal of the company.

* * * * *

(*2*) Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

* * *

Share capital and variation of rights

* * *

2. Subject to the provisions of section 79, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed on such terms and in such manner as the company before the issue of the shares may, by special resolution, determine.

3. (*1*) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, subject to the provisions of sections 105 and 106, and whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of that class.

(*2*) To every such separate general meeting, the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class in question.

4. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

5. (*1*) The company may exercise the powers of paying commissions conferred by section 75, provided that the rate per cent, or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by the said section.

(2) The rate of the commission shall not exceed the rate of five per cent. of the price at which the shares in respect whereof the same is paid are issued or an amount equal to five per cent. of such price, as the case may be.

(3) The commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in the one way and partly in the other.

(4) The company may also, on any issue of shares, pay such brokerage as may be lawful.

6. Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by, or be compelled in any way to recognise (even when having notice thereof), any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

7. (1) Every person whose name is entered as a member in the register of members shall be entitled to receive within three months after allotment or registration of transfer (or within such other period as the conditions of issue shall provide)—

(a) one certificate for all his shares without payment, or

(b) several certificates, each for one or more of his shares, upon payment of one rupee for every certificate after the first.

(2) Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid up thereon.

(3) In respect of any share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

8. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding eight annas, and on such terms, if any, as to evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence, as the directors think fit.

Lien.

9. (1) The company shall have a first and paramount lien—

(a) on every share (not being a fully-paid share), for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and

(b) on all shares (not being fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company:

Provided that the Board may at any time declare any share to be wholly or in part exempt from the provisions of this clause.

(2) The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the Board thinks fit, any shares on which the company has a lien:

Provided that no sale shall be made—

(*a*) unless a sum in respect of which the lien exists is presently payable, or

(*b*) until the expiration of fourteen days after a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share or the person entitled thereto by reason of his death or insolvency.

11. (*1*) To give effect to any such sale, the Board may authorise some person to transfer the shares sold to the purchaser thereof.

(*2*) The purchaser shall be registered as the holder of the shares comprised in any such transfer.

(*3*) The purchaser shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

12. (*1*) The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable.

(*2*) The residue, if any, shall, subject to a like lien for sums not presently payable as existed upon the shares before the sale, be paid to the person entitled to the shares at the date of the sale.

Calls on shares

13. (*1*) The Board may, from time to time, make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times:

Provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call.

(*2*) Each member shall, subject to receiving at least fourteen days' notice specifying the time or times and place of payment, pay to the company at the time or times and place so specified the amount called on his shares.

(*3*) A call may be revoked or postponed at the discretion of the Board.

14. A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed and may be required to be paid by instalments.

15. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

16. (*1*) If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest thereon from the day appointed for payment thereof to the time of actual payment at five per cent. per annum or at such lower rate, if any, as the Board may determine.

(*2*) The Board shall be at liberty to waive payment of any such interest wholly or in part.

17. (*1*) Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall, for the purposes of these regulations, be deemed to be a call duly made and payable on the date on which by the terms of issue such sum becomes payable.

(*2*) In case of non-payment of such sum, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

18. The Board—

(*a*) may, if it thinks fit, receive from any member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him; and

(*b*) upon all or any of the moneys so advanced, may (until the same would, but for such advance, become presently payable) pay interest at such rate not exceeding, unless the company in general meeting shall otherwise direct, six per cent. per annum, as may be agreed upon between the Board and the member paying the sum in advance.

Transfer of shares

19. (*1*) The instrument of transfer of any share in the company shall be executed by or on behalf of both the transferor and transferee.

(*2*) The transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

20. Shares in the company shall be transferred in the following form, or in any usual or common form which the Board shall approve * * * :—

"I, A. B. of , in consideration of the sum of rupees paid to me by C. D. of..... (hereinafter called "the transferee"), do hereby transfer to the transferee the share [*or* shares] numbered.....to..... inclusive, in the undertaking called the.....Company, Limited, to

hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same immediately before the execution hereof; and I, the transferee, do hereby agree to take the said share (*or* shares) subject to the conditions aforesaid.

As witness our hands this

day of

Witness to the signatures of, etc."

21. The Board may, subject to the right of appeal conferred by section 110, decline to register—

(a) the transfer of a share, not being a fully-paid share, to a person of whom they do not approve, or

(b) any transfer of shares on which the company has a lien.

22. The Board may also decline to recognise any instrument of transfer unless—

(a) a fee of two rupees is paid to the company in respect thereof;

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer; and

(c) the instrument of transfer is in respect of only one class of shares.

23. The registration of transfers may be suspended at such times and for such periods as the Board may from time to time determine:

Provided that such registration shall not be suspended for more than forty-five days in any year.

24. The company shall be entitled to charge a fee not exceeding two rupees on the registration of every probate, letters of administration, certificate of death or marriage, power of attorney, or other instrument.

Transmission of shares

25. (*1*) On the death of a member, the survivor or survivors where the member was a joint holder, and his legal representatives where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares.

(*2*) Nothing in clause (*1*) shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

26. (*1*) Any person becoming entitled to a share in consequence of the death or insolvency of a member may, upon such evidence being produced as may from time to time properly be required by the Board and subject as hereinafter provided, elect, either—

(a) to be registered himself as holder of the share, or

(*b*) to make such transfer of the share as the deceased or insolvent member could have made.

(*2*) The Board shall, in either case, have the same right to decline or suspend registration as it would have had, if the deceased or insolvent member had transferred the share before his death or insolvency.

27. (*1*) If the person so becoming entitled shall elect to be registered as holder of the share himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects.

(*2*) If the person aforesaid shall elect to transfer the share, he shall testify his election by executing a transfer of the share.

(*3*) All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or insolvency of the member had not occurred and the notice or transfer were a transfer signed by that member.

28. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company:

Provided that the Board may at any time give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share, until the requirements of the notice have been complied with.

Forfeiture of shares

29. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the Board may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

30. The notice aforesaid shall—

(*a*) name a further day (not earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made; and

(*b*) state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made will be liable to be forfeited.

31. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect.

32. (1) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit.

(2) At any time before a sale or disposal as aforesaid, the Board may cancel the forfeiture on such terms as it thinks fit.

33. (1) A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares.

(2) The liability of such person shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

34. (1) A duly verified declaration in writing that the declarant is a director, the managing agent, the secretaries and treasurers, the manager or the secretary of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

(2) The company may receive the consideration, if any, given for the share on any sale or disposal thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.

(3) The transferee shall thereupon be registered as the holder of the share.

(4) The transferee shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

35. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of shares into stock.

36. The company may, by ordinary resolution,—

(a) convert any paid-up shares into stock; and

(b) reconvert any stock into paid-up shares of any denomination.

37. The holders of stocks may transfer the same or any part thereof in the same manner as, and subject to the same regulations, under which, the shares from which the stock arose might before the conversion have been transferred, or as near thereto as circumstances admit:

Provided that the Board may, from time to time, fix the minimum amount of stock transferable, so however that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

38. The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose; but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

39. Such of the regulations of the company (other than those relating to share warrants), as are applicable to paid-up shares shall apply to stock and the words "share" and "shareholder" in those regulations shall include "stock" and "stockholder" respectively.

Share warrants

40. The company may issue share warrants subject to, and in accordance with, the provisions of sections 113 and 114; and accordingly the Board may in its discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence (if any) as the Board may, from time to time, require as to the identity of the person signing the application, and on receiving the certificate (if any) of the share, and the amount of the stamp duty on the warrant and such fee as the Board may from time to time require, issue a share warrant.

41. (*1*) The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending, and voting and exercising the other privileges of a member at any meeting held after the expiry of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant.

(*2*) Not more than one person shall be recognised as depositor of the share warrant.

(*3*) The company shall, on two days' written notice, return the deposited share warrant to the depositor.

42. (*1*) Subject as herein otherwise expressly provided, no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company.

(*2*) The bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

43. The Board may, from time to time, make rules as to the terms on which (if it shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss or destruction.

Alteration of Capital

44. The company may, from time to time, by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as may be specified in the resolution.

45. The company may, by ordinary resolution,—

(*a*) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(*b*) sub-divide its existing shares or any of them into shares of smaller amount than is fixed by the memorandum * *, subject, nevertheless, to the provisions of clause (*d*) of sub-section (*1*) of section 93;

(c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

46. The company may, by special resolution, reduce in any manner and with, and subject to, any incident authorised and consent required, by law—

(*a*) its share capital;

(*b*) any capital redemption reserve fund; or

(c) any share premium account.

General meetings

47. All general meetings other than annual general meetings shall be called extraordinary general meetings.

48. (*1*) The Board may, whenever it thinks fit, call an extraordinary general meeting.

(*2*) If at any time there are not within India directors capable of acting who are sufficient in number to form a quorum, any director or any two members of the company may call an extraordinary general meeting, in the same manner as nearly as possible, as that in which such a meeting may be called by the Board.

Proceedings at general meetings

49. (*1*) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(*2*) Save as herein otherwise provided, five members present in person in the case of a public company, and two members present in person in the case of a private company, shall be a quorum.

(*3*) If within half an hour from the time appointed for holding the meeting a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved.

(*4*) In any other case, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Board may determine.

mine.

(5) If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

50. The chairman, if any, of the Board * * shall preside as chairman at every general meeting of the company.

51. If there is no such chairman, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman of the meeting, the directors present shall elect one of their number to be chairman of the meeting.

52. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

53. (1) The chairman may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place.

(2) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(3) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(4) Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

54. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

55. Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

Votes of members

56. Subject to any rights or restrictions for the time being attached to any class or classes of shares,—

(a) on a show of hands, every member present in person shall have one vote, and

(b) on a poll, the voting rights of members shall be as laid down in section 86.

57. In the case of joint holders, the vote of the senior who tenders a vote whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.

For this purpose, seniority shall be determined by the order in which the names stand in the register of members.

58. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

59. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

60. (*1*) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

(*2*) Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

61. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll; and in default the instrument of proxy shall not be treated as valid.

62. An instrument appointing a proxy shall be in either of the forms in Schedule IX to the Act or a form as near thereto as circumstances admit.

63. A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the shares in respect of which the proxy is given:

Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Board of directors

64. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum * * * or a majority of them.

65. (*1*) The remuneration of the directors shall, in so far as it consists of a monthly payment, be deemed to accrue from day to day.

(*2*) In addition to the remuneration payable to them in pursuance of the Act, the directors may be paid all travelling, hotel and other expenses properly incurred by them—

(*a*) in attending and returning from meetings of the Board of directors or any committe thereof or general meetings of the company; or

(*b*) in connection with the business of the company.

66. The qualification of a director shall be the holding of at least one share in the company.

67. The Board may pay all expenses incurred in getting up and registering the company.

68. The company may exercise the powers conferred by section 49 with regard to having an official seal for use abroad, and such powers shall be vested in the Board.

69. The company may exercise the powers conferred on it by sections 156 and 157 with regard to the keeping of a foreign register, and the Board may (subject to the provisions of those sections) make and vary such regulations as it may think fit respecting the keeping of any such register.

70. All cheques, promissory notes, drafts, hundis, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, by the managing agent or secretaries and treasurers of the company, or where there is no managing agent or secretaries and treasurers, by such person and in such manner as the Board shall from time to time by resolution determine.

71. Every director present at any meeting of the Board or of a committee thereof shall sign his name in a book to be kept for that purpose.

72. (*1*) The Board shall have power at any time, and from time to time, to appoint a person as an additional director who shall hold office until the next following general meeting.

(*2*) Such person shall however be eligible for appointment by the company at that meeting as a director, after the meeting has, if necessary, increased the number of the directors.

Proceedings of Board

73. (*1*) The Board of directors may meet for the despatch of business, adjourn and otherwise regulate its meetings, as it thinks fit.

(*2*) A director may, and the managing agent, secretaries and treasurers, manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.

74. (*1*) Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.

(*2*) In case of an equality of votes, the chairman of the Board, if any, shall have a second or casting vote.

75. The continuing directors may act notwithstanding any vacancy in its body; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.

76. (*1*) The Board may elect a chairman of its meetings and determine the period for which he is to hold office.

(*2*) If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

77. (*1*) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.

(*2*) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.

78. (*1*) A committee may elect a chairman of its meetings.

(*2*) If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.

79. (*1*) A committee may meet and adjourn as it thinks proper.

(*2*) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

80. All acts done by any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.

81. Save as otherwise expressly provided in the Act, a resolution in writing, signed by * * * all the members of the Board or of a committee thereof, for the time being entitled to receive notice of a meeting of the Board or committee, shall be as valid and effectual as if it had been passed at a meeting of the Board or committee, duly convened and held.

Manager or Secretary

82. (*1*) A manager or secretary may be appointed by the Board for such term, at such remuneration and upon such conditions as

it may think fit; and any manager or secretary so appointed may be removed by the Board.

(2) A director may be appointed as manager or secretary.

83. A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and the manager or secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the manager or secretary.

The Seal

84. (1) The Board shall provide for the safe custody of the seal.

(2) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board or of a committee of the Board authorised by it in that behalf, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose; and those two directors and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Dividends and Reserve

85. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board.

86. The Board may from time to time pay to the members such *interim* dividends as appear to it to be justified by the profits of the company.

87. (1) The Board may, before recommending any dividend, set aside out of the profits of the company such sums as it thinks proper as a reserve or reserves which shall, at the discretion of the Board be applicable for any purpose to which the profits of the company may be properly applied, including provision for meeting contingencies or for equalising dividends; and pending such application, may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the Board may, from time to time, think fit.

(2) The Board may also carry forward any profits which it may think prudent not to divide, without setting them aside as a reserve.

88. (1) Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares.

(2) No amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share.

(3) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

89. The Board may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

90. (1) Any general meeting declaring a dividend or bonus may direct payment of such dividend or bonus, wholly or partly, by the distribution of specific assets; * * * * * and the Board shall give effect to the resolution of the meeting.

(2) Where any difficulty arises in regard to such distribution, the Board, may settle the same as it thinks expedient, and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the Board.

91. (1) Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct.

(2) Every such cheque or warrant shall be made payable to the order of the person to whom it is sent.

92. Any one of two or more joint holders of a share may give effectual receipts for any dividends, bonuses or other moneys payable in respect of such share.

93. Notice of any dividend that may have been declared shall be given to the persons entitled to share therein in the manner mentioned in the Act.

94. No dividend shall bear interest against the company.

Accounts

95. (1) The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations, the accounts and books of the company or any of them shall be open to the inspection of members not being directors.

(2) No member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorised by the Board or by the company in general meeting.

Capitalisation of profits

96. (1) The company in general meeting may, upon the recommendation of the Board, resolve—

(a) that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution, and

(b) that such sum be accordingly set free for distribution in the manner specified in clause (2) amongst the members who would have been entitled thereto, if distributed by way of dividend and in the same proportions.

(2) The sum aforesaid shall not be paid in cash but shall be applied, subject to the provision contained in clause (3), either in or towards—

(i) paying up any amounts for the time being unpaid on any shares held by such members respectively,

(ii) paying up in full, unissued shares or debentures of the company to be allotted and distributed, credited as fully paid up, to and amongst such members in the proportions aforesaid, or

(iii) partly in the way specified in sub-clause (i) and partly in that specified in sub-clause (ii).

(3) A share premium account and a capital redemption reserve fund may, for the purposes of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

(4) The Board shall give effect to the resolution passed by the company in pursuance of this regulation.

97. (1) Whenever such a resolution as aforesaid shall have been passed, the Board shall—

(a) make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares or debentures, if any, and

(b) generally do all acts and things required to give effect thereto.

(2) The Board shall have full power—

(a) to make such provision by the issue of fractional certificates or by payment in cash or otherwise as it thinks fit, for the case of shares or debentures becoming distributable in fractions; and also

(b) to authorise any person to enter, on behalf of all the members entitled thereto, into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which

they may be entitled upon such capitalisation, or (as the case may require) for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares.

(*3*) Any agreement made under such authority shall be effective and binding on all such members.

Winding up

98. (*1*) If the company shall be wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act, divide amongst the members in specie or kind the whole or any part of the assets of the company, whether they shall consist of property of the same kind or not.

(*2*) For the purpose aforesaid, the liquidator may set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members.

(*3*) The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

Indemnity

99. Every officer or agent for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 627 in which relief is granted to him by the Court.

TABLE B

FORM OF MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES

1*st*.—The name of the company is "The Eastern Steam Packet Company, Limited".

2*nd*.—The registered office of the company will be situated in the State of Bombay.

3*rd*.—The objects for which the company is established are "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing of all such other things as are incidental or conducive to the attainment of the above object".

4th.—The liability of the members is limited.

5th.—The share capital of the company is two hundred thousand rupees, divided into one thousand shares of two hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses and occupations of subscribers.	Number of shares taken by each subscriber.
1. A. B. of....., merchant	200
2. C. D. of....., merchant	25
3. E. F. of....., merchant	30
4. G. H. of..... , merchant	40
5. I. J. of....., merchant	15
6. K. L. of....., merchant	5
7. M. N. of....., merchant	10
Total shares taken . .	325

Dated..... day of.....19 .

Witness to the above signatures

X. Y. of.....

TABLE C

FORM OF MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL.

Memorandum of Association

1*st.*—The name of the company is "The Mutual Calcutta Marine Association, Limited".

2*nd.*—The registered office of the company will be situate in the State of West Bengal.

3*rd.*—The objects for which the company is established are "the mutual insurance of ships belonging to members of the company, and the doing of all such other things as are incidental or conducive to the attainment of the above object".

4*th.*—The liability of the members is limited.

5*th.*—Every member of the company undertakes to contribute to the assets of the company i nthe event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding one hundred rupees.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, addresses and occupations of subscribers.

1. A.B. of
2. C.D. of
3. E.F. of
4. G.H. of
5. I.J. of
6. K.L. of
7. M.N. of

Dated the..... day of.....

Witness to above signatures..... X., Y. of

ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

Interpretation

1. (*1*) In these articles—

(*a*) "the Act" means the Companies Act, 1955.

(*b*) "the seal" means the common seal of the company.

* * * *

(*2*) Unless the context otherwise requires, words or expressions contained in these articles shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

* * * *

Members

2. The number of members with which the company proposes to be registered is 500, but the Board of directors may, from time to time, whenever the company or the business of the company requires it, register an increase of members.

3. The subscribers to the memorandum and such other persons as the Board shall admit to membership shall be members of the company.

General Meetings

4. All general meetings other than annual general meetings shall be called extraordinary general meetings.

5. (*1*) The Board may, whenever it thinks fit, call an extraordinary general meeting.

(*2*) If at any time there are not within India directors capable of acting, who are sufficient in number to form a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner as nearly as possible, as that in which such a meeting may be called by the Board.

Proceedings at General Meetings

6. (*1*) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(*2*) Save as herein otherwise provided, five members present in person shall be a quorum.

7. (*1*) If within half an hour from the time appointed for holding the meeting a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved.

(*2*) In any other case, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Board may determine.

(*3*) If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

8. The chairman, if any, of the Board ** shall preside as chairman at every general meeting of the company.

9. If there is no such chairman, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman of the meeting, the directors present shall elect one of their number to be chairman of the meeting.

10. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

11. (*1*) The chairman may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place.

(*2*) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(*3*) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(*4*) Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

12. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

13. Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

Votes of members

14. Every member shall have one vote.

15. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

16. No member shall be entitled to vote at any general meeting unless all sums presently payable by him to the company have been paid.

17. (*1*) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

(*2*) Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

18. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed:

Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Board of Directors

19. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.

20. (*1*) The remuneration of the directors shall, in so far as it consists of a monthly payment, be deemed to accrue from day to day.

(*2*) The directors may also be paid all travelling, hotel and other expenses properly incurred by them—

(*a*) in attending and returning from meetings of the Board or any committee thereof or general meetings of the company; or

(*b*) in connection with the business of the company.

Proceedings of Meetings of Board

21. (*1*) The Board of directors may meet for the despatch of business, adjourn and otherwise regulate its meetings, as it thinks fit.

(*2*) A director may, and the managing agent, secretaries and treasurers, manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.

22. (*1*) Save as otherwise expressly provided in this Act, questions arising at any meeting of the Board shall be decided by a majority of votes.

(*2*) In case of an equality of votes, the chairman shall have a second or casting vote.

23. The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.

24. (*1*) The Board may elect a chairman of its meetings and determine the period for which he is to hold office.

(*2*) If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

25. (*1*) The Board may, subject to the provisions of the Act, delegate any of its powers to a committee consisting of such member or members of its body as it thinks fit.

(*2*) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.

26. (*1*) A committee may elect a chairman of its meetings.

(*2*) If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.

27. (*1*) A committee may meet and adjourn as it thinks proper.

(*2*) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

28. All acts done by any meeting of the Board or of a committee thereof, or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.

29. Save as otherwise expressely provided in the Act, a resolution in writing, signed by * * all the members of the Board or a committee thereof for the time being entitled to receive notice of a meeting of the Board or committee * *, shall be as valid and effectual as if it had been passed at a meeting of the Board or committee * *, duly convened and held.

Manager or Secretary

30. (*1*) A manager or secretary may be appointed by the Board for such term, at such remuneration and upon such conditions as it may think fit; and any manager or secretary so appointed may be removed by the Board.

(*2*) A director may be appointed as manager or secretary.

31. A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and the manager or secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the manager or secretary.

The Seal

32. (*1*) The Board shall provide for the safe custody of the seal.

(*2*) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board of directors, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose; and those two directors and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Names, Addresses and Occupations of Subscribers

1. A. B. of
2. C. D. of
3. E. F. of
4. G. H. of
5. I. J. of
6. K. L. of
7. M. N. of

Dated the *day of* 19 .

Witness to the above signatures.....X. Y. of

TABLE D

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL

Memorandum of Association

1*st*.—The name of the company is "The Snowy Range Hotel Company, Limited".

2*nd*.—The registered office of the company will be situate in the State of West Bengal.

3*rd*.—The objects for which the company is established are "the facilitating of travelling in the Snowy Range, by providing hotels and conveyances by sea and by land for the accommodation of

travellers and the doing of all such other things as are incidental or conducive to the attainment of the above object".

4*th*.—The liability of the members is limited.

5*th*.—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member for payment of the debts and liabilities if the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding fifty rupees.

6*th*.—The share capital of the company shall consist of five hundred thousand rupees, divided into five thousand shares of one hundred rupees each.

We, the several persons whose names and addresses are subscribed are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Occupations of Subscribers		Number of shares taken by each subscriber
1. A. B. of	Merchant	200
2. C. D. of	"	25
3. E. F. of	"	30
4. G. H. of	"	40
5. I. J. of	"	15
6. K. L. of	"	5
7. M. N. of	"	10
Total shares taken		325

*Dated the..... day of..... .....*19 .

Witness to the above signatures. X. Y. of

Articles of Association of a Company Limited by Guarantee and having a Share Capital

1. The number of members with which the company proposes to be registered is 100, but the directors may from time to time register an increase of members.

2. All the articles of Table A in Schedule I of the Companies Act, 1955, shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses and Occupations of Subscribers.

1. A. B. of	.....	Merchant.
2. C. D. of	.....	„
3. E. F. of	.....	„
4. G. H. of	.....	„
5. I. J. of	.....	„
6. K. L. of	.....	„
7. M. N. of	.....	„

Dated the..... day of.....19 .

Witness to the above signatures. X. Y. of

TABLE E

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY

Memorandum of Association

1*st*.—The name of the company is "The Patent Stereotype Company".

2*nd*.—The registered office of the company will be situate in the State of West Bengal.

3*rd*.—The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates of which method P. Q., of Bombay, is the sole patentee".

We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Occupations of Subscribers	Number of shares taken by each subscriber
1. A. B. of	3
2. C. D. of	2
3. E. F. of	1
4. G. H. of	2
5. I. J. of	2
6. K. L. of	1
7. M. N. of	1
Total shares taken ...	12

Dated the..... day of.....19 .

Witness to the above signatures. X. Y. of

ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY

1. The number of members with which the company proposes to be registered is 20, but the Board may from time to time register an increase of members.

2. The share capital of the company is twenty thousand rupees, divided into twenty shares of one thousand rupees each.

3. The company may by special resolution—

(*a*) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe;

(b) consolidate its shares into shares of a larger amount than its existing shares;

(c) sub-divide its shares into shares of a smaller amount than its existing shares;

(*d*) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person;

(*e*) reduce its share capital in any way.

4. All the articles of Table A in Schedule I to the Companies Act, 1955, except articles (36, 37, 38, 39, 44, 45 and 46) shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses and Occupations of Subscribers.	
1. A. B. of	Merchant.
2. C. D. of	„
3. E. F. of	„
4. G. H. of	„
5. I. J. of	„
6. K. L. of	„
7. M. N. of	„

Dated the..... .....day of.....19

Witness to the above signatures. X. Y. of

TABLE F

FORM OF STATEMENT TO BE PUBLISHED BY LIMITED BANKING COMPANIES, INSURANCE COMPANIES AND DEPOSIT, PROVIDENT OF BENEFIT SOCIETIES.

*The share capital of the company is Rs.....divided into..... shares of Rs.....each.

The number of shares issued is.....Calls to the amount of Rs..... per share have been made, under which the sum of Rs..... has been received.

The liabilities of the company on the thirty-first day of December (or thirtieth day of June) were—

Debts owing to sundry persons by the company:

Under decree, Rs.

On mortgages or bonds, Rs.

On notes, bills or hundis, Rs.

On other contracts, Rs.

On estimated liabilities, Rs.

The assets of the company on that day were:

Government securities [stating them], Rs.

Bills of exchange, hundis, and promissory notes, Rs.

Cash at the Bankers, Rs.

Other securities, Rs.

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*If the company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

SCHEDULE II

[*See* sections 43(2)(*a*) and 55.]

Matters to be specified in Prospectus and Reports to be set out therein

PART I

MATTERS TO BE SPECIFIED

1. (*1*) Save as hereinafter provided in clause 27, the main objects of the company, with the names, occupations and addresses of the signatories of the memorandum and the number of shares subscribed for by them.

(*2*) The number and classes of shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.

(*3*) The number of redeemable preference shares intended to be issued, with the date of redemption or, where no date is fixed, the period of notice required for redeeming the shares and the proposed method of redemption.

2. (*1*) The number of shares, if any, fixed by the articles as the qualification of a director.

(*2*) Any provision in the articles as to the remuneration of the directors whether for their services to the company as directors, managing directors or otherwise.

3. (*1*) The names, occupations and addresses of—

(*a*) the directors or proposed directors;

(*b*) the managing director or proposed managing director, if any;

(*c*) the managing agent or proposed managing agent, if any;

(*d*) secretaries and treasurers, if any;

(*e*) the manager or proposed manager, if any.

(*2*) Any provision in the articles or in any contract which has been entered into as to the appointment of a managing director, managing agent, secretaries and treasurers or manager, the remuneration payable to him, and the compensation, if any, payable to him for loss of office.

4. In the case of a company managed by a managing agent or secretaries and treasurers which is a body corporate, the subscribed capital of that body.

5. Where shares are offered to the public for subscription, particulars as to—

(*a*) the minimum amount which, in the opinion of the directors or of the signatories of the memorandum arrived at after due inquiry, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in

respect of each of the following heads and distinguishing the amount required under each head:—

(*i*) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(*ii*) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;

(*iii*) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;.

(*iv*) working capital;

(*v*) any other expenditure, stating the nature and purpose thereof and the estimated amount in each case; and

(*b*) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

6. The time of the opening of the subscription lists.

7. The amount payable on application and allotment on each share, and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

8. The substance of any contract or arrangement or proposed contract or arrangement, whereby any option or preferential right of any kind has been or is proposed to be given to any person to subscribe for any shares in or debentures of, a company, giving the number, description and amount of any such shares or debentures and including the following particulars of the option or right:—

(*a*) the period during which the option or right is exercisable,

(*b*) the price to be paid for shares or debentures subscribed for under the option or right,

(c) the consideration, if any, given or to be given for the option or right or for the right thereto,

(*d*) the names, occupations, and addresses of the persons to whom the option or right or the right thereto has been given or is proposed to be given or, if given to existing share-holders or debenture holders as such, the description and numbers of the relevant shares or debentures,

(*e*) any other material fact or circumstances relevant to the grant of the option or right.

Explanation.—Subscribing for shares or debentures shall for the purposes of this clause, include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

9. The number, description, and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in

the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or agreed to be issued.

10. The amount paid or payable by way of premium, if any, on each share which has been issued within the two years preceding the date of the prospectus or is to be issued, stating the dates or proposed dates of issue and, where some shares have been or are to be issued at a premium and other shares of the same class at a lower premium, or at par or at a discount, the reasons for the differentiation and how any premiums received have been or are to be disposed of.

11. Where any issue of shares or debentures is underwritten, the names of the underwriters, and the opinion of the directors that the resources of the underwriters are sufficient to discharge their * * * obligations.

12. (*1*) As respects any property to which this clause applies—

(*a*) the names, occupations and addresses of the vendors;

(*b*) the amount paid or payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so paid or payable to each vendor, specifying separately the amount, if any, paid or payable for goodwill;

(*c*) the nature of the title or interest in such property acquired or to be acquired by the company;

(*d*) short particulars of every transaction relating to the property completed within the two preceding years, in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest, direct or indirect, specifying the date of the transaction and the name of such promoter, director or proposed director and stating the amount payable by or to such vendor, promoter, director or proposed director in respect of the transaction.

(*2*) The property to which sub-clause (*1*) applies is property purchased or acquired by the company or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, other than property—

(*a*) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or

(*b*) as respects which the amount of the purchase money is not material.

(*3*) For the purposes of this clause, where any of the vendors is a firm, the members of the firm shall not be treated as separate vendors.

13. The amount, if any, or the nature and extent of any consideration, paid within the two preceding years, or payable, as commission to any person (including commission so paid or payable to any sub-underwriter, who is a promoter or officer of the company) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares in, or debentures of the company; and giving also the following particulars, namely:—

(a) the name, description, address and occupation of each such person;

(b) particulars of the amounts which each has underwritten or sub-underwritten as aforesaid;

(c) the rate of the commission payable for such underwriting or sub-underwriting;

(d) any other material term or condition of the underwriting or sub-underwriting contract with such person; and

(e) when such person is a company or a firm, the nature of any interest direct or indirect, in such company or firm of any promoter or officer of the company in respect of which the prospectus is issued.

14. (1) Save as hereinafter provided in clause 27, the amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable.

(2) Save as aforesaid, the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

15. Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter or officer and the consideration for the payment or the giving of the benefit.

16. (1) The dates of, parties to, and general nature of—

(a) every contract appointing or fixing the remuneration of a managing director, managing agent, secretaries and treasurers or manager whenever entered into, that is to say, whether within, or more than, two years before the date of the prospectus;

(b) every other material contract not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of the prospectus.

(2) A reasonable time and place at which any such contract or a copy thereof may be inspected.

17. The names and addresses of the auditors, if any, of the company.

18. (1) Full particulars of the nature and extent of the interest, if any, of every director or promoter—

(a) in the promotion of the company; or

(*b*) in any property acquired by the company within two years of the date of the prospectus or proposed to be acquired by it.

(*2*) Where the interest of such a director or promoter consists in being a member of a firm or company, the nature and extent of the interest of the firm or company, with a statement of all sums paid or agreed to be paid to him or to the firm or company in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm or company in connection with the promotion or formation of the company.

19. If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

20. Where the articles of the company impose any restrictions upon the members of the company in respect of the right to attend, speak or vote at meetings of the company or of the right to transfer shares, or upon the directors of the company in respect of their powers of management, the nature and extent of those restrictions.

21. (*1*) In the case of a company which has been carrying on business, the length of time during which the business of the company has been carried on.

(*2*) If the company proposes to acquire a business which has been carried on for less than three years, the length of time during which the business has been carried on.

22. (*1*) If any reserves or profits of the company or any of its subsidiaries have been capitalised, particulars of the capitalisation.

(*2*) Particulars of the surplus arising from any revaluation of the assets of the company or any of its subsidiaries during the two years preceding the date of the prospectus and the manner in which such surplus has been dealt with.

23. A reasonable time and place at which copies of all balance sheets and profit and loss accounts, if any, on which the report of the auditors under Part II of this Schedule is based, may be inspected.

PART II

Reports to be set out

24. (*1*) A report by the auditors of the company with respect to—

(*a*) profits and losses and assets and liabilities, in accordance with sub-clause (*2*) or (*3*) of this clause, as the case may require; and

(*b*) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company for each of

the five financial years immediately preceding the issue of the prospectus, giving particulars of each class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares for any of those years;

and, if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

(2) If the company has no subsidiaries, the report shall—

(*a*) so far as regards profits and losses, deal with the profits or losses of the company (distinguishing items of a non-recurring nature) for each of the five financial years immediately preceding the issue of the prospectus; and

(*b*) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.

(3) If the company has subsidiaries, the report shall—

(*a*) so far as regards profits and losses, deal separately with the company's profits or losses as provided by sub-clause (2) and in addition, deal either—

(*i*) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the company; or

(*ii*) individually with the profits or losses of each subsidiary, so far as they concern members of the company;

or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company, and, so far as they concern members of the company, with the combined profits or losses of its subsidiaries; and

(*b*) so far as regards assets and liabilities, deal separately with the company's assets and liabilities as provided by sub-clause (2) and in addition, deal either—

(*i*) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities, or

(*ii*) individually with the assets and liabilities of each subsidiary;

and shall indicate as respects the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

25. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly—

(*i*) in the purchase of any business; or

(*ii*) in the purchase of an interest in any business and by reason of that purchase or, anything to be done in consequence thereof, or in connection therewith, the company will become entitled to an interest, as respects either the capital or profits and losses or both, in such business exceeding fifty per cent. thereof;

a report made by accountants (who shall be named in the prospectus) upon—

(*a*) the profits or losses of the business for each of the five financial years immediately preceding the issue of the prospectus; and

(*b*) the assets and liabilities of the business at the last date to which the accounts of the business were made up, being a date not more than one hundred and twenty days before the date of the issue of the prospectus.

26. (*1*) If—

(*a*) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate; and

(*b*) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith, that body corporate will become a subsidiary of the company;

a report made by accountants (who shall be named in the prospectus) upon—

(*i*) the profits or losses of the other body corporate for each of the five financial years immediately preceding the issue of the prospectus; and

(*ii*) the assets and liabilities of the other body corporate at the last date to which its accounts were made up.

(*2*) The said report shall—

(*a*) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired; and

(*b*) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by sub-clause (*3*) of clause 24 of this Schedule in relation to the company and its subsidiaries.

PART III

PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE

27. Clause 1 (so far as it relates to * * * * * particulars of the signatories of the memorandum and the shares subscribed for by them) and clause 14 (so far as it relates to preliminary expenses) of this Schedule shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

28. Every person shall, for the purposes of this Schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(a) the purchase money is not fully paid at the date of the issue of the prospectus;

(b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;

(c) the contract depends for its validity or fulfilment on the result of that issue.

29. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, * * the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

30. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than five financial years, the accounts of the company or business have only been made up in respect of four such years, three such years, two such years or one such year, Part II of this Schedule shall have effect as if references to four financial years, three financial years, two financial years or one financial year, as the case may be, were substituted for references to five financial years.

* * * * * *

31. Where the five financial years immediately preceding the issue of the prospectus which are referred to in Part II of this Schedule or in this Part cover a period of less than five years, references to the said five financial years in either Part shall have effect as if references to a number of financial years the aggregate period covered by which is not less than five years immediately preceding the issue of the prospectus were substituted for references to the five financial years aforesaid.

32. Any report required by Part II of this Schedule shall either—

(a) indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary; or

(b) make those adjustments and indicate that adjustments have been made.

33. Any report by accountants required by Part II of this Schedule—

(*a*) shall be made by accountants qualified under this Act for appointment as auditors of a company; and

(*b*) shall not be made by any accountant who is an officer or servant, or a partner * * or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company.

For the purposes of this clause, the expression "officer" shall include a proposed director but not an auditor.

SCHEDULE III

(*See* section 69)

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A COMPANY WHICH DOES NOT ISSUE A PROSPECTUS OR WHICH DOES NOT GO TO ALLOTMENT ON A PROSPECTUS ISSUED, AND REPORTS TO BE SET OUT THEREIN.

PART I

FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN THE COMPANIES ACT, 1955

Statement in lieu of Prospectus delivered for registration by

[*Insert the name of the company.*]

Pursuant to section 69 of the Companies Act, 1955

Delivered for registration by	
The nominal share capital of the company.	Rs.
Divided into	Shares of Rs. each. " " " " " "
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of Rs. each.
The earliest date on which the company has power to redeem these shares.	
Names, occupations and addresses of— (*a*) directors or proposed directors; (*b*) managing director or proposed managing director; (*c*) managing agent or proposed managing agent; (*d*) secretaries and treasurers or proposed secretaries and treasurers; (*e*) manager or proposed manager.	
Any provision in the articles of the company or in any contract irrespective of the time when it was entered into, as to appointment of and remuneration payable to the persons referred to in (*a*), (*b*), (*c*), (*d*) and (*e*) above.	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. shares of Rs. fully paid. 2. shares upon which Rs. per share credited as paid.

The consideration for the intended issue of those shares and debentures.	3. Debentures. Rs. 4. Consideration :—
Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from, a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.	1. shares of Rs.....and debentures of Rs.....
Period during which the option is exercisable.	2. Until
Price to be paid for shares or debentures subscribed for or acquired under the option.	3.
Consideration for the option or the right to option.	4. Consideration :
Persons to whom the option or the right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.	5. Names and addresses—
Names, occupations and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material.	
Amount (in cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash, shares or debentures) for each such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price Rs..... Cash . . Rs..... Shares . . Rs..... Debentures . Rs..... Good will . Rs.....
Short particulars of every transaction relating to each such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest, direct or indirect.	

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company ; or	Amount paid. ,, payable.
Rate of the commission . . .	Rate per cent.
The number of shares, if any, which persons have agreed to subscribe for a commission.	
If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year, the above requirements shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on. Where the financial year with respect to which the accounts of the business have been made up is greater or less than a year, references to three years, two years, and one year in this paragraph shall have effect as if references to such number of financial years as in the aggregate, cover a period of not less than three years, two years or one year, as the case may be, were substituted for references to three years, two years and one year respectively.	
Estimated amount of preliminary expenses.	Rs.
By whom those expenses have been paid or are payable.	
Amount paid or intended to be paid to any promoter. Consideration for the payment .	Name of promoter. Amount Rs. Consideration :—
Any other benefit given or intended to be given to any promoter.	Name of promoter :— Nature and value of benefit :—

Consideration for ** the benefit.

Consideration :—

Dates of, parties to and general nature of—

(*a*) contract appointing or fixing the remuneration of directors, managing director, managing agent, secretaries and treasurers, or manager; and

(*b*) every other material contract other than (*i*) contracts entered into in the ordinary course of the business intended to be carried on by the company or (*ii*) entered into more than two years before the delivery of this statement.

Time and place at which (*1*) the contracts or copies thereof or (*2*) (*i*) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (*ii*) in the case of a contract wholly or partly in a language other than English, a copy of a translation thereof in English or embodying a translation in English of the parts in the other language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, may be inspected.

Names and addresses of the auditors of the company (if any).

Full particulars of the nature and extent of the interest of every director, managing director, managing agent, secretaries and treasurers or manager in the promotion of or in the property proposed to be acquired by the company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services

rendered by him or by the firm in connection with the promotion or formation of the company.

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorised in writing.)

Date

PART II

REPORTS TO BE SET OUT

1. Where it is proposed to acquire a business, a report made by accountants (who shall be named in the statement) upon—

(*a*) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and

(*b*) the assets and liabilities of the business as at the last date to which the accounts of the business were made up.

2. (*1*) Where it is proposed to acquire shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-clause (*2*) or (*3*) of this clause as the case may require, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(*2*) If the other body corporate has no subsidiaries, the report referred to in sub-clause (*1*) shall—

(*a*) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and

(*b*) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate as at the last date to which the accounts of the body corporate were made up.

(*3*) If the other body corporate has subsidiaries, the report referred to in sub-clause (*1*) shall—

(*a*) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by sub-clause (*2*) and in addition deal either—

(*i*) as a whole with the combined profits or losses of its subsidiaries so far as they concern members of the other body corporate; or

(*ii*) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate;

or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries; and

(*b*) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by sub-clause (*2*) and, in addition, deal either—

(*i*) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities; or

(*ii*) individually with the assets and liabilities of each subsidiary; and shall indicate, as respects the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

PART III

PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE

3. (*1*) In this Schedule, the expression "vendor" includes a vendor as defined in Part III of Schedule II.

(*2*) Clause 31 of Schedule II shall apply to the interpretation of Part II of this Schedule as it applies to the interpretation of Part II of Schedule II.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five financial years, the accounts of the business or body corporate have only been made up in respect of four such years, three such years, two such years or one such year, Part II of this Schedule shall have effect as if references to four financial years, three financial years, two financial years or one financial year, as the case may be, were substituted for references to five financial years.

5. Any report required by Part II of this Schedule shall either—

(*a*) indicate by way of note any adjustments as respects the figures of any profit or losses or assets and liabilities dealt with by the report which appear to the person making the report necessary; or

(*b*) make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II of this Schedule—

(*a*) shall be made by accountants qualified under this Act for appointment as auditors of a company; and

(*b*) shall not be made by any accountant who is an officer or servant, or a partner * * or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this clause the expression "officer" shall include a proposed director but not an auditor.

SCHEDULE IV

[*See* section 43(2)(*b*)]

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A PRIVATE COMPANY ON BECOMING A PUBLIC COMPANY AND REPORTS TO BE SET OUT THEREIN.

PART I

FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN.

THE COMPANIES ACT, 1955

Statement in lieu of Prospectus delivered for registration by

[*Insert the name of the Company.*]

Pursuant to clause (*b*) of sub-section (*2*) of section 43 of the Companies Act, 1955.

Delivered for registration by	
The nominal share capital of the company.	Rs.
Divided into	Shares of Rs. each. " " " " " "
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of Rs. each.
The earliest date on which the company has power to redeem these shares.	
Names, occupations and addresses of—	
(*a*) directors or proposed directors;	
(*b*) managing director or proposed managing director;	
(*c*) managing agent or proposed managing agent;	
(*d*) Secretaries and treasurers or proposed Secretaries and treasurers;	
(*e*) manager or proposed manager.	
Any provision in the articles of the company, or in any contract irrespective of the time when it was entered into, as to appointment of and remuneration payable to the persons referred to in (*a*), (*b*), (*c*), (*d*) and (*e*) above.	
Amount of shares issued . . .	Shares.
Amount of commission paid or payable in connection therewith.	
Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement.	

Unless more than two years have elapsed since the date on which the company was entitled to commence business :—

Amount of preliminary expenses. Rs.

By whom those expenses have been paid or are payable.

Amount paid or intended to be paid to any promoter — Name of promoter :— Amount Rs.

Consideration for the payment . — Consideration :—

Any other benefit given or intended to be given to any promoter. — Name of promoter :— Nature and value of benefit :—

Consideration for the * * * benefit — Consideration :—

]:the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

Number and amount of shares and debentures issued within the two years preceding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement. — 1. shares of Rs. fully paid. 2. shares upon which Rs. per share credited as paid.

Consideration for the issue of those shares or debentures. — 3. debentures for Rs. each 4. Consideration :—

Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from, a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale — 1. shares of Rs. and debentures of Rs.

Period during which the option is exercisable. — 2. Until.

Price to be paid for shares or debentures subscribed for or acquired under the option. — 3.

Consideration for the option or right to option. — 4. Consideration :—

Persons to whom the option or the right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures. — 5. Names and addresses :—

Names, occupations and addresses of vendors of property (*1*) purchased or

acquired by the company within the two years preceding the date of this statement or (*2*) agreed or proposed to be purchased or acquired by the company, except where the contract for its purchase or acquisition was entered into in the ordinary course of business and there is no connection between the transaction and the company ceasing to be a private company or where the amount of the purchase money is not material.

Amount (in cash, shares or debentures) paid or payable to each separate vendor.

Amount paid or payable in cash, shares or debentures for each such property, specifying the amount paid or payable for goodwill.

Total purchase price Rs.....

Cash . . . Rs.
Shares . . Rs.
Debentures . Rs.

Goodwill . . Rs.

Short particulars of every transaction relating to each such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest direct or indirect.

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company ; or rate of the commission.

Amount paid
Amount payable.
Rate per cent.

The number of shares, if any, which persons have agreed to subscribe for a commission.

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year, the above requirements shall have effect as if references to two years or one year, as the case

may be, were substituted for references to three years, and in any such case, the statement shall say how long the business to be acquired has been carried on. Where the financial year with respect to which the accounts of the business have been made up is greater or less than a year, references to three years, two years and one year in this paragraph shall have effect as if references to such number of financial years as, in the aggregate, cover a period of not less than three years, two years or one year, as the case may be, were substituted for references to three years, two years and one year respectively.

Dates of, parties to and general nature of—

(*a*) contract appointing or fixing the remuneration of directors, managing director, managing agent, secretaries and treasurers or manager ; and

(*b*) every other material contract other than (*i*) contracts entered into in the ordinary course of the business intended to be carried on by the company or (*ii*) entered into more than two years before the delivery of this statement.

Time and place at which (*1*) the contracts or copies thereof ; or (*2*) (*i*) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (*ii*) in the case of a contract wholly or partly in a language other than English, a copy of translation thereof in English or embodying a translation in English * * * * * of the parts in the other language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, may be inspected.

Names and addresses of the auditors of the company.

Full particulars of the nature and extent of the interest of every director, managing director, managing agent, secretaries and treasurers or manager, in any property purchased or acquired by the company within the two years preceding the date of this statement or proposed to be purchased or acquired by the company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become or to qualify him as, a director, or otherwise for services rendered or to be rendered to the company by him or by the firm.

Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the five financial years immediately preceding the date of this statement or since the incorporation of the company, whichever period is shorter.

Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.

(Signatures of the persons above-named as directors or proposed directors or of their agents authorised in writing.)

_____

_____

_____

Date.

PART II

Reports to be set out

1. If unissued shares or debentures of the company are to be applied in the purchase of a business, a report made by accountants (who shall be named in the statement) upon—

(a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and

(b) the assets and liabilities of the business as at the last date to which the accounts of the business were made up.

2. (*1*) If unissued shares or debentures of the company are to be applied directly or indirectly in any manner resulting in the acquisition of shares in a body corporate which by reason of the acquisition

or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-clause (*2*) or (*3*) of this clause, as the case may require, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with. for holders of other shares, if the company had at all material times held the shares to be acquired.

(*2*) If the other body corporate has no subsidiaries. the report referred to in sub-clause (*1*) shall—

(*a*) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and

(*b*) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate as at the last date to which the accounts of the body corporate were made up.

(*3*) If the other body corporate has subsidiaries, the report referred to in sub-clause (*1*) shall—

(*a*) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by sub-clause (*2*), and in addition deal either—

(*i*) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate; or

(*ii*) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate;

or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate. with the combined profits or losses of its subsidiaries; and

(*b*) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by sub-clause (*2*) and in addition, deal either—

(*i*) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities; or

(*ii*) individually with the assets and liabilities of each subsidiary; and shall indicate. as respects the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

PART III

PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE

3. (*1*) In this Schedule the expression "vendor" includes a vendor as defined in Part III of Schedule II.

(*2*) Clause 31 of Schedule II shall apply to the interpretation of Parts I and II of this Schedule as it applies to the interpretation of Part II of Schedule II.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five financial years, the accounts of the business or body corporate have only been made up in respect of four such years, three such years, two such years or one such year, Parts I and II of this Schedule shall have effect as if references to four financial years, three financial years, two financial years or one financial year, as the case may be, were substituted for references to five financial years.

5. Any report required by Part II of this Schedule shall either—

(*a*) indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary; or

(*b*) * * make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II of this Schedule shall—

(*a*) be made by accountants qualified under this Act for appointment as auditors of a company; and

(*b*) shall not be made by any accountant who is an officer or servant or a partner * * or in the employment of an officer or servant, of the company, or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this clause the expression "officer" shall include a proposed director but not an auditor.

SCHEDULE V

(*See* section 158)

CONTENTS AND FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL

PART I

CONTENTS

1. The address of the registered office of the company.

2. If any part of the register of members or debenture holders of a company is, under the provisions of this Act, kept in any State or country outside India, the name of that State or country and the address of the place where such part of the register is kept.

3. A summary, specifying the following particulars, and distinguishing wherever possible between shares issued for cash, bonus shares, and shares other than bonus shares issued as fully or partly paid up otherwise than in cash, and specifying in respect of each class of shares the following particulars:—

(a) the amount of the nominal share capital of the company and the number of shares into which it is divided;

(b) the number of shares taken, from the commencement of the company up to the date of the company's last annual general meeting;

(c) the amount called up on each share up to the date aforesaid;

(d) the total amount of calls received up to that date;

(e) the total amount of calls unpaid on that date;

(f) the total amount of the sums (if any) paid by way of commission in respect of any shares or debentures up to that date;

(g) the discount allowed on the issue of any shares issued at a discount or so much of that discount as has not been written off at the date aforesaid;

(h) the total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the annual general meeting with reference to which the last return was submitted;

(i) the total number of shares forfeited up to the date referred to in sub-clause (b);

(j) the total amount of shares for which share warrants are outstanding at the date referred to in sub-clause (b) and of share warrants issued and surrendered respectively since the date referred to in sub-clause (h) and the number of shares comprised in each warrant.

4. Particulars of the total amount of the indebtedness of the company on the date referred to in sub-clause (b) of clause 3 in respect of all mortgages and charges which are required to be registered with the Registrar under this Act [or which would have been required so to be registered if created on or after the 1st day of April, 1914.]

5. A list—

(*a*) containing the names, addresses and occupations, if any, of all persons who, on the day of the company's last annual general meeting, are members of the company, and of persons who had ceased to be members on or before that day and since the date referred to in sub-clause (*h*) of clause 3 or, in the case of the first return, since the incorporation of the company;

(*b*) stating the number of shares held by each of the existing members at the date referred in sub-clause (*b*) of clause 3, specifying shares transferred since the date referred to in sub-clause (*h*) of clause 3 (or, in the case of the first return, since the incorporation of the company) by persons who are still members and by persons who have ceased to be members respectively, and the dates of registration of the transfers;

(c) if the names aforesaid are not arranged in alphabetical order, having annexed thereto an index sufficient to enable the name of any person therein to be easily found.

6. All such particulars, with respect to the persons who at the date of the company's last annual general meeting are the directors of the company and with respect to any person who at that date is the managing agent, secretaries and treasurers, the manager or the secretary of the company, as are by this Act required to be contained with respect to directors, the managing agent, secretaries and treasurers, the manager and the secretary respectively in the register of the directors, managing agents, secretaries and treasurers, managers and secretaries of a company.

PART II

FORM

ANNUAL RETURN of Limited, made up to the day of , 19 being the date of the last annual general meeting of the company.

I. Address.

(*Address of the registered office of the company.*)

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2. Situation of Foreign Registers of Members and Debenture holders.

(*a*) *Name of every State or country outside India in which foreign register is kept.*

(*b*) *Address of place in each such State or country in which a foreign register is kept.*

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3. Summary of Share Capital and Debentures.

(*a*) *Nominal Share Capital.*

Nominal share capital—Rs.....divided into :

(*Insert number and class*) shares of.....each
....shares of....each
....shares of....each
....shares of....each

(*b*) *Issued Share Capital and Debentures.*

	Number	*Class*	
Number of shares of each class taken up to the date of the last annual general meeting (which number must agree with the total shown in the list as held by members on that date)	..	..	shares
	..	..	shares
	..	..	shares
	..	..	shares
	..	..	shares
Number of shares of each class issued subject to payment wholly in cash.	..	..	shares
	..	..	shares
	..	..	shares
	..	..	shares
Number of shares of each class issued as fully paid up for a consideration other than cash.	..	..	shares
	..	..	shares
	..	..	shares
	..	..	shares
Number of shares of each class issued as partly paid up for a consideration other than cash and extent to which each such share is so paid up.	..	..	shares issued as paid up to the extent of Rs. ..... per share
	..	..	shares issued as paid up to the extent of Rs. ..... per share
	..	..	shares issued as paid up to the extent of Rs. ..... per share
	..	..	shares issued as paid up to the extent of Rs. ..... per share
Number of shares (if any) of each class issued at a discount.	..	..	shares
	..	..	shares
	..	..	shares
	..	..	shares
Amount of discount on the issue of shares which has not been written off at the date of last annual general meeting	Rs.		

	Number	*Class*	
Amount called upon number of shares of each class. Rs..... per share on	..	..	shares
Rs..... per share on	..	..	shares
Rs..... per share on	..	..	shares
Rs..... per share on	..	..	shares
Total amount of calls received, including payments on application and allotment and any sums received on shares forfeited.	Rs.		

		Number	*Class*	
Total amount (if any) agreed to be considered as paid on number of shares of each class issued as fully paid up for a consideration other than cash.	Rs.....on	..	..	shares
		..	..	shares
		..	..	shares
		..	..	shares
Total amount (if any) agreed to be considered as paid on number of shares of each class issued as partly paid up for a consideration other than cash.	Rs.....on	..	..	shares
		..	..	shares
		..	..	shares
		..	..	shares
Total amount of calls unpaid . . .		Rs.....		
Total amount of the sums (if any) paid by way of commission in respect of any shares or debentures . . .		Rs.....		
Total amount of the sums (if any) allowed by way of discount in respect of any debentures since the date of the annual general meeting with reference to which the last annual return was submitted.		Rs.....		
		Number	*Class*	
Toral number of shares of each class forfeited.		..	..	shares
		..	..	shares
		..	..	shares
		..	..	shares
Total amount paid (if any) on shares forfeited.		Rs.....		
Total amount of shares for which share warrants to bearer are outstanding.		Rs.....		
Total amount of share warrants to bearer issued and surrendered respectively since the date of the annual general meeting with reference to which the last annual return was submitted.		Issued Rs.....		
		Surrendered Rs.....		
Number of shares comprised in each share warrant to bearer, specifying in the case of warrants of different kinds, particulars of each kind.		.....		

4. Particulars of Indebtedness.

Total amount of indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar under the Companies Act,

1955 [or which would have been required so to be registered if created on or after the 1st April, 1914.] Rs.....

5. List of Past and Present Members.

List of persons holding shares or stock in the company on the day of the annual general meeting, namely, the ..... day of ..... 19 , and of persons who have held shares or stock therein at any time since the day of 19 ..... when the previous annual meeting was held, or in the case of the first return, at any time since the incorporation of the company.

Folio in register ledger containing particulars	Names, addresses and occupations, if any	Account of Shares: Number of shares held by members at date of annual general meeting *†	Account of Shares: Particulars of shares transferred since the date of the previous annual general meeting or, in the case of the first return, since the incorporation of the company, by (*a*) persons who are still members and (*b*) persons who have ceased to be members‡			Remarks
			Number †	Date of registration of transfer		
				(*a*)	(*b*)	

*The aggregate number of shares held by each member must be stated, and the aggregates must be added up so as to agree with the number of shares stated in the summary of share capital and debentures to have been taken up.

†When the shares are of different classes these columns should be sub-divided so that the number of each class held, or transferred, may be shown separately. Where any shares have been converted into stock, the amount of stock held by each member must be shown.

‡The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transfer or and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer.

Notes.

1. If either of the two immediately preceding returns has given as at the date of the annual general meeting with reference to which it was submitted, the full particulars required as past and present members and the shares and stock held and transferred by them, only such of the particulars need be given as relate to persons ceasing to be or becoming members since that date and to shares transferred since that date or to changes as compared with that date in the amount of stock held by a member.

2. If the names in the list are not arranged in alphabetical order, an index sufficient to enable the name of any person to be readily found must be annexed.

6. Particulars of Directors, Managing Agents, Secretaries and Treasurers, Managers and Secretaries.

A. Particulars of the persons who are directors of the company on the day of the annual general meeting, namely, the....day of.....19

Present name or names and surname, in full	Any former name or names and surname, in full	Nationality	Usual residential address	Business, occupation and particulars of other directorships, managing agencies, secretaries and treasurerships managerships and secretaryships held	Date of birth

B. Particulars of the person/persons who is Managing Agent/are Secretaries and Treasurers of the company on the day aforesaid.

Name (In the case of an individual, present name or names and surname, in full. In the case of a corporation or a firm, the corporate or firm name)	Any former name or names and surname, in full	Usual residential address (In the case of a corporation or firm, the registered or principal office)	Particulars of other managing agencies, offices of secretaries and treasurers directorships, managerships and secretaryships held

C. Particulars of the person who is Manager/Secretary of the company on the day aforesaid.

Present name or names and surname, in full	Any former name or names and surname, in full	Nationality	Usual residential address	Particulars of other managerships, secretaryships, directorships, managing agencies and offices of secretaries and treasurers held

Signed ....., Director
Signed ....., Managing Agent
Signed ....., Secretaries and Treasurers
Signed ....., Manager
Signed ....., Secretary

" Director " includes any person who occupies the position of a director by whatsoever name called, and any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

" Name " includes a " forename ", and " surname " in the case of a person usually known by a title different from his surname, means that title.

" Former name " and " former surname " do not include—

(*a*) in the case of a person usually known by a title different from his surname, the name by which he was known previous to the adoption of or succession to the title ; or

(*b*) in the case of any person, a former name or surname where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years or has been changed or disused for a period of not less than twenty years ; or

(*c*) in the case of a married woman the name or surname by which she was known previous to the marriage.

The names of all bodies corporate incorporated or carrying on business in India of which the director, managing agent, secretaries and treasurers manager or secretary is also a director, managing agent, secretaries and treasurers, manager or secretary should be given, except bodies corporate of which the company making the return is the wholly-owned subsidiary or bodies corporate which are the wholly-owned subsidiaries either of the company or of another body corporate of which the company is the wholly-owned subsidiary. A body corporate is deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees. If the space provided in the form is insufficient, particulars of other directorships, managing agencies, offices of secretaries and treasurers, managerships, or secretaryships should be listed on a separate statement attached to this return.

Dates of birth need only be given in the case of a company which is subject to section 279 of the Companies Act, 1955, namely, a company which is not a private company or which, being a private company, is the subsidiary of a public company.

Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated.

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*Delivered for filing by.....

CERTIFICATES AND OTHER DOCUMENTS ACCOMPANYING ANNUAL RETURN.

Certificate to be given by a Director and the Managing Agent/ Secretaries and Treasurers, Manager/Secretary of every Private Company.

We certify that the company has not since the date of† [the incorporation of the company/the annual general meeting with reference to which the last annual return was submitted] issued any

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*This should be printed at the bottom of the first page of the return.

†In the case of the first return strike out the second alternative. In the case of a second or subsequent return strike out the first alternative.

invitation to the public to subscribe for any shares or debentures of the company.

Signed....., Director.
Signed....., Managing Agent,
Secretaries and Treasurers
Manager, Secretary.

Further Certificate to be given as aforesaid if the number of Members of the Company exceeds Fifty.

We certify that the excess of the number of members of the company over fifty consists wholly of persons who, under sub-clause (*b*) of clause (*iii*) of section 3 of the Companies Act, 1955, are not to be included in reckoning the number of fifty.

Signed....., Director.
Signed....., Managing Agent,
Secretaries and Treasurers
Manager, Secretary.

Certified copies of Accounts.

There must be annexed to this return a written copy, certified both by a director and by the managing agent/secretaries and treasurers, manager/secretary of the company to be a true copy, of every balance sheet laid before the company in general meeting during the period to which this return relates (including every document required by law to be annexed to the balance sheet) and a copy (certified as aforesaid) of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet. If any such balance sheet or document required by law to be annexed thereto is in a language other than English, there must also be annexed to that balance sheet a translation in English of the balance sheet or document certified in the prescribed manner to be a correct translation. If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets or documents aforesaid, as the case may be, there must be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the fact that the copy has been so amended must be stated thereon.

SCHEDULE VI

[*See* section 210]

PART I

Form of balance sheet.

Balance Sheet of ..... (Here enter the name of the company)

As at ..... (Here enter the date as at which the balance sheet is made out)

Instructions in accordance with which liabilities should be made out	Liabilities		Assets		Instructions in accordance with which assets should be made out
	Figures for the previous year	Figures for the current year	Figures for the previous year	Figures for the current year	
	Rs. (*b*)	Rs. (*b*)	Rs. (*b*)	Rs. (*b*)	
*Terms of redemption or conversion (if any) of any Redeemable Preference Capital to be stated, together with earliest date of redemption or conversion. Particulars of any option on unissued share capital to be specified.		*I. SHARE CAPITAL : Authorised ..... shares of Rs. .....each. Subscribed (distinguishing between the various classes of capital and stating the particulars specified below, in respect of each class.) ..shares of Rs. .....each. Rs. ..... called up. Of the above shares, ... shares are allotted as fully paid up pursuant to a contract without payments being received in cash. Of the above shares, ... shares are allotted as fully paid up by way of bonus shares. *Less* : Calls unpaid : (*i*) By managing agents or secretaries and treasurers and where the managing agent or secretaries and treasurers are a firm, by the partners thereof.		*I. FIXED ASSETS : Distinguishing as far as possible between expenditure upon (a) goodwill, (b) land, (c) buildings, (d) leaseholds, (e) railway sidings, (f) plant and machinery, (g) furniture and fittings, (h) development of property, (i) patents, trade marks and designs, (j) live-stock and (k) vehicles etc.	*Under each head the original cost, and the additions thereto and deductions therefrom during the year, and the total depreciation written off or provided, to be stated. In case where original cost figures cannot be ascertained the valuation shown by the books shall be given and where any of the assets are sold and the original cost in respect thereof is not ascertainable, the amount of the sale proceeds shall be shown as deduction.

and where the managing agent or secretaries and treasurers are a private company, by the directors or members of that company.
(ii) By directors.
(iii) By others.

Where sums have been written off on a reduction of capital or a revaluation of assets, every Balance Sheet, (after the first Balance Sheet) subsequent to the reduction or revaluation shall show the reduced figures and with the date of the reduction, in place of the original cost.

Each Balance Sheet for the first five years subsequent to the date of the reduction, shall show also the amount of the reduction made.

Similarly, where sums have been added by writing up the assets, every Balance Sheet subsequent to such writing up shall show the increased figures with the date of the increase in place of the original cost.

Instructions in accordance with which liabilities should be made out.	Liabilities.		Assets.		Instructions in accordance with which assets should be made out.
	Figures for the previous year.	Figures for the current year.	Figures for the previous year.	Figures for the current year.	
	Rs (*b*)	Rs. (*b*)	Rs. (*b*)	Rs. (*b*)	
		Add : Forfeited shares (amount paid up) Share Premium Account.			Each Balance Sheet for the first five years subsequent to the date of writing up shall also show the amount of increase made.
*Additions and deductions since last Balance Sheet to be shown under each of the specified heads.		*II. RESERVES AND SURPLUS : (1) Capital Reserves not available for dividend. (2) Capital Redemption Reserve Fund. (3) Other Reserves specifying the nature of each reserve and the amount in respect thereof.	II. INVESTMENTS : Showing nature of investments and mode of valuation, for example cost or market value and distinguishing between— *(1) Investments in Government or Trust Securities. *(2) Investments in shares, debentures or bonds (showing separately shares fully paid up and partly paid up and also distinguishing the different classes of shares).		*Aggregate amount of company's quoted investments and also the market value thereof shall be shown. Aggregate amount of company's unquoted investments shall also be shown.
		Less : Debit balance in Profit and Loss Account (if any).			
		(4) Any other Fund created out of Net Profit. (5) Surplus, that is, balance in Profit and Loss Account, after providing for proposed allocations, *viz.*, Dividend, Bonus or Reserves. (6) Proposed additions to reserves. (7) Liability Funds. (8) Sinking Funds. (9) Pension, Insurance or Provident Funds, etc.	*(3) Investments in shares, debentures or bonds of subsidiary companies (c). (4) Immovable properties.		

*The nature of the security to be specified in each case.

Where loans have been guaranteed by managing agents, secretaries and treasurers, managers, and/or directors, a mention thereof should be made also and also the aggregate amount of such loans under each head.

III. SECURED LOANS :
(1) Debentures.
*(2) Loans and Advances from Banks.
*(3) Loans and Advances from subsidiaries.
*(4) Other Loans and Advances.

INTEREST ACCRUED ON INVESTMENTS

III. CURRENT ASSETS :
(1) Stores and Spare Parts.
(2) Loose Tools.
‡(3) Stock-in-trade.
**(4) Works in Progress.
†(5) Sundry Debtors.
Less : Reserves.

‡ Mode of valuation of stock shall be stated and the amount in respect of raw materials shall also be stated separately where practicable.

**Mode of valuation of works shall be stated.

†In regard to Sundry Debtors, particulars to be given separately of—(*a*) debts considered good and in respect of which the company is fully secured ; and (*b*) debts considered good for which the company holds no security other than the debtor's personal security ; and (*c*) debts considered doubtful or bad.

Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private

Instructions in accordance with which liabilities should be made out.	Liabilities.		Assets.		Instructions in accordance with which assets should be made out.
	Figures for the previous year.	Figures for the current year.	Figures for the previous year.	Figures for the current year.	
	Rs. (*b*)	Rs. (*b*)	Rs. (*b*)	Rs. (*b*)	
					companies respectively in which any director is a partner or a director or a member to be separately stated.
					Debts due from other companies under the same management to be disclosed with the names of the companies (*vide* section 370).
					The maximum amount due by directors or other officers of the company at any time during the year to be shown by way of a note.

*See note (*d*) at foot of form.

IV. UNSECURED LOANS :

(1) Fixed Deposits.
(2) Loans and Advances from subsidiaries.
*(3) Short Term Loans and Advances :

(*a*) From Banks.
(*b*) From others.

(4) Other Loans and Advances :

(*a*) From Banks.
(*b*) From others.

V. CURRENT LIABILITIES AND PROVISIONS :

(1) Acceptances.
(2) Sundry Creditors.
(3) Interest accrued and accruing on secured loans.
(4) Interest accrued and accruing on unsecured loans.
(5) Subsidiary Companies.
(6) Provision for Taxation.
(7) Provision for Contingencies.
(8) Proposed Dividends.
(9) Advance Payments and Unexpired Discounts for the portion for which value has still to be given, *e.g.*, in the case of the following classes of companies :—
(Newspaper, Fire Insurance, Theatre, Clubs, Banking, Steamship Companies, etc.)

†IV. LOANS AND ADVANCES :

(1) Bills of Exchange.
(2) Advances recoverable in cash or in kind or for value to be received, *e.g.*, Rates, Taxes, Insurance, etc.
(3) Balances on current account with managing agents or secretaries and treasurers.
(4) Balances with Customs, Port Trust, etc. (where payable on demand).

†The above instructions regarding "Sundry Debtors" apply to "Loans and Advances" also. In addition, Loans and Advances to subsidiary companies shall be separately stated.

Instructions in accordance with which liabilities should be made out.	Liabilities.		Assets.		Instructions in accordance with which assets should be made out.
	Figures for the previous year.	Figures for the current year.	Figures for the previous year.	Figures for the current year.	
	Rs. (*b*)	Rs. (*b*)	Rs. (*b*)	Rs. (*b*)	
		(10) Unclaimed Dividends. (11) Other Liabilities (if any). (12) Contingent Liabilities :			
		(*i*) Claims against the company not acknowledged as debts.			
		(*ii*) Uncalled liability on shares partly paid held as investment.			
		VI. CONTINGENT LIABILITIES NOT PROVIDED FOR :			
‡The period for which the dividends are in arrear or if there is more than one class of shares, the dividends on each such class are in arrear, shall be stated.		‡(1) Arrears of Fixed Cumulative Dividends.			
The amount shall be stated before deduc-			*V. CASH AND BANK BALANCES.		*The balances lying with Bankers on current accounts,

tion of income-tax, except that in the case of tax-free dividends the amount shall be shown free of income-tax and the fact that it is so shown shall be stated.				call accounts and deposit accounts shall be shown separately.
‡‡The amount of any guarantees given by the company on behalf of directors or other officers of the company shall be stated and where practicable, the general nature and amount of each such contingent liability, if material, shall also be specified.	‡‡(2) Other money for which the company is contingently liable.		VI. MISCELLANEOUS EXPENDITURE AND LOSSES (to the extent not written off): (1) Preliminary expenses. (2) Expenses including Commission or Brokerage on under-writing or subscription of shares or debentures. (3) Discount allowed on the issue of shares or debentures. (4) Interest paid out of Capital during construction (also stating the rate of interest). (5) Profit and Loss Account. (only, if there is no General Reserve from which it can be deducted).	

NOTES

General instructions for preparation of balance sheet.—(*a*) The information required to be given under any of the items or sub-items in this Form if it cannot be conveniently included in the Balance Sheet itself shall be furnished in a separate Schedule or Schedules to be annexed to and to form part of the Balance Sheet. This is recommended when items are numerous.

(*b*) Annas and pies can also be given in addition to Rupees, if desired.

(*c*) In the case of subsidiary companies, etc., the number of shares held by the ultimate holding company and its subsidiaries must ** be separately stated.

(*d*) Short Term Loans will include those which are due for not more than one year as at the date of the Balance Sheet.

(*e*) Depreciation written off or provided shall be allocated under the different asset heads and deducted in arriving at the value of Fixed Assets.

(*f*) Dividends declared by subsidiary companies after the date of the Balance Sheet cannot be included unless they are in respect of a period which closed on or before the date of the Balance Sheet.

(*g*) Any reference to benefits expected from contracts not executed shall not be made in the Balance Sheet but shall be made in the Board's report.

(*h*) The debit balance in the Profit and Loss Account shall be set off against the General Reserve and where there is no General Reserve, against future profits.

(*i*) As regards Loans and Advances (Group IV), amounts due by the managing agents, secretaries and treasurers either severally or jointly with any other persons to be separately stated ; the amounts due from other companies under the same management should also be given with the names of the companies: *vide*, section 370 ; the maximum amount due from every one of these at any time during the year must be shown.

(*j*) Particulars of any redeemed debentures which the company has power to issue should be given.

(*k*) Where any of the company's debentures are held by a nominee or a trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the books of the company shall be stated.

(*l*) A list of investments separately classifying Trade Investments and Other Investments should be attached to the Balance Sheet stating the names of the bodies corporate (with the names of their managing agent, or secretaries and treasurers, if any,) in whose shares, debentures or bonds, investments have been made and also stating the amounts in respect of each item, provided however that it shall not be necessary to give such particulars (*a*) in respect of investments made by Managing Agency companies in managed companies' shares, debentures or bonds, or (*b*) in respect of investments made by Investment Companies, provided that particulars in respect of investments in shares of Private Companies shall be given. The amount in respect of the holdings by Investment Companies in unquoted shares or shares of private limited companies shall be separately stated, specifying the name of each such company and the amount invested therein.

(*m*) If in the opinion of the Board, any of the current assets have not a value on realisation in the ordinary course of business at least equal to the amount at which they are stated, the fact that the Board are of that opinion shall be stated.

(*n*) Except in the case of the first Balance Sheet laid before the company after the commencement of the Act, the corresponding amounts for the immediately preceding financial year for all items shown in the Balance Sheet shall be also given in the Balance Sheet. The requirements in this behalf shall in the case of companies preparing quarterly or half-yearly accounts etc. relate to the Balance Sheet for the corresponding date in the previous year.

(*o*) The amounts to be shown under Sundry Debtors shall include the amounts due in respect of goods sold or services rendered or in respect of other contractual obligations but shall not include the amounts which are in the nature of loans or advances. A debt which remains unrealised after a period of three months from the date on which the debit in respect of the same arose shall be treated as a loan or an advance and the amounts in this behalf shall, for the purposes of the Balance Sheet, be treated as a loan or an advance and separately shown as such under the heading "Loans and Advances".

PART II

Requirements as to Profit and Loss Account

1. The provisions of this Part shall apply to the income and expenditure account referred to in sub-section (2) of section 209 of the Act, in like manner as they apply to a profit and loss account, but subject to the modification of references as specified in that sub-section.

2. The profit and loss account—

(a) shall be so made out as clearly to disclose the result of the working of the company during the period covered by the account; and

(b) shall disclose every material feature, including credits or receipts and debits or expenses in respect of non-recurring transactions or transactions of an exceptional nature.

3. The profit and loss account shall set out the various items relating to the income and expenditure of the company arranged under the most convenient heads; and in particular, shall disclose the following information in respect of the period covered by the account:—

(i) (a) The turnover, that is, the aggregate amount for which sales are effected by the company.

(b) The selling agents commission, brokerage and discount on sales, other than the usual trade discount.

(ii) (a) In the case of manufacturing concerns, the purchases of raw material, and the opening and the closing stocks of the goods produced.

(b) In the case of trading concerns, the purchases made, and the opening and the closing stocks.

(c) In the case of concerns rendering or supplying services, the gross income derived from services rendered or supplied.

(d) In the case of other concerns, the gross income derived under the different heads.

(iii) In the case of all concerns having works in progress, the amounts for which works remained to be executed at the commencement and at the end of the accounting period.

(iv) The amount provided for depreciation, renewals or diminution in value of fixed assets.

If such provision is not made by means of a depreciation charge, the method adopted for making such provision.

If no provision is made for depreciation, the fact that no provision has been made shall be stated.

(v) The amount of interest on the company's debentures and other fixed loans, that is to say, loans for fixed periods, stating separately the amount of interest, if any, payable to the managing director, the managing agent, the secretaries and treasurers and the manager, if any.

(*vi*) The amount of charge for Indian income-tax and other Indian taxation on profits, including, where practicable, with Indian income-tax any taxation imposed elsewhere to the extent of the relief, if any, from Indian income-tax and distinguishing where practicable between income-tax and other taxation.

(*vii*) The amounts provided for—

(*a*) repayment of share capital; and

(*b*) repayment of loans.

(*viii*) (*a*) The aggregate, if material, of any amounts set aside or proposed to be set aside, to reserves, but not including provisions made to meet any specific liability, contingency or commitment known to exist at the date as at which the balance sheet is made up.

(*b*) The aggregate, if material, of any amounts withdrawn from such reserves.

(*ix*) (*a*) The aggregate, if material, of the amounts set aside to provisions made for meeting specific liabilities, contingencies or commitments.

(*b*) The aggregate, if material, of the amounts withdrawn from such provisions, as no longer required.

(*x*) Expenditure incurred on each of the following items, separately for each item:—

(*a*) Consumption of stores and spare parts.

(*b*) Power and fuel.

(*c*) Rent.

(*d*) Repairs to buildings.

(*e*) Repairs to machinery.

(*f*) (*1*) Salaries, wages and bonus.

(*2*) Contribution to provident and other funds.

(*3*) Workmen and staff welfare expenses.

(*g*) Insurance.

(*h*) Rates and taxes, excluding taxes on income.

(*i*) Miscellaneous expenses.

(*xi*) (*a*) The amount of income from investments, distinguishing between trade investments and other investments.

(*b*) Other income by way of interest, specifying the nature of the income.

(*c*) The amount of income-tax deducted if the gross income is stated under sub-paragraphs (*a*) and (*b*) above.

(*xii*) (*a*) Profits or losses on investments.

(*b*) Profits or losses in respect of transactions of a kind, not usually undertaken by the company or undertaken in circumstances of an exceptional or non-recurring nature, if material in amount.

(*c*) Miscellaneous income.

(*xiii*) (*a*) Dividends from subsidiary companies.

(*b*) Provisions for losses of subsidiary companies.

(*xiv*) The aggregate amount of the dividends paid and proposed, and stating whether such amounts are subject to deduction of income-tax or not.

(*xv*) Amount, if material, by which any items shown in the profit and loss account are affected by any change in the basis of accounting.

4. The profit and loss account shall also contain, or give by way of a note the following further information:—

(*i*) The total of the amounts payable to the managing agent, if any, whether as fees, percentages or otherwise for services rendered as managing agent or in any other capacity.

(*ii*) The total of the amounts payable to secretaries and treasurers, if any, whether as fees, percentages or otherwise, for services rendered as secretaries and treasurers or in any other capacity.

(*iii*) The total of the amounts payable whether as fees, percentages or otherwise to the directors, managing director or manager respectively as remuneration for services rendered as directors, managing director or manager or in any other capacity.

If any director of the company is by virtue of any nomination made by it whether directly or indirectly, a director of any other company, any remuneration or other emoluments received by him for his own use whether as director or in any other capacity, in connection with the management of that other company shall be shown in a note at the foot of the account or in a statement annexed thereto.

Particulars of the amounts received by individual directors shall be separately given for each of the subsidiaries of the company.

(*iv*) The aggregate amount of any compensation paid to the managing agent, secretaries and treasurers, directors, the managing director or the manager or the former managing agent, secretaries and treasurers, directors, managing director, or manager of the company—

(*a*) as such, and

(*b*) in any other capacity,

for loss of office in connection with, or arising out of, their retirement from the office held by them in the company or from any office held by them in any other company by virtue of any nomination, made by the first-mentioned company, whether directly or indirectly.

Any compensation so paid to any person shall be sub-divided so as to show the amounts paid respectively—

(*a*) by the company,

(*b*) by the other company or each of the other companies, and

(c) by any other person.

(*v*) The aggregate amount of any pension or gratuity paid to the directors, managing director, or manager, or former directors, managing director or manager of the company—

(*a*) as such, and

(*b*) in any other capacity.

Any pension or gratuity so paid to any person shall be subdivided so as to show the amounts paid respectively—

(*a*) by the company, and

(*b*) by any subsidiary company.

5. The Central Government may direct that a company shall not be obliged to show the amount set aside to provisions other than those relating to depreciation, renewal or diminution in value of assets, if the Central Government is satisfied that the information should not be disclosed in the public interest and would prejudice the company, but subject to the condition that in any heading stating an amount arrived at after taking into account the amount set aside as such, the provision shall be so framed or marked as to indicate that fact.

6. (*1*) Except in the case of the first profit and loss account laid before the company after the commencement of the Act, the corresponding amounts for the immediately preceding financial year for all items shown in the profit and loss account shall also be given in the profit and loss account.

(*2*) The requirement in sub-clause (*1*) shall, in the case of companies preparing quarterly or half-yearly accounts, relate to the profit and loss account for the period which ended on the corresponding date of the previous year.

PART III

Interpretation

7. (*1*) For the purposes of Parts I and II of this Schedule, unless the context otherwise requires,—

(*a*) the expression "provision" shall, subject to sub-clause (*2*) of this clause, mean any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy;

(*b*) the expression "reserve" shall not, subject as aforesaid, include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability;

(c) the expression "capital reserve" shall not include any amount regarded as free for distribution through the profit and loss account and the expression "revenue reserve" shall mean any reserve other than a capital reserve;

and in this clause the expression "liability" shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(2) Where—

(a) any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, not being an amount written off in relation to fixed assets before the commencement of this Act: or

(b) any amount retained by way of providing for any known liability;

is in excess of the amount which in the opinion of the directors is reasonably necessary for the purpose, the excess shall be treated for the purposes of this Schedule as a reserve and not as a provision.

8. For the purposes aforesaid, the expression "quoted investment" means an investment as respects which there has been granted a quotation or permission to deal on a recognised stock exchange, * * *; and the expression "unquoted investment" shall be construed accordingly.

SCHEDULE VII

(*See* sections 368 and 379)

* * * * * * * * * *

Restrictions on powers of managing agent / secretaries and treasurers

The managing agent / secretaries and treasurers shall not exercise any of the following powers except after obtaining the previous approval of the Board of directors of the company in regard to each such exercise:—

(*1*) Power to appoint (but not to suspend or dismiss) any person as manager of the company;

(*2*) Power to appoint as an officer or member of the staff of the company, payable from its funds (as distinguished from the funds of the managing agent, / secretaries and treasurers or from out any remuneration payable to him by the company), any person—

(*a*) on a remuneration or scale of remuneration exceeding the limits laid down by the Board in this behalf; or

(*b*) who is a relative of the managing agent, or where the managing agent is / secretaries and treasurers are a firm, of any partner in the firm, or where the managing agent, is / director secretaries and treasurers are a private company, of any director or member of such company;

* * * * * * * *

(*3*) Power to purchase capital assets for the company except where the purchase price is within the limits prescribed by the Board in this behalf;

(*4*) Power to sell the capital assets of the company, except where the sale price is within the limits prescribed by the Board in this behalf;

(*5*) Power to compound, or sanction the extension of time for the satisfaction or payment of, any claim or demand of the company against (including any debt claimed to be due to it from) the managing agent / secretaries and treasurers or any associate of the managing agent. / secretaries and treasurers.

(*6*) Power to compound any claim or demand made against the company (including any debt claimed to be due from it) by the managing agent / secretaries and treasurers or any associate of the managing agent. / secretaries and treasurers.

SCHEDULE VIII

(*See* sections 346 and 379)

Declarations to be made by firms, private companies and other bodies corporate acting as managing agents secretaries and treasurers

Definition

1. (*1*) In this Schedule, "relevant date" means—

(*a*) in the case of a firm or body corporate holding office at the commencement of this Act as the managing agent secretaries and treasurers of a company, the date of such commencement; and

(*b*) in the case of a firm or body corporate appointed or re-appointed after the commencement of this Act as the managing agent secretaries and treasurers of a company, the date of such appointment or reappointment.

(*2*) For the purposes of sub-clause (*1*), the expressions "re-appointment" and "re-appointment" shall have the same meaning as they have for the purposes of sub-section (*1*) of section 327.

Firms

2. Every * * firm acting as the managing agent, of any company or companies secretaries and treasurers shall file with each company, whether public or private, of which it acts as such a declaration specifying—

(*a*) the names of the partners constituting the firm on the relevant date;

(*b*) the share, or the extent of the interest, of each partner in the firm, on the relevant date;

(*c*) the names of persons, if any other than partners, who are interested, on the relevant date, in any share of, or amount forming part of the remuneration payable to the managing agent secretaries and treasurers by the company; and the extent of the interest of each such person in such remuneration.

3. The declaration shall be signed by a partner of the firm and shall be filed within one month of the relevant date.

4. If any change occurs in regard to any of the matters specified in clause 2 after the relevant date, a declaration specifying the change and signed by a partner of the firm shall be filed, within three weeks of the occurrence of the change, with each of the companies referred to in that clause.

Private companies

5. Every private company which acts as managing agent secretaries and treasurers of any other company or companies, whether public or private, shall file with each of those companies, a declaration specifying—

(*a*) the names of the members of the private company on the relevant date;

(*b*) where the private company has a share capital, the shares held by each member of the company, on that date;

(*c*) where the private company has no share capital, the extent of the interest of each member of the company in it on that date;

(*d*) the manner in which each such member holds his shares or interest, that is to say, whether he holds the same beneficially or on behalf of or in trust for any other person; and in the latter case, the name or names of the person or persons on whose behalf or in trust for whom the shares or interest is held and the extent of the interest of each such person;

(*e*) the names of the directors of the private company and the name of its managing director, if any;

(*f*) the names of persons, if any, who are interested in any share of, or amount forming part of; the remuneration payable to the private company by the company under its management, otherwise than as members of the private company; and the extent of the interest of each such person in such remuneration;

(*g*) that no arrangement has been entered into to the knowledge of the private company, under which the control of the private company is vested in any persons other than the members of the company and the persons referred to in sub-clause (d):

Provided that the obligation to furnish information on the matters specified in sub-clauses (*d*) and (*f*) shall extend only to such particulars relating to those matters as are within the knowledge of the private company.

6. The declaration shall be signed by a director of the company and shall be filed within two months of the relevant date.

7. If, to the knowledge of the company, there is a sale or transfer of any shares in the company or an agreement has been entered into, for the sale or transfer of any such shares, or any other change occurs in regard to any of the matters specified in clause 5, a declaration specifying the sale, transfer, agreement or change and signed by a director of the company shall be filed, within six weeks thereof, with each of the companies referred to in that clause.

8. Where any shares are sold or transferred or agreed to be sold or transferred, the declaration referred to in clause 7 shall specify the name of the person or persons who part with or have agreed to part with the shares and also the name of the person or persons who acquire or have agreed to acquire them, with full details of the sale, transfer or agreement.

Other bodies corporate

9. The provisions of clauses 5 to 8 shall apply to every body corporate (other than a private company) acting as the managing agent secretaries and treasurers of any company, unless it is exempt from the operation of the provisions of this Schedule by virtue of section 346.

General

10. (*1*) All declarations filed with any company in pursuance of this Schedule shall be open to inspection, and extracts may be taken therefrom and copies thereof may be required, by any member of the company to the same extent, in the same manner and on payment of the same fees as is applicable in respect of the register of members of the company.

(*2*) All such declarations shall also be open to inspection by any director of the company, free of charge.

SCHEDULE IX

FORM OF PROXY

[*See* Article 62 of Table A and also section 175 (6)]

I

"……Name of Company,

I / We ……of……in the district of……

being a member / members of the above-named Company hereby appoint

……of……in the district of……or failing him,

……of……in the district of……

as my / our proxy to vote for me / us on my / our behalf at the annual general meeting / general meeting (not being an annual general meeting) of the company to be held on the……day of……and at any adjournment thereof.

Signed this……day of ……"

†II

"……Name of Company…… ……

I / We "……of……, ……

in the district of ……, being a member / members of the above-named Company, hereby appoint……of……in the district of……, or failing him……of……

……in the district of……, as my / our proxy to vote for me / us on my / our behalf at the annual general meeting / general meeting (not being an annual general meeting) of the company, to be held on the……day of……19……, and at any adjournment thereof.

Signed this ……day of……19……

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†This form is to be used *in favour / *against of the resolution. Unless otherwise instructed, the proxy will vote as he thinks fit.

*Strike out whichever is not desired.

SCHEDULE X

(*See* sections 569 and 606)

Table of fees to be paid to the Registrar

1. *By a company having a share capital*

	Rs. A. P.
1. For registration of a company whose nominal share capital does not exceed Rs. 20,000, a fee of . .	40 0 0
2. For registration of a company whose nominal share capital exceeds Rs. 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital:—	
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 20,000 rupees up to 50,000 rupees	20 0 0
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 50,000 rupees up to 10,00,000 rupees	5 0 0
For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 10,00,000 rupees	1 0 0

3. For registration of any increase of share capital made after the first registration of the company, the same fees per 10,000 rupees or part of 10,000 rupees, as would have been payable if such increased share capital had formed part of the original share capital at the time of registration :

Provided that no company shall be liable to pay in respect of nominal share capital on registration, or afterwards, any greater amount of fees than 1,000 rupees, taking into account, in the case of fees payable on an increase of share capital after registration, the fees paid on registration.

4. For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.

5. For filing or registering any document by this Act required or authorised to be filed or registered, other than—

(*a*) the memorandum or the abstract required to be filed with the Registrar by a receiver, or

(*b*) the statement required to be filed with the Registrar by the liquidator in a winding up

a fee of 5 0 0

6. For making a record of or registering any fact by this Act required or authorised to be recorded or registered by the Registrar, a fee of 5 0 0

II. *By a company not having a share capital*	Rs.	A.	P.
7. For registration of a company whose number of members as stated in the articles of association, does not exceed 20, a fee of	40	0	0
8. For registration of a company whose number of members as stated in the articles of association, exceeds 20 but does not exceed 100, a fee of	100	0	0
9. For registration of a company whose number of members as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 100 with an additional Rs. 5 for every 50 members, or less number than 50 members, after the first 100.			
10. For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of	400	0	0
11. For registration of any increase on the number of members made after the registration of the company, the same fee as would have been payable in respect of such increase, if such increase had been stated in the articles of association at the time of registration :			
Provided that no company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members, taking into account the fee paid on the first registration of the company.			
12. For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
13. For filing or registering any document by this Act required or authorised to be filed or registered with the Registrar other than—			
(*a*) the memorandum or the abstract required to be filed with the Registrar by a receiver, or			
(*b*) the statement required to be filed with the Registrar by the liquidator in a winding up,			
a fee of	5	0	0
14. For making a record of or registering any fact by this Act required or authorised to be recorded or registered by the Registrar, a fee of	5	0	0

SCHEDULE XI

(*See* section 405)

FORM IN WHICH SECTIONS 536 TO 541 OF ACT ARE TO APPLY TO CASES WHERE AN APPLICATION IS MADE UNDER SECTION 396 OR 397.

536. Penalty for falsification of books.—If with intent to defraud or deceive any person, any officer or member of a company in respect of which an application has been made under section 396 or 397—

(*a*) destroys, mutilates, alters, falsifies or secretes any books, papers or securities, or is privy to the destruction, mutilation, alteration, falsification, or secreting of any books, papers or securities; or

(*b*) makes, or is privy to the making of, any false or fraudulent entry in any register, book of account or document belonging to the company,

he shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

537. Penalty for frauds by officers.—If any person, being at the time of the commission of the alleged offence an officer of a company in respect of which the Court subsequently makes an order under section 396 or 397,—

(*a*) has, by false pretences or by means of any other fraud, induced any person to give credit to the company; * *

(*b*) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or

(*c*) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company, or within two months before that date,

he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.

538. Liability where proper accounts not kept.—(*1*) Where an application has been made to the Court under section 396 or 397 in respect of a company, if it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the making of the application, or the period between the incorporation of the company and the making of the

application, whichever is shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, be punishable with imprisonment for a term which may extend to one year.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company, if there have not been kept—

(a) such books or accounts as are necessary to exhibit and explain the transactions and financial position of the business of the company, including books containing entries made from day to day in sufficient detail of all cash received and all cash paid; and

(b) where the business of the company has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

539. Liability for fraudulent conduct of business.—(1) If in the course of the * * * proceedings on an application made to the Court under section 396 or 397 in respect of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company, or * * * any other persons, or for any fraudulent purpose, the Court * * * * * * may, if it thinks it proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court may direct.

* * * * * *

(2) (a) Where the Court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.

(b) In particular, the Court may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any * * * * person on his behalf, or any * * person claiming as assignee from or through the person liable or any * * * * person acting on his behalf.

(c) The Court may, from time to time, make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.

(d) For the purpose of this sub-section, the expression "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without

notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

(4) This section shall apply, notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

540. Power of Court to assess damages against delinquent directors, etc.—(1) If, in the course of the proceedings on an application made to the Court under section 396 or 397, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, managing agent, secretaries and treasurers or manager * * * or any officer of the company—

(a) has misapplied or retained or become liable or accountable for any money or property of the company, or

(b) has been guilty of any misfeasance or breach of trust in relation to the company,

the Court may, on the application * * * * of any creditor or * * * member, examine into the conduct of such person, director, managing agent, secretaries and treasurers, manager * * * * or officer aforesaid, and compel him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Court thinks just or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(2) This section shall apply notwithstanding that the matter is one for which the person concerned may be criminally liable.

541. Liability under sections 539 and 540 to extend to partners or directors in * * * firm or company.—Where * * * * a declaration under section 539 or an order under section 540 is or may be made * * * * in respect of a firm or body corporate, the Court shall also have power to make a declaration under section 539 or an order under section 540, * * * in respect of any person who is a partner in that firm or a director of that body corporate.

SCHEDULE XII

(*See* section 635).

Enactments repealed

Year	No.	Subject or short title	Extent of repeal
1	2	3	4
1913	VII	The Indian Companies Act, 1913.	The whole. * * * * * * * *
1942	LIV	The Registration of Transferred Companies Ordinance.	Do
1951	LII	The Indian Companies (Amendment) Act, 1951	Do
1952	LI	The Indian Companies (Amendment) Act, 1952.	Do

APPENDIX I

(Vide *para.* 2 *of the Report*)

Motion in the Lok Sabha for reference of the Bill to Joint Committee

"That the Bill to consolidate and amend the Law relating to companies and certain other Associations, be referred to a Joint Committee of the Houses consisting of 49 members, 33 members from this House, namely:—

1. Shri Hari Vinayak Pataskar
2. Shri Chimanlal Chakubhai Shah
3. Shri Awadeshwar Prasad Sinha
4. Shri V. B. Gandhi
5. Shri Khandubhai Kasanji Desai
6. Shri Dev Kanta Borooah
7. Shri Shriman Narayan Agarwal
8. Shri R. Venkataraman
9. Shri Ghamandi Lal Bansal
10. Shri Radheshyam Ramkumar Morarka
11. Shri B. R. Bhagat
12. Shri Nityanand Kanungo
13. Shri Purnendu Sekhar Naskar
14. Shri T. S. Avinashilingam Chettiar
15. Shri K. T. Achuthan
16. Shri Kotha Raghuramaiah
17. Pandit Chatur Narain Malviya
18. Dr. Shaukatullah Shah Ansari
19. Shri Tekur Subrahmanyam
20. Col. B. H. Zaidi
21. Shri Mulchand Dube
22. Pandit Munishwar Dutt Upadhyay
23. Shri Radhelal Vyas
24. Shri Ajit Singh
25. Shri Kamal Kumar Basu
26. Shri C. R. Chowdary
27. Shri M. S. Gurupadaswamy
28. Shri Amjad Ali
29. Shri N. C. Chatterjee
30. Shri Tulsidas Kilachand
31. Shri G. D. Somani

32. Shri Tridib Kumar Chaudhuri and

33. Shri C. D. Deshmukh

and 16 members from the Council;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the last day of the first week of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to the Council that the Council do join in the said Joint Committee and communicate to this House the names of the members to be appointed by the Council to the Joint Committee."

APPENDIX II

(Vide *para.* 3 *of the Report*)

Motion in the Rajya Sabha

"That this Council concurs in the recommendation of the House of the People that the Council do join in the Joint Committee of the Houses on the Bill to consolidate and amend the law relating to companies and certain other associations and resolves that the following members of the Council of States be nominated to serve on the said Joint Committee:—

1. Dr. P. Subbarayan
2. Shri S. P. Jain
3. Shri Somnath P. Dave
4. Dr. R. P. Dube
5. Shri B. K. P. Sinha
6. Dr. Nalinaksha Dutt
7. Shri R. S. Doogar
8. Shri Jaspat Roy Kapoor
9. Shri S. Chattanatha Karayalar
10. Shri Amolakh Chand
11. Shri M. C. Shah
12. Shri V. K. Dhage
13. Shri G. Ranga
14. Shri Satyapriya Banerjee
15. Shri B. C. Ghose
16. Dr. P. V. Kane."

APPENDIX III

(Vide *para.* 5 *of the Report*)

Report of the Sub-Committee of the Joint Committee on the Companies Bill, 1953, Appointed to Examine the Drafting of Clauses 209—306 of the Bill.

I, the Chairman of the Sub-Committee of the Joint Committee on the Companies Bill, 1953, having been authorised by the Sub-Committee to submit the Report on their behalf, present this their Report.

2. The Sub-Committee was appointed by the Joint Committee at their 36th meeting held on the 13th November, 1954 to examine the drafting of Clauses 209 to 306 of the Bill and to suggest necessary amendments, if any (*vide* para. 2 of the Minutes of the Joint Committee, dated the 13th November, 1954—Appendix A).

3. The Sub-Committee held 6 sittings in all.

4. The Sub-Committee have examined Clauses 209—237 only of the Bill. The Sub-Committee were not able to examine the other clauses for want of time.

5. The amendments suggested by the Sub-Committee with regard to the clauses examined by them are embodied in the minutes of the meetings of the Sub-Committee. (Appendix B).

6. The Sub-Committee recommend that the amendments suggested by them be accepted by the Joint Committee.

H. V. PATASKAR,
Chairman,
Sub-Committee of the Joint Committee.

NEW DELHI;
The 26th November, 1954.

APPENDIX IV

(Vide *para. 5 of the Report*)

Report of the Sub-Committee of the Joint Committee on the Companies Bill, 1953, for the Examination of Schedules to the Bill

I, the Chairman of the Sub-Committee of the Joint Committee on the Companies Bill, 1953, for the examination of Schedules to the Bill, having been authorised by the Sub-Committee to submit the Report on their behalf, present this their Report.

2. The Sub-Committee was appointed by the Joint Committee at their 53rd Meeting held on the 7th February, 1955 to examine the Schedules to the Bill and to suggest necessary amendments therein (*vide* para. 6 of the Minutes of the Joint Committee, dated the 7th February, 1955—Appendix C).

3. The Sub-Committee held two sittings in all.

4. The Sub-Committee have examined Schedules I to XII to the Bill.

5. The amendments suggested by the Sub-Committee with regard to the Schedules along with reasons for the same are embodied in the minutes of the meetings of the Sub-Committee. (*vide* Appendix D).

6. Extension of time for presentation of the Report of the Sub-Committee upto the 12th February, 1955 was sought at the meeting of the Joint Committee held on the 11th February, 1955 and granted.

7. The Sub-Committee recommend that the amendments suggested by them be accepted by the Joint Committee.

N. C. CHATTERJEE,
Chairman,
Sub-Committee of the Joint Committee.

NEW DELHI;
The 12th February, 1955.

Annexure A

MINUTES OF THE 36TH MEETING OF THE JOINT COMMITTEE ON THE COMPANIES BILL, HELD ON SATURDAY, THE 13TH NOVEMBER, 1954.

* * * * * * * *

2. The Committee appointed a Sub-Committee consisting of the following Members to examine the drafting of the clauses 209 to 306 of the Bill and to suggest necessary amendments therein if any:—

Shri Hari Vinayak Pataskar—*Chairman.*
Shri M. C. Shah
Shri C. C. Shah
Shri Radheshyam Ramkumar Morarka
Pandit Chatur Narain Malviya

The Sub-Committee was directed to complete the work entrusted to them before the next meeting of the Committee.

* * * * * * * *

Annexure B

(*Vide* para. 5 of Appendix III).

MINUTES OF THE MEETINGS OF THE SUB-COMMITTEE OF THE JOINT COMMITTEE ON THE COMPANIES BILL, 1953 APPOINTED TO EXAMINE THE DRAFTING OF CLAUSES 209—306 OF THE BILL.

I

First Meeting

The Sub-Committee met from 3 P.M. to 5-5 P.M. on Monday, the 15th November, 1954.

PRESENT

Shri Hari Vinayak Pataskar—*Chairman*

MEMBERS

2. Shri M. C. Shah
3. Shri Chimanlal Chakubhai Shah
4. Shri Radheshyam Ramkumar Morarka
5. Shri Chatur Narain Malviya.

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

1. Shri D. L. Mazumdar
2. Shri K. V. Rajagopalan
3. Shri R. Ganapathi Iyer.

} *Officers on Special Duty, Department of Economic Affairs, Ministry of Finance.*

SECRETARIAT

Shri M. Sundar Raj—*Deputy Secretary.*

Shri P. K. Patnaik—*Under Secretary.*

2. In accordance with the decision of the Committee dated the 13th November, 1954 (para. 2, Minutes, dated the 13th November, 1954) appointing the Sub-Committee with directions to consider clauses 209 to 306 of the Bill with a view to examine the drafting and to suggest necessary amendments therein, if any, the Sub-Committee took up examination of the said clauses.

3. The suggestions of the Sub-Committee in respect of different clauses of the Bill are detailed in the succeeding paragraphs.

4. *Clauses* 209.—In the title of the clause (page 94, line 35)—

for "Qualifications and appointment and powers and duties of auditors", *substitute* "Appointment and remuneration of auditors".

Sub-clause (5):

(i) at page 95, line 11,—

for "may", *substitute* "shall";

(ii) at page 95, line 12,—

for "before the first annual general meeting" *substitute* "within three months of the date of registration of the Company";

(iii) at page 95, lines 13-14,—

for "that meeting", *substitute* "the next succeeding annual general meeting".

5. *Clause* 210.—In sub-clause (2),—

(i) at page 96, line 7,—

delete "if any".

(ii) It was decided to add a penalty provision in this sub-clause (2) to the effect that non-compliance on the part of the Company of the requirements of sub-clause (2) will render the Company liable for a fine extending up to five hundred rupees. The Draftsman was asked to place a draft accordingly.

(iii) In sub-clause (3) (at page 96, line 27)—

for "on an application under this section", *substitute* "on such an application".

(iv) In sub-clause (4) (at page 96, lines 31-32)—

for "as it applies", *substitute* "as they apply".

6. *Clause* 211.—In sub-clause (1)—

(i) at page 96, line 39,—

delete "either";

(ii) at page 96, lines 40—42,—

delete "or as having obtained adequate knowledge and experience in the course of his employment by a chartered accountant as aforesaid".

New Sub-clause (2):

Add new sub-clause (2) as follows:—

"(2) (a) Notwithstanding anything contained in sub-section (1) but subject to the provisions of rules made under sub-clause (b) of this sub-section the holder of a certificate granted under a law in force in the whole or any portion of a part B State immediately before the commencement of the Part B States (Laws) Act, 1951, (III of 1951) entitling him to act as an auditor of companies in that State or any portion thereof shall be entitled to be appointed to act as an auditor of companies registered anywhere in that State.

(b) The Central Government may, by notification in the Official Gazette, make rules providing for the grant, renewal, suspension or

cancellation of auditors' certificates to persons in Part B States for the purposes of clause (b), and prescribing conditions and restrictions for such grant, renewal, suspension or cancellation."

The existing sub-clauses (2) to (4) to be renumbered as 3 to 5.

7. The Sub-Committee then adjourned to meet again at 3 P.M. on Tuesday, the 16th November, 1954.

II

Second Meeting

The Sub-Committee met from 3 P.M. to 4 P.M. on Tuesday, the 16th November, 1954.

PRESENT

Shri Hari Vinayak Pataskar—*Chairman*

MEMBERS

2. Shri M. C. Shah
3. Shri Radheshyam Ramkumar Morarka
4. Pandit Chatur Narain Malviya

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

1. Shri D. L. Mazumdar
2. Shri K. V. Rajagopalan
3. Shri R. Ganapathi Iyer

} *Officers on Special Duty, Department of Economic Affairs, Ministry of Finance.*

SECRETARIAT

Shri M. Sundar Raj—*Deputy Secretary.*

Shri P. K. Patnaik—*Under Secretary.*

2. The Sub-Committee took up examination of clauses 211 to 219 of the Bill.

3. The suggestions of the Sub-Committee in respect of the clauses aforesaid are detailed in the succeeding paragraphs.

4. *Clause* 211.—(*contd.*).—

In sub-clause (2)—

(i) *insert* new paragraph (a) as follows:—

"(a) a body corporate";

(ii) *re-letter* the existing paragraphs (a) to (e) as paragraphs (b) to (f);

(iii) *after* the proviso to this sub-clause (2), *add* the following:—

"References in this sub-section to an officer or servant shall be construed as not including references to an auditor."

The Draftsman was directed to examine this and suggest further amendments necessary therein, if any.

5. *Clause* 212.—

(i) *New sub-clause* (4):

Insert a new sub-clause (4) as follows:—

"(4) Where any of the matters referred to in clauses (i) and (ii) of sub-section (2) or in clauses (a), (b) and (c) of sub-section (3) is answered in the negative or with a qualification, the auditor's report shall state the reason for the answer."

(ii) *Re-number* existing sub-clause (4) as sub-clause (5).

6. *Clause* 213.—

In sub-clause (1)—

at page 98, line 26,—

for "section 210", *substitute* "section 211".

7. *Clauses* 214 to 216.—

No amendments.

8. *Clause* 217.—

(i) In the title,—

for "212", *substitute* "210";

(ii) at page 99, line 10,—

for "211", *substitute* "210";

9. *Clause* 218.—

No amendments.

10. *Clause* 219.—

In sub-clause (7)

at page 100, line 9,—

for "or the creditors of any other person", *substitute* "in fraud of persons dealing with the company".

11. The Sub-Committee then adjourned to meet again at 3 P.M. on Wednesday, the 17th November, 1954.

III

Third Meeting

The Sub-Committee met from 3 P.M. *to* 4-25 P.M. on Wednesday, the 17th November, 1954.

PRESENT

Shri Hari Vinayak Pataskar—*Chairman*

MEMBERS

2. Shri M. C. Shah
3. Shri Radheshyam Ramkumar Morarka
4. Pandit Chatur Narain Malviya

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

1. Shri D. L. Mazumdar
2. Shri K. V. Rajagopalan
3. Shri R. Ganapathi Iyer

} *Officers on Special Duty, Department of Economic Affairs, Ministry of Finance.*

SECRETARIAT

Shri M. Sundar Raj—*Deputy Secretary.*

Shri P. K. Patnaik—*Under Secretary.*

2. The Sub-Committee took up examination of clauses 220 to 222 of the Bill.

3. The suggestions of the Sub-Committee in respect of the clauses aforesaid are detailed in the succeeding paragraphs.

4. *Clause* 220.—

In page 100, line 23,—

insert "competent persons as" *between* "more" and "inspectors".

5. *Clause* 221.—

In the title of the clause (in page 100, lines 34-35),—

for "Application for inspection by members to be supported by evidence", *substitute* "Application by members to be supported by evidence and power to call for security".

6. *Clause* 222.—

In sub-clause (a) (in page 100, line 43),—

insert "competent persons as" *between* "more" and "inspectors".

In sub-clause (b)—

(i) in page 101, line 1,—

for "in the opinion of", *substitute* "it appears to";

(ii) in page 101, line 1,—

insert "that" *between* "Government" and "there";

(iii) in page 101, line 6,—

for "any of its members", *substitute* "any part of its members";

(iv) in page 101, line 12,—

delete "any of".

The Sub-Committee also suggested that an Explanation on the lines of the recommendation of the Report of the Company Law Committee contained in para. 1 at page 305 of the said Report be added to this sub-clause. The Draftsman was asked to examine this and to place a draft 'Explanation' before the Sub-Committee.

New Clause 222A.—

Insert a new clause 222A as follows:—

"222-A. *Firms, body corporate, etc. not to be appointed under section* 220 *or* 222.—No firm, body corporate or other

association shall be appointed as an inspector under section 220 or 222."

7. The Sub-Committee then adjourned to meet again at 3 P.M. on Thursday, the 18th November, 1954.

IV

Fourth Meeting

The Sub-Committee met from 3 P.M. to 4-5 P.M. on Thursday, the 18th November, 1954.

PRESENT

Shri Hari Vinayak Pataskar—*Chairman*

MEMBERS

2. Shri M. C. Shah
3. Shri Radheshyam Ramkumar Morarka
4. Pandit Chatur Narain Malviya

Shri Amolakh Chand and Shri B. R. Bhagat (Members, Joint Committee on the Companies Bill), were also present.

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

1. Shri D. L. Mazumdar
2. Shri K. V. Rajagopalan
3. Shri R. Ganapathi Iyer

Officers on Special Duty, Department of Economic Affairs, Ministry of Finance.

SECRETARIAT

Shri M. Sundar Raj—*Deputy Secretary.*

Shri P. K. Patnaik—*Under Secretary.*

2. The Sub-Committee took up examination of clauses 222 to 228 of the Bill.

3. The suggestions of the Sub-Committee in respect of the clauses aforesaid are detailed in the succeeding paragraphs.

4. *Clause* 222 (reviewed).—

The Sub-Committee reviewed their decision arrived at on the 17th November in regard to the amendments suggested therein in page 101, line 1 and it was decided that no change need be made in page 101, line 1.

5. *Clause* 223.—

In sub-clause (b),—

In page 101, line 26,—

before "the company", *insert* "the managing agent of".

6. *Clause* 224.—

(i) *Sub-clause* (2):

In page 102, line 12,—

after "as the case may be" *add* "and may administer an oath accordingly".

(ii) *Sub-clause* (3):

In page 102, lines 19—23,—

for "and if after hearing * * * * * * contempt of the court", *substitute* "and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the court".

(iii) *New sub-clause* (5):

In page 102, after line 43,—

add the new sub-clause (5) as follows:—

"(5) Notes of any examination under sub-section (2) or (4) shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him."

(iv) *Re-number* the existing sub-clause (5) as sub-clause (6).

7. *Clause* 225.—

(i) In page 103, lines 31 to 35,—

omit the proviso.

(ii) In page 103, line 36,—

for "(3) the Central Government may also cause the report to be published" *substitute* "may also cause the report to be printed and published". It was decided to add the above line as a part of sub-clause (2).

8. *Clause* 226.—

No amendment.

9. *Clause* 227.—

In page 104, line 11,—

for "the Registrar", *substitute* "any person authorised by the Central Government in this behalf".

10. *Clause* 228.—

No amendment.

11. The Sub-Committee then adjourned to meet again at 3 P.M. on Friday, the 19th November, 1954.

V

Fifth Meeting

The Sub-Committee met from 3 P.M. to 4 P.M. on Friday, the 19th November, 1954.

PRESENT

Shri Hari Vinayak Pataskar—*Chairman*

MEMBERS

2. Shri M. C. Shah

3. Pandit Chatur Narain Malviya

Shri Amolakh Chand (Member, Joint Committee on the Companies Bill), was also present.

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

1. Shri D. L. Mazumdar
2. Shri K. V. Rajagopalan
3. Shri R. Ganapathi Iyer

} *Officers on Special Duty, Department of Economic Affairs, Ministry of Finance.*

SECRETARIAT

Shri M. Sundar Raj—*Deputy Secretary.*

Shri P. K. Patnaik—*Under Secretary.*

2. The Sub-Committee took up examination of clauses 229 to 235 of the Bill.

3. The suggestions of the Sub-Committee in respect of the aforesaid clauses of the Bill are detailed in the succeeding paragraphs.

4. *Clause* 229.—

Sub-clause (6):

The Draftsman was directed to examine if suitable provision for expenses incurred in relation to the winding up of companies has been made elsewhere in this Bill. In case no such provision has been made, it should be suitably provided for in this sub-clause.

5. *Clause* 230.—

In page 105, lines 43-44,—

for "in such manner, if any, as may be prescribed", *substitute* "by the seal of the company whose affairs they have investigated".

6. *Clause* 231.—

Sub-clause (5):

add a new para. (iii) to the proviso to this sub-clause as follows:—

"(iii) the Central Government shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or

with a complete copy thereof if they are of opinion that there is good reason for not divulging the contents of the report or of parts thereof, but shall cause to be kept by the registrar a copy of any such report or, as the case may be, the parts of any such report, as respects which they are not of that opinion."

The Draftsman was asked to re-examine this draft and make suitable drafting changes, if necessary.

7. *Clauses 232 to 235.*—

No amendments.

8. The Sub-Committee then adjourned to meet again at 3 P.M. on Monday, the 22nd November, 1954.

VI

Sixth Meeting

The Committee met from 3 P.M. to 4 P.M. on Monday, the 22nd November, 1954.

PRESENT

Shri Hari Vinayak Pataskar—*Chairman*

MEMBERS

2. Shri M. C. Shah
3. Shri Radheshyam Ramkumar Morarka
4. Pandit Chatur Narain Malviya

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

1. Shri D. L. Mazumdar
2. Shri K. V. Rajagopalan
3. Shri R. Ganapathi Iyer

} *Officers on Special Duty, Department of Economic Affairs, Ministry of Finance.*

SECRETARIAT

Shri M. Sundar Raj—*Deputy Secretary.*

Shri P. K. Patnaik—*Under Secretary.*

2. The Sub-Committee examined clauses 236 and 237 of the Bill.

3. No amendments were suggested to the aforesaid clauses.

4. The Sub-Committee decided not to hold any further sittings as it would not be possible for them to complete examination of the rest of the clauses for want of time particularly as the Session of the Lok Sabha had already commenced.

5. It was decided that the Minutes of the sittings of the Sub-Committee be circulated amongst the members of the Joint Committee before the next sitting of the Joint Committee in order to enable the members to study the amendments suggested by the Sub-Committee.

6. The Sub-Committee authorised the Chairman to present a Report of the Sub-Committee to the Joint Committee containing their decisions embodied in paragraphs 4 and 5 above.

7. The Sub-Committee then adjourned.

Annexure C

MINUTES OF THE 53RD MEETING OF THE JOINT COMMITTEE ON THE COMPANIES BILL, HELD ON MONDAY, THE 7TH FEBRUARY, 1955.

* * * * * * * *

6. * * * * * * * *

* * * The Committee appointed a Sub-Committee consisting of the following members to examine the Schedules to the Bill and to suggest necessary amendments therein:—

1. Shri N. C. Chatterjee—*Chairman.*
2. Pandit Chatur Narain Malviya
3. Shri Radheshyam Ramkumar Morarka
4. Shri Narendra P. Nathwani
5. Shri Mulchand Dube
6. Shri Ghamandi Lal Bansal
7. Col. B. H. Zaidi
8. Shri S. P. Jain
9. Shri S. C. Karayalar
10. Shri Tridib Kumar Chaudhuri
11. Shri M. C. Shah.

The Sub-Committee were directed to examine all the Schedules with a view to see (i) if the provisions therein have been properly worded, (ii) if they are in conformity with the provisions of the Indian Companies Act 1913 or the U.K. Companies Act 1948, (iii) if changes, if any, made therein from the provisions of those of the said acts are justifiable and (iv) if they are consistent with the earlier decisions of the Committee in respect of the clauses of the Bill already disposed of by the Committee.

The Sub-Committee were further directed to complete the work entrusted to them on or before the 10th February, 1955, and submit their report on the 11th February, 1955.

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Annexure D

MINUTES OF THE MEETINGS OF THE SUB-COMMITTEE OF THE JOINT COMMITTEE ON THE COMPANIES BILL, 1953 FOR THE EXAMINATION OF SCHEDULES TO THE BILL.

(*Vide* para. 5 of Appendix IV)

I

First Meeting

The Sub-Committee met from 4 P.M. *to* 5-30 P.M. on Thursday, the 10th February, 1955.

PRESENT

Shri N. C. Chatterjee—*Chairman*

MEMBERS

2. Shri Ghamandi Lal Bansal
3. Shri Mulchand Dube
4. Shri Radheshyam Ramkumar Morarka
5. Shri N. P. Nathwani
6. Pandit Chatur Narain Malviya
7. Shri Shriyans Prasad Jain
8. Shri S. C. Karayalar
9. Shri M. C. Shah

Shri Hari Vinayak Pataskar, Chairman of the Joint Committee on the Companies Bill, 1953 was also present.

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

1. Shri D. L. Mazumdar
2. Shri K. V. Rajagopalan
3. Shri R. Ganapathi Iyer

} *Officers on Special Duty, Department of Economic Affairs, Ministry of Finance.*

SECRETARIAT

Shri P. K. Patnaik—*Under Secretary.*

2. In accordance with the decision of the Committee, dated the 7th February, 1955 (para. 6, Minutes, dated the 7th February, 1955) appointing the Sub-Committee with directions to consider the Schedules to the Bill and to suggest necessary amendments therein, the Sub-Committee took up examination of Schedule I.

3. The suggestions of the Sub-Committee in respect of different Regulations in Schedule I are detailed in the succeeding paragraphs.

4. *Regulation* 1:

In page 247, line 10,—

delete "(c) 'section' means a section of the Companies Act, 1953".

This suggested as the definition of 'section' is considered unnecessary. No such definition has been given in the U.K. Act and no difficulty on account of that has so far been felt there.

(ii) In page 247, lines 15—17,—

delete clause (3) of the Regulation.

This deletion is suggested as there is no such provision in the Indian Companies Act, 1913 or the U.K. Companies Act, 1948.

(iii) It is also suggested that a definition of 'secretary' should be given in the body of the Bill.

5. *Regulation* 2:

Omit this Regulation.

This Regulation should be dropped in view of the provisions contained in clause 79 of the Bill.

6. *Regulations* 3—5:

No amendment.

7. *Regulation* 6:

In clause 2 of this Regulation

for "10 per cent." *substitute* "5 per cent."

This is consequential upon changes made in clause 70 of the Bill.

8. *Regulations* 7—20:

No amendment.

9. *Regulation* 21:

In order to make it more explicit, this Regulation should be redrafted on the lines of Regulation 19 of the Indian Companies Act, 1913.

10. *Regulations* 22—64:

No amendment.

11. *Regulation* 65:

No amendment. But clause 239 of the Bill should be made subject to clause 238.

12. *Regulations* 66—74:

No amendment.

13. *Regulation* 75:

In page 257, line 45,—

before "questions", *insert* "save as otherwise expressly provided in the Act".

This is necessary in order to avoid any conflict with the proviso under clause 292(2).

14. *Regulations* 76—90:

No amendment.

15. *Regulation* 91:

In page 260, lines 3-4,—

delete "and any particular of paid up shares, debentures or debenture stock of any other company or in any one or more of such ways".

The deletion is suggested as such provision is considered unnecessary.

16. *Regulations* 92—100:

No amendment.

17. *Schedule I—Table B.*

No amendment.

18. The Sub-Committee then adjourned to meet again at 4 P.M. on Friday, the 11th February, 1955.

II

Second Meeting

The Sub-Committee met from 4 P.M. to 5-45 P.M. on Friday, the 11th February, 1955.

PRESENT

Shri N. C. Chatterjee—*Chairman*

MEMBERS

2. Shri Ghamandi Lal Bansal
3. Shri Mulchand Dube
4. Col. B. H. Zaidi
5. Shri Radheshyam Ramkumar Morarka
6. Shri N. P. Nathwani
7. Pandit Chatur Narain Malviya
8. Shri Shriyans Prasad Jain
9. Shri Manilal Chaturbhai Shah

Shri Hari Vinayak Pataskar, Chairman of the Joint Committee on the Companies Bill, 1953 was also present.

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

1. Shri D. L. Mazumdar
2. Shri K. V. Rajagopalan
3. Shri R. Ganapathi Iyer

} *Officers on Special Duty, Department of Economic Affairs, Ministry of Finance.*

SECRETARIAT

Shri P. K. Patnaik—*Under Secretary.*

2. The Sub-Committee took up examination of Schedules II to XII of the Bill.

3. The suggestions of the Sub-Committee in respect of the Schedules aforesaid are detailed in the succeeding paragraphs.

SCHEDULE II—PART I

4. *Clause* 1 *of the Schedule*:

(i) In page 264, line 6,—

after "Save as", *insert* "hereinafter".

This is a drafting improvement.

(ii) In page 264, lines 6-7,—

for "contents of the memorandum with", *substitute* "main objects of the company".

This is suggested to avoid inconvenience in repeating the contents of the memorandum as well as confusion in the minds of the investing public.

(iii) In page 264, line 7,—

after "signatories", *insert* "of the memorandum".

This is a drafting improvement.

(iv) In page 264, line 9,—

for "of founders, or management or deferred shares", *substitute* "and classes of shares".

This is necessary in order to bring it in conformity with clause 79 of the Bill.

5. *Clauses* 2—12 *of the Schedule*:

No amendment.

6. *Clause* 13 *of the Schedule*:

In page 266, line 41,—

after "underwritten", *add* "as aforesaid".

This is suggested in order to make it clear that it applies only to a promoter or officer of the company.

7. *Clauses* 14—23 *of the Schedule*:

No amendment.

SCHEDULE II—PART II

8. *Clauses* 24—26 *of the Schedule*:

No amendment.

9. *Clause* 27 *of the Schedule*:

(i) In page 270, line 3,—

delete "contents of the memorandum and".

(ii) In page 270, line 4,—

after "signatories", *insert* "of the memorandum".

These are consequential amendments upon changes made in clause 1 of the Schedule.

10. *Clauses* 28—30 *of the Schedule*:

No amendment.

11. *Clause* 31 *of the Schedule*:

In page 270, lines 30—35,—

delete sub-clause (1).

The deletion is suggested as the sub-clause is considered unnecessary in view of definition of "financial year" in clause 2 of the Bill.

12. *Clauses* 32-33 *of the Schedule*:

No amendment.

13. *Schedules III to VI*:

The Sub-Committee has no amendments to suggest with regard to these Schedules.

14. *Schedule VII*:

(i) *Part I of the Schedule*:

Omit the entire Part I of this Schedule.

This is suggested as the Sub-Committee feel that the provisions contained in this part are absolutely unnecessary.

(ii) *Part II of the Schedule*:

In page 306, lines 19—29,—

delete the entire Explanation under sub-clause (2) of Part II of this Schedule.

The deletion of the Explanation is suggested as it is redundant in view of definition of "relative" already inserted in the definition clause of the Bill.

(iii) It is further suggested that a provision should be made in this Schedule to the effect that in respect of matters not enumerated under the existing Part II of the Schedule, the managing agent of a company may exercise powers, subject to any resolution passed by the directors and subject also to the provisions of the memorandum and articles of the company.

(iv) The Sub-Committee feel that clause 351 of the Bill needs some amendment as follows:—

In page 155, line 28,—

for "except to such extent as is otherwise provided in", *substitute* "in accordance with".

The Sub-Committee recommend that the above mentioned amendment may be effected in clause 351 of the Bill by the Joint Committee.

15. *Schedules VIII to X*:

No amendment.

SCHEDULE XI

16. *Part I of the Schedule*:

No amendment.

17. *Parts II—V of the Schedule*:

Omit Parts II—V.

This omission is suggested in view of the modifications already made by the Joint Committee in clauses relating to 'Managing Agent' in the Bill.

18. *Part VI of the Schedule*:

The Sub-Committee feel that this is an important provision involving some principle and should be discussed and disposed of by the Joint Committee only.

19. *Part VII of the Schedule*:

In page 324, lines 30-31,—

delete "or 87AA, the further provision to clause (c) of section 87B, or section 87BB, 87CC, or 289D".

This is a consequential amendment upon omission of Parts II to V of this Schedule.

20. *Schedule XII*:

No amendment.

21. The Sub-Committee authorised the Chairman to present the Report of the Sub-Committee to the Joint Committee on their behalf.

22. The Sub-Committee then adjourned.

APPENDIX V

(Vide *para. 7 of the Report*)

List of Associations who tendered their evidence before the Joint Committee

S. No.	*Name of the Association*	*Date on which the evidence was taken*
1.	The Employers' Federation of India, Bombay.	2nd July, 1954.
2.	The Associated Chambers of Commerce of India, Calcutta.	2nd July, 1954.
3.	The Indian National Trade Union Congress, New Delhi.	3rd July, 1954.
4.	Bombay Shareholders' Association, Bombay.	5th July, 1954.
5.	The Federation of Indian Chambers of Commerce and Industry, New Delhi.	6th, 7th and 9th July, 1954.
6.	The Indian Federation of Working Journalists, New Delhi.	9th July, 1954.
7.	The Institute of Chartered Accountants of India, New Delhi.	10th July, 1954.
8.	The Incorporated Law Society of Calcutta.	16th August, 1954.
9.	The Bombay Incorporated Law Society, Bombay.	16th August, 1954.

APPENDIX VI

Clauses in which the Central Government is referred to, and nature of Reference.

2(9) and 10.	Power to declare that an establishment shall not be treated as branch office.
2(18).	Definition of "Government Company".
2(33).	Definition of "Prescribed".
2(38).	Definition of "Public Holiday".
2(39).	Definition of "Recognised Stock Exchange".
10.	Power to empower District Court to exercise jurisdiction.
20.	Power to declare a name of company to be undesirable.
21.	Approval to change in name of company.
22.	Power to order change in name of company.
24.	Power to dispense with "Limited" in name of charitable or other company.
78.	Power to permit issue of shares at a discount higher than ten per cent.
88.	Power to exempt company from provisions relating to termination of excessive voting rights in existing companies.
110.	Power to hear appeal against company's refusal to transfer shares.
157.	Power to make rectifications ordered by foreign courts applicable to foreign registers.
166.	Power to call annual general meeting.
204.	Payment of dividends out of moneys provided by Government.
207.	Sanction to payment of interest out of capital; also Right to lay down the rate of interest.
210.	Power to exempt a company or class of companies from operation of Schedule VI (form of balance sheet).
211.	Power to exempt a company from operation of section 211 (information in balance sheet of holding company).
212.	Power to extend last date of financial year, of annual return and of general meeting of a holding company so as to make it coincide with the financial year of its subsidiary.
223.	Power to appoint auditors of a company.
225.	Power to authorise a person to be appointed auditor as having obtained necessary qualifications outside India, also.
	Power to make rules for auditors' certificates to persons in Part B States.

234. Power to appoint inspectors on application.

235. Power to require supporting evidence from applicants for investigation.

236. Power to appoint inspectors in discretion.

240. Power to receive inspector's report.

241. Power to prosecute person on inspector's report.

242. Power to cause winding-up petition to be presented to Court.

243. Power to institute proceedings on inspector's report for recovery of damages.

244. Right to recover expenses of investigation.

246. Power to appoint inspectors to investigate ownership.

247. Power to require information as to person interested in shares.

248. Power to investigate association with managing agent.

249. Power to impose restrictions on shares or debentures.

250. Exemption of legal advisers and bankers from operation of clauses 233—249.

258. Sanction to increase in number of directors.

267. Approval to amendment of provision relating to managing or non-rotational directors.

268. Approval to appointment of managing director.

270. Director appointed by Government not to have share qualification.

273. Power to remove disqualification of directors.

275. Right to receive notice from director, of resignations from companies in excess of 20.

294. Approval to loans to directors etc.

299. Power to exempt director from application of clause 299 (prohibiting interested director from participating or voting in Board's proceedings).

309. Sanction to increase in remuneration of directors.

310. Sanction to increase in existing remuneration of managing director.

323. Power to notify industries.

325. Power to approve of appointment etc., of managing agent.

327. Power to permit re-appointment of managing agent earlier than in the last two years of agreement.

328. Sanction necessary to resolution varying terms of managing agency agreement.

331. Power to determine which ten companies a managing agent shall retain where he himself does not express his choice in time.

342. Approval to transfer of office by managing agent.

344. Approval to succession to managing agent on his death.

345. Approval to changes in constitution of managing agency firm or corporation; also

Power to notify that change in ownership of shares of managing agent (public company), quoted on a recognised stock exchange, shall be deemed to be a change in its constitution.

346. Power not to exempt from the application of Schedule VIII a managing agent (public company) whose shares are quoted on a recognised stock exchange.

348. Power of control to Government to direct exclusion of bounties and subsidies given by a public authority to company in its net profits; also

Power to require deduction from profits, of certain taxes by declaring them to be of the nature of taxes on excess or abnormal profits or by notifying them as imposed for special reasons.

351. Power to approve additional remuneration to managing agents.

369. Power to declare that the management of a company is accustomed to act in accordance with the instructions of managing agent of another company.

372. Power to approve investments in companies in the same group in excess of specified limits.

373. Power to approve existing investments in companies in the same group in excess of specified limits.

385. Power to remove disqualifications of managers.

395. Power to provide for amalgamation of companies in national interest.

398. Power to authorise less than specified members to apply for relief against oppression and mismanagement.

399. Right to receive notice of applications for relief against oppression and mismanagement.

400. Right to apply for relief against oppression and mismanagement in cases falling under clause 242 (inspector's report).

406. Right to receive notice of application of managing agent and others for exemption from disqualification.

407. Power to appoint directors to prevent oppression of members or prejudice to interests of company.

408. Power to prevent change in ownership of shares to bring about change in Board of directors likely to affect company prejudicially.

409. Duty to constitute Advisory Commission.

410 Duty to refer matters coming under specified sections to Advisory Commission; also

Power to refer other matters to Advisory Commission.

411. Power to prescribe rules for application under specified sections.

414. Immunity for action taken in good faith.

437. Power to authorise a person to present a petition for winding-up, on inspector's report; also

Powers to sanction Registrar's petition for winding up in certain cases.

446. Duty to appoint Official Liquidator.

449. Right to receive payment where Official Liquidator acts as liquidator.

494. Power to extend date within which liquidator is required to call general meetings.

527. Right to receive preferential payment of taxes due in twelve months previous to liquidation.

531. Right to fix rate of interest for sums advanced on a floating charge and paid in twelve months previous to liquidation.

542. Right to investigate offence committed by an officer in relation to a company in liquidation; and also Right to direct Registrar to institute proceedings.

545. Power to permit creditor or contributory to inspect books of company after order for winding-up of company is made.

546. Power to prevent destruction of books.

547. Right to receive application for payment of money from the Companies Liquidation Account from person entitled to it.

567. Approval to change in name of company.

573. Sanction necessary to alteration in provisions of other Acts applicable to company.

589. Power to exempt foreign company from making out balance sheet and profit and loss account in the form prescribed by the Act.

604. Power to appoint Registrars.

607. Right to receive fees paid to Registrar.

608. Power to reduce fees, charges etc.

611. Definition of "Government Company".

614. Power to modify Act in relation to Government Companies.

615. Power to authorise person to complain to Court for offences committed by a company or its officer.

630. Power to delegate powers and functions under Act.

631. Duty to place report on working of Act before Parliament.

632. Power to alter Schedules.

633. Power to make rules.

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