

THE COMPANIES ACT, 1956

ACT NO. 1 OF 1956

[18th January, 1956]

An Act 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---

1.

Short title, commencement and extent.

1.Short title, commencement and extent. (1) This Act may be called the Companies Act, 1956.

(2) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint.

3[(3) It extends to the whole of India:

4 * * * * *]

5[Provided ⁶ * * * that it shall apply to the State of Nagaland subject to such modifications, if any, as the Central Government may, by notification in the Official Gazette, specify.]

2.

Definitions.

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. 19 of 1857 or in Table A in the First Schedule annexed to the Indian Companies Act, 1882, (6 of 1882.) or in Table A in the First

1 This Act has been extended to Goa, Daman and Diu by Regulation

12 of 1962 (with modifications), s. 3 and Sch.: to Dadra and Nagar Haveli by Regulation 6 of 1963, s. 2 and Sch. I and to Pondicherry by Regulation 7 of 1963, s. 3 and Sch. 1.

The provisions of this Act shall apply to Goa, Daman and Diu, subject to the exceptions, modifications and adaptations contained in the Schedule to G.S.R. 615, dated the 24th April, 1965 (Gazette of India, Pt. II, Sec. 3(i), p. 670). Amended in its application to Goa, Daman and Diu by Reg. 11 of 1963, s. 9.

2 1st April, 1956, vide Notification No. S.R.O. 612, dated 8-3-1956, Gazette of India, Extraordinary, 1956, Pt. II, Sec. 3, p. 473.

3 Subs. by Act 62 of 1956 s. 2 and Sch., for sub-section (3) (w.e.f. 1-11-1956).

4 Proviso omitted by Act 25 of 1968, s. 2 and Sch. (w.e.f. 15-8-1968).

5 Ins. by Act 31 of 1965, s. 2 (w.e.f. 15-10-1965).

6 The word "further" omitted by Act 25 of 1968, s. 2 and Sch. (w.e.f. 15-8-1968).

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Schedule annexed to the Indian Companies Act, 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 or relative of such individual; any firm in which such individual, partner or relative is a partner; any private company of which such individual or any such partner, relative or 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-third 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, partner or partners, relative or relatives, firm or firms; and private company or companies;

(b) where the managing agent is a firm:

any member of such firm;
any partner or relative of any such member; and any other firm in which any such member, partner or relative is a partner; any private company of which the firm first mentioned, or any such member, partner, relative 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-third of the total voting power in regard to any matter may be exercised or controlled by any one or more of the

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following, namely, the firm firstmentioned, any such member or members, partner or partners, relative or relatives, other firm or firms and private company or companies;

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

(i) 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 ; any partner or relative of any such director or manager; any firm in which such director, manager, partner or relative, is a partner;1 * * *

(ii) any other body corporate at any general meeting of which not less than one-third 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 and the companies and other persons specified in paragraph (i) above; and

2[(iii)any subsidiary of the other body corporate referred to in paragraph (ii) above:

Provided that where the body corporate is the managing agent of the other body corporate referred to in paragraph (ii) above, a subsidiary of such other body corporate shall not be an associate

1 The "and" omitted by Act 65 of 1960, s. 2.

2 Ins. by s. 2, *ibid.*

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in relation to the managing agent aforesaid ; and]

(d) where the managing agent is a private company or a body corporate having not more than fifty members:

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

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 or relative of any such member; and any other firm in which any such member, partner or relative is a partner ;

any private company of which the firm first-mentioned, or any such member, partner, relative 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-third 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, relative or relatives, other firm or firms, and private company or companies;

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

(i) 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 ; any partner or relative of any such director or manager; any firm in which such director or manager, partner or relative, is a partner; 1 * * *

(ii) any other body corporate at any general meeting of which not less than one-third 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 and the companies and other persons specified in paragraph (i) above; and

2 [(iii) any subsidiary of the other body corporate referred to in paragraph (ii) above:

Provided that where the

body corporate is the secretaries and treasurers of the other body corporate referred to in paragraph (ii) above, a subsidiary of such other body corporate shall not be an associate in relation to the secretaries and treasurers aforesaid; and]

1 The word "and" omitted by Act 65 of 1960, s. 2.

2 Ins. by s. 2, *ibid.*

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(c) where the secretaries and treasurers are a private company or a body corporate having not more than fifty members:

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

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 (10 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 1[does not include-

(a) a corporation sole ;

(b) a co-operative society registered under any law relating to co-operative societies ; and

(c) any other body corporate (not being a company as defined in this Act) which the Central Government may, by notification in the Official Gazette, specify in this behalf ;]

(8) "book and paper " and " book or paper " include accounts, . deeds , 2 [vouchers,] writings, and documents;

3[(9) "branch office" in relation to a company means-

(a) any establishment described as a branch by the company ; or

(b)any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company ; or

(c)any establishment engaged in any production, processing or manufacture,

1 Subs. by Act 65 of 1960, s. 2, for " does not include a corporation sole".

2 Ins. by Act 31 of 1965, s. 3 (w.e.f. 15-10-1965),

3 Subs. by Act 65 of 1960, s. 2, for cl. (9),

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but does not include any establishment specified in any order made by the Central Government under section 8;]

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

1[(10A) "Company Law Board" means the Board of Company Law Administration constituted under section 10E;]

2[(11)"the Court" means,-

(a)with respect to any matter relating to a company other than any offence against this Act), the Court having jurisdiction under this Act with respect to that matter relating to that company, as provided in section 10;

(b)with respect to any offence against this Act, the Court of a Magistrate of the First Class or, as the case may be, a Presidency Magistrate, having jurisdiction to try such offence;]

(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, requisition, order, other legal process, and registers, whether issued, sent or kept in pursuance of this or any other Act or otherwise;

(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:

1 Ins. by Act 53 of 1963, s. 2 (w.e.f. 1-1-1964).

2 Subs. by Act 65 of 1960, s. 2, for cl. (11).

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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 (4 of 1938);

(18) "Government company" means a Government company within the meaning of section 617;

1* * * * *

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

2* * * * *

(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;

1 Omitted by Act 30 of 1984, s.52 (w.e.f. 1.8.1984).

2 Cl. (20) omitted by Act 62 of 1956, s. 2 and Sch. (w.e.f. 1-11-1956).

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(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.

1[Explanation I.-For the purposes of this Act, references to "managing agent" shall be construed as references to any individual, firm, or body corporate who, or which, was, at any time before the 3rd day of April, 1970, the managing agent of any company.

Explanation II.-For the removal of doubts, it is hereby declared that notwithstanding anything contained in section 6 of the Companies (Amendment) Act, 1969, (17 of 1969.) this clause shall remain, and shall be deemed always to have remained, in force;]

(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 2[substantial 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:

3[Provided that the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct

registration of transfer of any share, shall not be deemed to be included within substantial powers of management:

Provided further that a managing director of a company shall exercise his powers subject to the superintendence, control and direction of its Board of directors;]

1 Ins. by Act 41 of 1974, s. 2 (w.e.f. 1-2-1975).

2 Subs. by Act 65 of 1960, s. 2, for "any powers of management".

3 Ins. by s. 2, *ibid.*

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(27) "member", in relation to a company, does not include a bearer of a share-warrant of the company issued in pursuance of section 114;

(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;

1[(30) "officer" includes any director, managing agent, secretaries and treasurers, manager or secretary, 2[or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act,] and also includes-

(a) where the managing agent, 3[or the secretaries and treasurers] is or are a firm, any partner in the firm;

(b) where the managing agent or the secretaries and treasurers is or are a body corporate, any director or manager of the body corporate;

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but save in sections, 477, 478, 539, 543, 545, 621, 625 and 633 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 (5) of section 503, 5[sub-section (3) of section 550, section 552 and sub-section (3) of section 555], prescribed

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- 1 Subs. by Act 65 of 1960, s. 2, for cl. (30).
 - 2 Ins. by Act 31 of 1965, s. 3 (w.e.f. 15-10-1965).
 - 3 Subs. by Act 41 of 1974, s. 2, for "the secretaries and treasurers or the secretary" (w.e.f. 1-8-1975).
 - 4 Sub-clause (c) omitted by s. 2, ibid. (w.e.f. 1-8-1975).
 - 5 Subs. by Act 65 of 1960, s. 2, for "sub-section (1) of section 549 and subsection (3) of section 550".
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by rules made by the Supreme Court in consultation with High Courts, and as respects the other provisions of this Act including sub-section (5) of section 503,1[sub-section (3) of section 550, section 552 and sub-section (3) of section 555], 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 2[any document described or issued as a prospectus and includes any] notice, circular, advertisement or other document 3[inviting deposits from the public or] 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 (26 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 Additional, a Joint, a Deputy or an Assistant Registrar, having the duty of registering companies under this Act;

1 Subs. by Act 65 of 1960. s. 2, for "sub-section (1) of section 549 and subsection (3) of section 550".

2 Subs. by s. 2, *ibid.*, for "any prospectus".

3 Ins. by Act 41 of 1974, s. 2 (w.e.f. 1-2-1975).

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(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 (2 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.

1[Explanation I.-For the purposes of this Act, references to "secretaries and treasurers" shall be construed as references to any firm or body corporate which was, at any time before the 3rd day of April, 1970, secretaries and treasurers of any company.

Explanation II.-For the removal of doubts, it is hereby declared that notwithstanding anything contained in section 6 of the Companies (Amendment) Act, 1969 (17 of 1969), this clause shall remain, and shall be deemed always to have remained, in force;]

4[(45) "secretary" means a Company Secretary within the meaning of clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980), and includes any other individual possessing the prescribed qualifications and appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties;]

5[(45A) "secretary in whole-time practice" means a secretary who shall be deemed to be in practice within the meaning of sub-section (2) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who is not in fulltime employment;]

6[(46A) "Securities and Exchange Board of India" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992)]

(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

1 Ins. by Act 41 of 1974, s. 2 (w.e.f. 1-2-1975).

2 Subs. by Act 65 of 1960, s. 2, for el. (45).

3 41 of 1974, s. 2, for certain words (w.e.f. 1-2-1975).

4 Subs. by Act 31 of 1988, s. 2 (w.e.f. -----).

5 Subs by s.2 ibid (w.e.f. 15.6.1988).

6 Ins. by Act 22 of 1996, s.31 and Sch. (w.e.f. 20.9.1995).

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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;

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

2[(2A.) Words and expressions used and not defined in this Act but defined in the Depositories Act, 1996 (22 of 1996), shall have the same meanings respectively assigned to them in that Act.]

3.

Definitions of "Company", "Existing Company", "Private Company" and "Public Company".

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 subsection (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 (10 of 1866.) and repealed by that Act;

(b) The Indian Companies Act, 1866 (10 of 1866);

(c) The Indian Companies Act, 1882 (6 of 1882);

(d) The Indian Companies Act, 1913 (7 of 1913);

(e) The Registration of Transferred Companies Ordinance, 1942 (54 of 1942); and

2[(f) Any law corresponding to any of the Acts or the Ordinance aforesaid and in force-

(1) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913 (7 of 1913); or

1 Cl. (49A) omitted by Act 17 of 1967, s. 4 and Sch. (w.e.f. 1-7-1967).

2 Ins. by Act 22 of 1996, s. 31 and Sch. (w.e.f. 20.9.1995).

3 Subs. by Act 62 of 1956, s. 2 and Sch., for cl. (f) (w.e.f. 1-11-1956).

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(2) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956 (62 of 1956). 1[in so far as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968 (25 of 1968) in so far as other corporations are concerned];]

(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

1 Ins. by Act 25 of 1968, s. 2 and Sch. (w.e.f, 15-8-1968).

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(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 where of 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 subsection (1);

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4.

Meaning of "holding company" and "subsidiary".

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

2[(b) that other-

(i) where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company;

(ii) where the first-mentioned company is any other company, 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.

1 Cl. (b) omitted by Act 62 of 1956, s. 2 and Sch (w.e.f. 1-11-1956).

2 Subs. by Act 65 of 1960, s. 3, for cl, (b),

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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

1[(c) that the directorship is held by an individual nominated by that other company or a subsidiary thereof ;]

(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;

1 Subs. by Act 65 of 1960, s. 3, for cl. (c).

(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 85.

(6) In the case of a body corporate which is incorporated in a country outside India, a subsidiary or holding company of the body corporate under the law of such country shall be deemed to be a subsidiary or holding company of the body corporate within the meaning and for the purposes of this Act also, whether the requirements of this section are fulfilled or not.

1[(7) A private company, being a subsidiary of a body corporate incorporated outside India, which, if incorporated in India, would be a public company within the meaning of this Act, shall be deemed for the purposes of this Act to be a subsidiary of a public company if the entire share capital in that private company is not held by that body corporate whether alone or together with one or more other bodies corporate incorporated outside India.]

4A.

Public financial institutions.

2[4A. Public financial institutions. (1) Each of the financial institutions specified in this subsection shall be regarded, for the purposes of this Act, as a public financial institution, namely:-

(i) the Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Indian Companies Act, 1913 (7 of 1913);

1 Ins. by Act 65 of 1960, s. 3.

2 Ins. by Act 41 of 1974, s. 3 (w.e.f. 1-2-1975).

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(ii) the Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948);

(iii) the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964);

(iv) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);

(v) the Unit Trust of India, established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963).

(2) Subject to the provisions of sub-section (1), the Central Government may, by notification in the Official Gazette, specify such

other institution as it may think fit to be a public financial institution:

Provided that no institution shall be so specified unless-

- (i) it has been established or constituted by or under any Central Act, or
- (ii) not less than fifty one per cent. of the paid-up share capital of such institution is held or controlled by the Central Government.]

5.

Meaning of "officer who is in default".

1[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 all the following officers of the company, namely:-

- (a) the managing director or managing directors;
- (b) the whole-time director or whole-time directors;
- (c) the manager;
- (d) the secretary;
- (e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act;
- (f) any person charged by the Board with the responsibility of complying with that provision:

Provided that the person so charged has given his consent in this behalf to the Board;

(g) where any company does not have any of the officers specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors:

Provided that where the Board exercises any power under clause (f) or clause (g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form.

6.

Meaning of "relative".

2[6.Meaning of "relative". A person shall be deemed to be a relative of another if, and only if,-

- (a) they are members of a Hindu undivided family; or
- (b) they are husband and wife; or
- (c) the one is related to the other in the manner indicated in Schedule IA.]

1 Subs by Act 31 of 1988, s. 3 (w.e.f. 15.7.1988).

2 Subs by Act 65 of 1960, s.4, for s.6.

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7.

Interpretation of "person in accordance with whose directions or instructions directors are accustomed to act".

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.

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, 1* * *, any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company, or 2[any establishment engaged in any production, processing 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.

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.

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 subsection (2); and

1 The words "not being a banking or an insurance company" omitted by Act 65 of 1960, s. 5.

2 Subs. by s. 5, *ibid.*, for "any production or manufacture".

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(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 237, 391, 394, 395 and 397 to 407, 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 425 to 560) 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.

10A. [Constitution of Tribunal.] Repealed by the Companies Tribunal (Abolition) Act, 1967 (17 of 1967) s. 4 and Sch.

10B. [Procedure of Tribunal.] Repealed by s. 4 and Sch. *ibid*

10C. [Powers of Tribunal.] Repealed by s 4 and Sch., *ibid*

10D. [Appeals against decisions. etc.. of the Tribunal.] Repealed by s. 4 and Sch., *ibid*.

1[PART IA,

BOARD OF COMPANY LAW ADMINISTRATION

10E.

Constitution of Board of Company Law Administration.

10E. Constitution of Board of Company Law Administration.

2[(1) As soon as may be after the commencement of the Companies (Amendment) Act, 1988, the Central Government shall, by notification in the Official Gazette, constitute a Board to be called the Board of Company Law Administration.

(1A) The Company Law Board shall exercise and discharge such powers and functions as may be conferred on it, by or under this Act or any other law, and shall also exercise and discharge such other powers and functions of the Central Government under this Act or any other law as may be conferred on it by the Central Government, by notification in the Official Gazette under the provisions of this Act or that other law.]

1 Ins. by Act 53 of 1963, s. 4 (w.e.f. 1-1-1964).

2 Subs. by Act 31 of 1988, s. 4 (w.e.f. 31.5.1991).

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(2) The Company Law Board shall consist of such number of members, not exceeding 1[nine], as the Central Government deems fit, to be appointed by that Government by notification in the Official Gazette:

2["Provided that the Central Government may, by notification in the official Gazette, continue the appointment of the chairman or any other member of the company Law Board functioning as such immediately before the commencement of the Companies (Amendment) Act, 1988 (31 of 1988), as the chairman or any other member of the Company Law Board, after such commencement for such period not exceeding three years as may be specified in the notification.

3[(2A)The members of the Company Law Board shall possess such qualifications and experience as maybe prescribed."]

(3) One of the members shall be appointed by the Central Government to be the chairman of the Company Law Board.

(4)No act done by the Company Law Board shall be called in question on the ground only of any defect in the constitution of, or the existence of any vacancy in, the Company Law Board.

4* * * * *

5[(4B) 6[The Board may, by order in writing, form one or more Benches from among its members and authorise each such Bench to exercise and discharge such of the Board's powers and functions as may be specified in the order; and every order made or act done by a Bench in exercise of such powers or discharge of such functions shall be deemed to be the order or act as the case may be, of the Board.

(4C) Every Bench referred to in sub-section (4B) shall have powers which are vested in a Court under the Code of Civil Procedure, 1908, (5 of 1908). while trying a suit, in respect of the following matters, namely :-

(a) discovery and inspection of documents or other material objects producible as evidence;

-
- 1 Subs. by Act 41 of 1974, s. 4, for "five" (w.e.f. 1-2-1975).
 2. Ins. by Act 31 of 1988, s.4 (w.e.f. 31-5-1991).
 - 3 Ins by s.4, ibid (w.e.f. 4-8-1989).
 - 4 Omitted by s.4, ibid Act 31 of 1988, s. 4 (w.e.f.31-5-1991).
 - 5 Ins.by Act 41 of 1974, s.4 (w.e.f. 1-2-1975).
 6. Subs. by s.4, ibid (w.e.f.1-2-1975).
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(b)enforcing the attendance of witnesses and requiring the deposit of their expenses;

(c)compelling the production of documents or other material objects producible as evidence and impounding the same;

- (d) examining witnesses on oath;
- (e) granting adjournments;
- (f) reception of evidence on affidavits.

(4D) Every Bench shall be deemed to be a civil court for the purposes of section 195 and 1[Chapter XXVI of the Code of Criminal Procedure, 1973], (2 of 1974). and every proceeding before the Bench shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Indian Penal Code and for the purpose of section 196 of that Code.] (45 of 1860).

2[(5) Without prejudice to the provisions of sub-sections (4C) and (4D), the Company Law Board shall in the exercise of its powers and the discharge of its functions under this Act or any other law be guided by the principles of natural justice and shall act in its discretion.

(6)Subject to the foregoing provisions of this section, the Company Law Board shall have power to regulate its own procedure"]

10F.

Appeals against the orders of the Company Law Board.

3[10F.Appeals against the orders of the Company Law Board. Any person aggrieved by any decision or order of the Company Law Board may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.]

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.

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.

1 Subs. by Act 46 of 1977, s. 2, for the words and figures "Chapter XXXV of the Code of Criminal Procedure, 1898".

2 Subs. by Act 31 of 1988, s. 4 (w.e.f.31-5-1991).

3 Ins. by s. 5, ibid. (w.e.f. 31-5-1991).

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(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.

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");

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

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13.

Form of memorandum.

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 word 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; 1* * *

2[(c) in the case of a company in existence immediately before the commencement of the Companies (Amendment) Act, 1965, the objects of the company ;

(d) in the case of a company formed after such commencement,-

(i) the main objects of the company to be pursued by the company on its incorporation and objects incidental or ancillary to the attainment of the main objects ;

(ii) other objects of the company not included in sub-clause (i); and

(e) in the case of companies (other than trading corporations), with objects not confined to one State, the 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

1 The word "and " omitted by Act 31 of 1965, s. 5 (w.e.f. 15-10-1965).

2 Subs. by s. 5, ibid., for clause (c) (w.e.f. 15-10-1965).

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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.

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 and shall likewise add his address, description and occupation, if any.

15A.

Special provision as to alternation of memorandum consequent on alteration of name of State of Madras. 1[15A.Special provision as to alternation of memorandum consequent on alteration o

15B.

Special provision as to alternation of memorandum consequent on alteration of name of State of Mysore.

1[15B.Special provision as to alteration of memorandum consequent on alteration of name of State of Mysore. Where, in the memorandum of association of a company in existence immediately before the commencement of the Mysore State (Alteration of Name) Act, 1973 (31 of 1973), it is stated that Mysore is the State in which the registered office of that company is situate, then, notwithstanding anything contained in this Act, the said memorandum shall, as from such commencement, be deemed to have been altered by substitution of a reference to the State of Karnataka for the reference to the State of Mysore and the Registrar of the State of Karnataka shall make necessary alterations in the memorandum of association and the certificate of incorporation of the said company.]

16.

Alteration of memorandum.

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 in 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.

1 Ins. by the Mysore State (Alteration of Name) (Adaptation of Laws on Union Subjects) Order, 1974 (w.e.f. 1-11-1973), see Notification No.

G.S.R. 431(E), dated 21st October, 1974, see Gazette of India, Extraordinary, Pt. II, Sec. 3(i), P. 1981.

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17.

Special resolution and confirmation by Company Law Board required for alternation of memorandum.

17. Special resolution and confirmation by Company Law Board required for alternation of memorandum. (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 1[Company Law Board] on petition.

(3) Before confirming the alteration, the 1[Company Law Board] 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 1[Company Law Board], be affected by the alteration; and

(b) that, with respect to every creditor who, in the opinion of the 1[Company Law Board], is entitled to object to the alteration, and who signifies his objection in the manner directed by the 1[Company Law Board], 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 1 [Company Law Board] :

Provided that the 1[Company Law Board] may, in the case of any person or class of persons, for special reasons, dispense with the notice required by clause (a).

1 Subs. by Act 41 of 1974, s. 5, for "Court" (w.e.f. 1-2-1975).

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1[(4) The 2[Company Law Board] shall cause notice of the petition for confirmation of the alteration to be served on the Registrar who shall also be given a reasonable opportunity to appear before the 2[Company Law Board] and state his objections and suggestions, if any, with respect to the confirmation of the alteration.]

(5) The 2[Company Law Board] 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 2[Company Law Board] 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 2[Company Law Board] may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the 2[Company Law Board] 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.

Alternation to be registered within three months.

18.Alternation to be registered within three months.3[(1) A certified copy of the order of the 2[Company Law Board] made under sub-section (5) of section 17 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 who shall register the same and certify the registration under his hand within one month from the date of the filing of such documents.)

(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

1 Subs. by Act . 65 of 1960, s. 6, for sub-section (4).

2 Subs. by Act 41 of 1974, s. 5, for "Court" (w.e.f. 1-2-1975).

3 Subs. by Act 65 of 1960, s. 7, for sub-section (1).

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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 1[Company Law Board] may, at any time, by order, extend the time for the filing of documents 2[or for the registration of the alteration] under this section by such period as it thinks proper.

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Effect of failure to register.

19.Effect of failure to register.(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.

3[(2) If the documents required to be filed with the Registrar under section 18 are not filed within the time allowed under that section, such alteration and the order of the 1[Company Law Board] made under sub-section (5) of section 17 and all proceedings connected therewith, shall, at the expiry of such period, become void and inoperative :

Provided that the 1[Company Law Board] 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.

Companies not to be registered with undesirable names.

20.Companies not to be registered with 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).

1 Subs. by Act 41 of 1974, s. 5, for "Court" (w.e.f. 1-2-19 75).

2 Ins. by Act 65 of 1960, s. 7.

3 Subs. by s. 8, ibid., for sub-section (2).

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21.

Change of name by company.

*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:

1[Provided that no such approval shall be required where the only change in the name of a company is the addition thereto or, as the case may be, the deletion therefrom, of the word "Private", consequent on the conversion in accordance with the provisions of this Act of a public company into a private company or of a private company into a public company.]

22.

Rectification of name of company.

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 or new name; and

* In its application to Government Companies, section 21 shall be read along with the following proviso:

"Provided that nothing in this section shall apply to a Government Company where the change in its name consists only

in the deletion of the word 'Private' therefrom":

Vide Notification No.GSR 1649 dt. 13.11.65, Gaz. of India, Pt.II, Sec. 3(i), p. 1733-34 (issued under s. 620).

1 Added by Act 31 of 1965, s. 6 (w.e.f. 15-10-1965).

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(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), the company, and every officer who is in default, 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.

*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.

Change of existing private limited companies.

24.Change of existing private limited companies. (1) In the case of a company which was a private limited company immediately before the commencement of this Act, the Registrar shall enter the word

'Private' before the word 'Limited' in the name of the company upon the register and shall also make the necessary alterations in the certificate of incorporation issued to the company and in its memorandum of association.

(2) Sub-section (3) of section 23 shall apply to a change of name under sub-section (1), as it applies to a change of name under section 21.

*In its application to Government Companies section 23 shall be read along with the following sub-section:-

"(1A) Where the change in the name of a Government Company consists only in the deletion of the word "Private" therefrom, that Government Company shall, not later than three months from the date thereof, inform the Registrar of the aforesaid change and thereupon the Registrar shall delete the word 'Private' before the word 'Limited' in the name of the Company upon the register and shall also make the necessary alterations in the certificate of incorporation issued to the company":

Vide Notifn. No. (GSR 1649 dt. 13.11.1965, Gaz. of India, Pt.II, Sec.3(i), p-1733-34 (issued under s. 620).

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25.

Power to dispense with "Limited" in name of charitable or other company.

25. 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,

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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.

1[(6) It shall not be necessary for a body to which a licence is so granted to use the word " Limited " or the words " Private Limited " as any part of its name and, unless its articles otherwise provide, such body shall, if the Central Government by general or special order so directs and to the extent specified in the direction, be exempt from such of the provisions of this Act as may be specified therein.]

(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.

2[(8) (a) A body in respect of which a licence under this section is in force shall not alter the provisions of its memorandum with respect to its objects except with the previous approval of the Central Government signified in writing.

(b) The Central Government may revoke the licence of such a body if

it contravenes the provisions of clause (a).

1 Subs. by Act 65 of 1960 s. 9, for sub-section (6).

2 Subs. by s. 9, ibid., for sub-section (8).

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(c) In according the approval referred to in clause (a), the Central Government may vary the licence by making it subject to such conditions and regulations as that Government thinks fit, in lieu of, or in addition to, the conditions and regulations, if any, to which the licence was formerly subject.

(d) Where the alteration proposed in the provisions of the memorandum of a body under this sub-section is with respect to the objects of the body so far as may be required to enable it to do any of the things specified in clauses (a) to (g) of sub-section (1) of section 17, the provisions of this sub-section shall be in addition to, and not in derogation of, the provisions of that section.]

(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.

26.

Articles prescribing regulations.

26. 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.

27.

Regulations required in case of unlimited company, company limited by guarantee or private company limited by shares.

27. 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.

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(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).

28.

Adoption and application of Table A in the case of companies limited by shares.

28. 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.

29.

Form of articles in the case of other companies.

29. Form of articles in the case of other companies. The articles of a 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:

1[Provided that nothing in this section shall be deemed to prevent a company from including any additional matters in its articles in so far as they are not inconsistent with the provisions contained in the Form in any of the Tables C, D and E, adopted by the company.]

30.

Form and signature of articles.

30. 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 and shall likewise add his address, description and occupation, if any.

1 Ins. by Act 65 of 1960, s. 10.

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31.

Alteration of articles by special resolution.

31. 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:

1[Provided that no alteration made in the articles under this subsection which has the effect of converting a public company into a private company, shall have effect unless such alteration has been approved by the Central Government.]

(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.

1[(2A) Where any alteration such as is referred to in the proviso to sub-section (1) has been approved by the Central Government, a printed copy of the articles as altered shall be filed by the company with the Registrar within one month of the date of receipt of the order of approval.]

(3) The power of altering articles under this section shall, in the case of any company formed and registered under Act No. 19 of 1857 and Act No. 7 of 1360 or either of them, extend to altering any provisions in Table B annexed to Act 19 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

32.

Registration of unlimited company as limited, etc.

32.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 pursuant 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.

1 Ins. by Act 65 of 1960, s. 11.

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(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.

33.

Registration of memorandum and articles.

33.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

1[(c) the agreement, if any, which the company proposes to enter into with any individual for appointment as its managing or whole-time director or manager.]

(2) A declaration by an advocate of the Supreme Court or of a High Court, an attorney or a plader entitled to appear before a High Court, or 2["a secretary, or a chartered accountant, in whole-time practice in India"] who is engaged in the formation of a company, or by a person named in the articles as a director, 2* * * 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[Explanation.-For the purposes of this sub-section, "chartered accountant in whole-time practice in India" means a chartered accountant within the meaning of clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949), who is practising in India and who is not in fulltime employment.]

(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.

34.

Effect of Registration.

34. 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.

1 Subs. by Act 31 of 1988, s. 6 (w.e.f. 15-6-1988).

2. Omitted by s.6, ibid. (w.e.f. 15-6-1988).

3. Added by s.6, ibid (w.e.f. 15-6-1988).

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(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.

35.

Conclusiveness of certificate of incorporation.

35. 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.

36.

Effect of memorandum and articles.

36. 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.

37.

Provision as to companies limited by guarantee.

37. 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.

38.

Effect of alteration in memorandum or articles.

38. 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:

1[Provided that this section shall not apply-

(a) in any case where the member agrees in writing either before or after a particular alteration is made, to be bound by the alteration; or

(b) in any case where the company is a club or the company is any other association and the alteration requires the member to pay recurring or periodical subscriptions or charges at a higher rate although he does not agree in writing to be bound by the alteration.]

39.

Copies of memorandum and articles, etc, to be given to members.

39. 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 192, 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.

40.

Alteration of memorandum or articles, etc., to be noted in every copy.

40.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

1 Subs. by Act 65 of 1960, s. 12, for the proviso.

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sub-section (1) of section 39 or in any other agreement, or any resolution, referred to in section 192, 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

41.

Definition of "member".

41.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 1[agrees in writing] to become a member of a company and whose name is entered in its register of members, shall be a member of the company.

2[(3) Every person holding equity share capital or company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a members of the conserved company.]

42.

Membership of holding company.

42.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.

1 Subs. by Act 65 of 1960, s, 13, for " agrees."

2. Ins. by Act 22 of 1996, s.31 and Sch. (w.e.f. 20-9-1995).

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(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

43.

Consequences of default in complying with conditions constituting a company a private company.

43. 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 1[Company Law Board] 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 1[Company Law Board] just and expedient, order that the company be relieved from such consequences as aforesaid.

43A.

Private company to become public company in certain cases.

2[43A.Private company to become public company in certain cases. (1) Save as otherwise provided in this section, where not less than twenty-five per cent. of the paid-up share capital of a private company having a share capital, is held by one or more bodies corporate, the private company shall,-

(a)on and from the date on which the aforesaid percentage is first held by such body or bodies corporate, or

(b)where the aforesaid percentage has been first so held before the commencement of the Companies (Amendment) Act, 1960 (65 of 1960), on and from the expiry of the period of three months from the date of such commencement unless within that period the aforesaid percentage is reduced

1 Subs. by Act 31 of 1988, s. 67 (w.e.f. 31-5-1991).

2 Ins. by Act 65 of 1960, s.14.

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below twenty-five per cent. of the paid-up share capital of the private company,

become by virtue of this section a public company:

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1)

of section 3 and the number of its members may be, or may at any time be reduced, below seven :

Provided further that in computing the aforesaid percentage, account shall not be taken of any share in the private company held by a banking company, if, but only if, the following conditions are satisfied in respect of such share, namely:-

(a) that the share-

(i) forms part of the subject-matter of a trust,

(ii) has not been set apart for the benefit of any body corporate, and

(iii) is held by the banking company either as a trustee of that trust or in its own name on behalf of a trustee of that trust; or

(b) that the share-

(i) forms part of the estate of a deceased person,

(ii) has not been bequeathed by the deceased person by his will to any body corporate, and

(iii) is held by the banking company either as an executor or administrator of the deceased person or in its own name on behalf of an executor or administrator of the deceased person;

and the Registrar may, for the purpose of satisfying himself that any share is held in the private company by a banking company as aforesaid, call for at any time from the banking company such books and papers as he considers necessary.

1[Explanation.- For the purposes of this sub-section, "bodies corporate" means public companies, or private companies which had become public companies by virtue of this section.]

2[(1A) Without prejudice to the provisions of sub-section (1), where the average annual turnover of a private company, whether in existence at the commencement of the Companies (Amendment) Act,

1 Added by Act 31 of 1988, s. 7 (w.e.f. 15.6.1988).

2 Ins. by Act 41 of 1974 s.6 (w.e.f. 1-2-1975).

1974, (41 of 1974) or incorporated thereafter, is not, during the relevant period 1[less than such amount as may be prescribed] the private company shall, irrespective of its paid-up share capital, become, on and from the expiry of a period of three months from the last day of the relevant period during which the private company had the said

average annual turnover, a public company by virtue of this sub-section :

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be, or may at any time be reduced, below seven.

(1B) Where not less than twenty-five per cent. of the paid-up share capital of a public company, having share capital, is held by a private company, the private company shall,-

(a) on and from the date on which the aforesaid percentage is first held by it after the commencement of the Companies (Amendment) Act, 1974, (41 of 1974), or

(b) where the aforesaid percentage has been first so held before the commencement of the Companies (Amendment) Act, 1974, (41 of 1974) on and from the expiry of the period of three months from the date of such commencement, unless within that period the aforesaid percentage is reduced below twenty-five per cent. of the paid-up share capital of the public company,

become, by virtue of this sub-section, a public company, and thereupon all other provisions of this section shall apply thereto :

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be, or may at any time be reduced, below seven.]

2[(1C) Where, after the commencement of the Companies (Amendment) Act, 1988, (31 of 1988) a private company accepts, after an invitation is made by an advertisement, or renews, deposits from the public, other than its members, directors or their relatives, such private company shall, on and from the date on which such acceptance or renewal, as the case may be, is first made after such commencement, become a public company and thereupon all the provisions of this section shall apply thereto:

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be, or may at any time be, reduced below seven.]

(2) Within three months from the date on which a private company becomes a public company by virtue of this section, the company shall inform the Registrar that it has become a public company as aforesaid, and thereupon the Registrar shall delete the word "Private" before the word "Limited" in the name of the company upon the register and shall also make the necessary alterations in the certificate of incorporation issued to the company and in its memorandum of association.

1 Subs. by Act 31 of 1988, s. 7 (w.e.f. 15.6.88).
2 Ins. by s.7, ibid (w.e.f. 15.6.88).

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(3) Sub-section (3) of section 23 shall apply to a change of name under sub-section (2) as it applies to a change of name under section 21.

(4)A private company which has become a public company by virtue of this section shall continue to be a public company until it has, with the approval of the Central Government and in accordance with the provisions of this Act, again become a private company.

(5)If a company makes default in complying with sub-section (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 for every day during which the default continues.

1* * * * *

1 Omitted by Act 31 of 1988, s. 7 (w.e.f. 15-6-1988).

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(8)Every private company having a share capital shall, in addition to the certificate referred to in sub-section (2) of section 161, file with the Registrar along with the annual return a second certificate signed by both the signatories of the return, stating either-

(a) that 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 private company, no body or bodies corporate has or have held twenty-five per cent. or more of its paid-up share capital, 1* * *

1* * * * *

2[(c) that the private company, irrespective of its paid-up share capital, did not have, during the relevant period, an average annual turnover of 3[such amount as is referred to in such-section (1A) or more.]]

4["(d) that the private company did not accept or renew deposits from the public.]

2[(9)Every private company, having share capital, shall file with the Registrar along with the annual return a certificate signed by both the signatories of the return, stating that 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 private company, it did not hold twenty-five per

cent. or more of the paid-up share capital of one or more public companies.

4[(10) Subject to the other provisions of this Act, any reference in this section to accepting, after an invitation is made by an advertisement, or renewing deposits from the public shall be construed as including a reference to accepting, after an invitation is made by an advertisement, or renewing deposits from any section of the public and the provisions of section 67 shall, so far as may be, apply, as if the reference to invitation to the public to subscribe for shares or debentures occurring in that section, includes a reference to invitation from the public for acceptance of deposits.]

1 Omitted by Act 31 of 1988, s. 7 (w.e.f. 15.6.88).

2 Ins. by Act 41 of 1974, s.6 (w.e.f. 1-2-1975).

3 Subs. by Act 31 of 1988 s.7 (w.e.f. 15-6-88).

4 Ins. by s.7, ibid (w.e.f. 15-6-1988).

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Explanation.--For the purposes of this section,--

(a)"relevant period" means the period of three consecutive financial years,-

(i)immediately preceding the commencement of the Companies (Amendment) Act, 1974, (41 of 1974), or

(ii)a part of which immediately preceded such commencement and the other part of which immediately, followed such commencement, or

(iii)immediately following such commencement or at any time thereafter;

(b) "turnover", of a company, means the aggregate value of the realisation made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year.]

1["(c) "deposit" has the same meaning as in section 58A.]

44.

Prospectus or statement in lieu of prospectus to be filed by private company on ceasing to be private company.

44.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 article 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 2[thirty] 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 the Schedule, shall set out the reports specified therein, and the said Parts I and II

1 Ins. by Act 31 of 1988, s.7 (w.e.f. 15-6-1988).

2 Subs. by Act 31 of 1965, s. 62 and Sch., for "fourteen" (w.e.f. 15-10-1965).

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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

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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 for every day during which the default continues.

(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 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 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 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

45.

Members severally liable for debts where business carried on with fewer than seven, or in the case of a private company, two members.

45. 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

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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.

46.

Form of contracts.

46. 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.

47.

Bills of exchange and promissory notes.

47. 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.

48.

Execution of deeds.

48. 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.

49.

Investments of company to be held in its own name.

49. Investments of company to be held in its own name. (1) Save as otherwise provided in sub-sections (2) to (5) 1[or any other law for the time being in force] 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

1 Ins. by Act 65 of 1960, s. 15.

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(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 1** *.

(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 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

2[(aa) from depositing with, or transferring to, or holding in the name of, the State Bank of India or a Scheduled Bank, being the bankers of the company, shares or securities, in order to facilitate the transfer thereof;

Provided that if thin a period of six months from the date on which the shares or securities are transferred by the company to, or are first held by the company in the name of, the State Bank of India or a Scheduled Bank as aforesaid, no transfer of such shares or securities takes place, the company shall, as soon as practicable after the expiry

1 The words "expressly described as a nominee of the company" omitted by Act 65 of 1960, s. 15.

2 Ins. by s. 15, *ibid.*

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of that period, have the shares or securities retransferred to it from the State Bank of India or the Scheduled Bank or, as the case may be, again hold the shares or securities in its own name; 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.

1[(c) from holding investments in the name of a depository when such investment are in the form of Securities held by the company as a beneficial owner.]

(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 2[with the State Bank of India or 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 subsections (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 3[Company Law Board] 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.

1. Ins. by Act 22 of 1996 s.31 and Sch. (w.e.f. 20-9-1995).

2 Subs. by Act 65 of 1960 s. 15, for "with a Scheduled Bank".

3 Subs. by Act 31 of 1988, s. 67 (w.e.f. 31-5-1991).

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50.

Power for company to have official seal for use outside India.

50. 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 agents 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 Documents

51.

Service of documents on company.

51. Service of documents on company. A document may be served on a company or an officer thereof by sending it to the company or officer at the registered office of the company by post under certificate of posting or by registered post, or by leaving it at its registered office:

1[Provided that where the securities are held in a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic mode or by delivery of floppies or discs.]

52.

Service of documents on Registrar.

52. Service of documents on Registrar. A document may be served on a 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 or leaving it for, him at his office.

53.

Service of documents on members by company.

53. Service of documents on members by company. (1) A document may be served by a company on any member thereof 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 document is sent by post,-

(a) service thereof shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the

1. Ins. by Act 22 of 1996, s.31 and Sch. (w.e.f. 20-9-1995).

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document, provided that where a member has intimated to the

company in advance that documents should be sent to him under a certificate of posting or by registered post with or without acknowledgement due and has deposited with the company a sum sufficient to defray the expenses of doing so, service of the document shall not be deemed to be effected unless it is sent in the manner intimated by the member; and

(b)1* * * 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 document advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly served on the day on which the advertisement appears, on 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 document may be served by the company on the jointholders of a share by serving it on the joint-holder named first in the register in respect of the share.

(5) A document may be served by the company on 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 serving the document in any manner in which it might have been served if the death or insolvency had not occurred.

Authentication of Documents and Proceedings

54.

Authentication of documents and proceedings.

54. Authentication of documents and proceedings. 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.

1 The words " unless the contrary is proved," omitted by Act 65 of 1960, s. 16.

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

Prospectus

55.

Dating of prospectus.

55. 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.

56.

Matters to be stated and reports to be set out in prospectus.

56. 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 1[by memorandum containing such salient features or a prospectus as may be prescribed] which complies with the requirements of this section:

1[Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list, be furnished to him:

Provided further 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

1 Subs. by Act 31 of 1988, s. 8 (w.e.f.31-5-1991).

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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 1[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 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.

57.

Expert to be unconnected with formation or management of company.

57. Expert to be unconnected with formation or management of 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, and has not been, engaged or interested in the formation or promotion, or in the management, of the company.

1 Subs. by Act 52 of 1964 s. 3 and Sch. II, for "was immaterial".

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58.

Expert's consent to issue of prospectus containing statement by him.

58. 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 in the prospectus.

58A.

Deposits not to be invited without issuing an advertisement.

1[58A. Deposits not to be invited without issuing an advertisement. (1) The Central Government may, in consultation with the Reserve Bank of India, prescribe the limits up to which, the manner in which and the conditions subject to which deposits may be

invited or accepted by a company either from the public or from its members.

(2) No company shall invite, or allow any other person to invite or cause to be invited on its behalf, any deposit unless-

(a) such deposit is invited or is caused to be invited in accordance with the rules made under sub-section (1), and

(b) an advertisement, including therein a statement showing the financial position of the company, has been issued by the company in such form and in such manner as may be prescribed.

(3) (a) Every deposit accepted by a company at any time before the commencement of the Companies (Amendment) Act, 1974, (41 of 1974). in accordance with the directions made by the Reserve Bank of India under Chapter IIIB of the Reserve Bank of India Act, 1934, (2 of 1934) shall, unless renewed in accordance with clause (b), be repaid in accordance with the 2[terms and conditions of such deposit.]

(b) No deposit referred to in clause (a) shall be renewed by the company after the expiry of the term thereof unless the deposit is such that it could have been accepted if the rules made under sub-section (1) were in force at the time when the deposit was initially accepted by the company.

1 Ins. by Act 41 of 1974, s. 7 (w.e.f. 1-2-1975).

2 Subs. by Act 31 of 1988, s. 9 (w.e.f. 1.9.1989).

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(c) Where, before the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), any deposit was received by a company in contravention any direction made under Chapter IIIB of the Reserve Bank of India Act, 1934(2 of 1934), repayment of such deposit shall be made in full on or before the 1st day of April, 1975 and such repayment shall be without prejudice to any action that may be taken under the Reserve bank of India Act, 1934 for the acceptance of such deposit in contravention of such direction.

1[(3A) Every deposit accepted by a company after the commencement of the Companies (Amendment) Act, 1988, shall, unless renewed in accordance with the rules made under subsection (1), be repaid in accordance with the terms and conditions of such deposit.]

(4) Where any deposit is accepted by a company after the commencement of the Companies (Amendment) Act, 1974(41 of 1974), in contravention of the rules made under sub-section (1), repayment of such deposit shall be made by the company within thirty days from the date of acceptance of such deposit or within such further time, not exceeding thirty days, as the Central Government may, on sufficient cause

being shown by the company, allow.

(5) Where a company omits or fails to make repayment of a deposit in accordance with the provisions of clause (c) of sub-section (3), or in the case of a deposit referred to in sub-section (4), within the time specified in that sub-section,-

(a) the company shall be punishable with fine which shall not be less than twice the amount in relation to which the repayment of the deposit has not been made, and out of the fine, if realised, an amount equal to the amount in relation to which the repayment of deposit has not been made, shall be paid by the Court, trying the offence, to the person to whom repayment of the deposit was to be made, and on such payment, the liability of the company to make repayment of the deposit shall, to the extent of the amount paid by the Court, stand discharged;

(b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

(6) Where a company accepts or invites, or allows or causes any other person to accept or invite on its behalf, any deposit in excess of the limits prescribed under sub-section (1) or in contravention of

1 Ins. by Act 31 of 1988, s. 9 (w.e.f. 1.9.1989).

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the manner or condition prescribed under that sub-section or in contravention of the provisions of subsection (2), as the case may be,-

(a) the company shall be punishable,-

(i) where such contravention relates to the acceptance of any deposit, with fine which shall not be less than an amount equal to the amount of the deposit so accepted,

(ii) where such contravention relates to the invitation of any deposit, with fine which may extend to one lakh rupees but shall not be less than five thousand rupees;

(b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

(7) (a) Nothing contained in this section shall apply to,--

(i) a banking company, or

(ii) such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

(b) Except the provisions relating to advertisement contained in clause (b) of sub-section (2), nothing in this section shall apply to such classes of financial companies as the Central Government may after consultation with the Reserve Bank of India, specify in this behalf.

1[(8) The Central Government may, if it considers it necessary for avoiding any hardship or for any other just and sufficient reason by order issued either prospectively or retrospectively from a date not earlier than the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), grant extension of time to a company or class of companies to comply with, or exempt any company or class of companies from, all or any of the provisions of this section either generally or for any specified period subject to such conditions as may be specified in the order:

Provided that no order under this sub-section shall be issued in relation to a class of companies except after consultation with the Reserve Bank of India.]

2[(9) Where a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board may, if it is satisfied, either on its own motion or on the application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest, direct, by order, the company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:

Provided that the Company Law Board may, before making any order under this sub-section, give a reasonable opportunity of being heard to the company and the other persons interested in the matter.

(10) Whoever fails to comply with any order made by the Company Law Board under sub-section (9) shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of not less than rupees fifty for every day during which such noncompliance continues.]

1 Ins. by Act 46 of 1977, s. 3.

2 Ins. by Act 31 of 1988, s. 9 (w.e.f. 1.9.1989).

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Explanation.-For the purposes of this section "deposit" means any deposit of money with, and includes any amount borrowed by, a company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.

58B.

Provisions relating to prospectus to apply to advertisement.

58B. Provisions relating to prospectus to apply to advertisement. The provisions of this Act relating to a prospectus shall, so far as may be, apply to an advertisement referred to in section 58A.]

59.

Penalty and interpretation.

59. Penalty and interpretation. (1) If any prospectus is issued in contravention of section 57 or 58, 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 57 and 58, the expression "expert" includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him.

60.

Registration of prospectus.

60. 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 58 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.

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(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,

1[(3) The Registrar shall not register a prospectus unless the requirements of sections 55, 56, 57 and 58 and sub-sections (1) and (2) of this section have been complied with and the prospectus is accompanied by the consent in writing of the person, if any, named therein as the auditor, legal adviser, attorney, solicitor, banker or broker of the company or intended company, to act in that capacity.]

(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.

61.

Terms of contract mentioned in prospectus or statement in lieu of prospectus, not to be varied.

61. Terms of contract mentioned in prospectus or statement in lieu of prospects, 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.

1 Subs. by Act 65 of 1960, s. 17, for sub-section (3).

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62.

Civil liability for misstatements in prospectus.

62.Civil liability for misstatements 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;

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(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 58, the consent of a person is required to the issue of a prospectus and he has given that consent, or where, under 1* * * sub-section (3)of section 60, 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;

(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

1 The words, brackets and letter "clause (b) of " omitted by Act 65 of 1960, S. 18.

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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 an 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 58 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 58, 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 58 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 58 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration ;

(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 58 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 58 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 58.

63.

Criminal liability for mis-statements in prospectus.

63.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 58 to the inclusion therein of a statement purporting to be made by him as an expert, or

(b) the consent required by 1* * * sub-section (3) of section 60.

64.

Document containing offer of shares or debentures for also to be deemed prospectus.

64.Document containing offer of shares or debentures for also 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 misstatements contained in the document or otherwise in respect thereof.

1 The words, brackets and letter " clause (b) of " omitted by Act 65 of 1960, S. 19.

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(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 56 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 60 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.

65.

Interpretation of provisions relating to prospectuses.

65. 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 be untrue

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.

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(2) For the purposes of sections 61, 62 and 63 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.

66.

Newspaper advertisements of prospectus.

66. 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.

67.

Construction of references to offering shares or debentures to the public, etc]

67. 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

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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).

68.

Penalty for fraudulently inducing persons to invest money.

68. 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.

68A.

Personation for acquisition, etc., of shares.

1[68A. Personation for acquisition, etc., of shares. (1) Any person who-

(a) makes in a fictitious name an application to a company for acquiring, or subscribing for, any shares therein, or

(b) otherwise induces a company to allot, or register any transfer of, shares therein to him, or any other person in a fictitious name,

shall be punishable with imprisonment for a term which may extend to five years.

(2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by the company and in every form of application for shares which is issued by the company to any person.]

Allotment

69.

Prohibition of allotment unless minimum subscription received.

69. 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

1 Ins. by Act 31 of 1965, s. 8 (w.e.f. 15-10-1965).

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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.

1[(4) All moneys received from applicants for shares shall be deposited and kept deposited in a Scheduled Bank-

(a) until the certificate to commence business is obtained

under section 149 ; or

(b)Where such certificate has already been obtained, until the entire amount payable on applications for shares in respect of the minimum subscription has been received by the company,

and where such amount has not been received by the company within the time or the expiry of which the moneys received from the applicants for shares are required to be repaid without interest under sub-section (5), all moneys received from applicants for shares shall be returned in accordance with the provisions of that sub-section.

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

1 Subs. by Act 31 of 1965, s. 9, for sub-section (4) (w.e.f. 15-10-1965).

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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 in relation to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

70.

Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar.

70. 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.

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(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 thereof.

(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 authorised 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 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 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 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.

71.

Effect of irregular allotment.

71. Effect of irregular allotment. (1) An allotment made by a company to an applicant in contravention of the provisions of section 69 or 70 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 69 or 70 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.

72.

Applications for, and allotment of, shares and debentures.

72. 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 62 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

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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 62 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.

73.

Allotment of shares and debentures to be dealt in on stock exchange.

73 Allotment of shares and debentures to be dealt in on stock exchange. 1[(1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.]

2[1A] Where a prospectus, whether issued generally or not,

state that an 3[application under sub-section (1) has been] made for permission for the shares or debentures offered thereby to be dealt in one or more recognized stock exchanges, such prospectus, shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void 4* * *

1 Ins. by Act 31 of 1988, s.10(w.e.f.15-6-1988).

2 Subs. by Act 41 of 1974, s.8 sub-section (1) (w.e.f. 1-2-1975) and renumbered as sub-section (1A) by Act 31 of 1988, s.10 (w.e.f. 15-6-1988).

3 Subs. by Act 31 of 1988, s.10 (w.e.f. 15-6-1988).

4 Omitted by s.10, ibid.(w.e.f. 15-6-1988).

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if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists:

Provided that where an appeal against the decision of any recognized stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act,1956 (42 of 1956),such allotment shall not be void until the dismissal of the appeal.]

(2) Where the permission has not been 1[applied under sub-section(1)] 2[or, such permission, having been applied for, 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 1[the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent. and not more than fifteen per cent., as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.]

3* * * * *

4[(2A) Where permission has been granted by the recognized stock exchange or stock exchanges for dealing in any shares or debentures in such stock exchange or each such stock exchange and the moneys received from applicants for shares or debentures are in excess of the aggregate of the application moneys relating to the shares or debentures in respect of which allotments have been made, the company shall repay the moneys to the extent of such excess forthwith without interest, and if such money is not repaid within eight days, from the day the company becomes liable to pay it, 1[the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent. and not more than fifteen per cent., as may be prescribed,

having regard to the length of the period of delay in making the repayment of such money.]

3* * * * *

1 Subs. by Act 31 of 1988, s.10 (w.e.f. 15-6-1988).

2 Subs. by Act 41 of 1974, s. 8, for certain words (w.e.f. 1-2-1975).

3 Omitted by Act 31 of 1988, s.10 (w.e.f. 15-6-1988).

4 Ins. by Act 41 of 1974, s.8 (w.e.f. 1-2-1975).

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(2B) If default is made in complying with the provisions of sub-section (2A), 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 where repayment is not made within six months from the expiry of the eighth day, also with imprisonment for a term which may extend to one year.]

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank 1[until the permission has been granted, or where an appeal has been preferred against the refusal to grant such. permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in 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.

2[(3A) Moneys standing to the credit of the separate bank account referred to in sub-section (3) shall not be utilised for any purpose other than the following purposes, namely :-

(a) adjustment against allotment of shares, where the shares have been permitted to be dealt in on the stock exchange or each stock exchange specified in the prospectus; or

(b) repayment of moneys received from applicants in pursuance of the prospectus, where shares have not been permitted to be dealt in on the stock exchange or each stock exchange specified in the prospectus, as the case may be, or, where the company is for any other reason unable to make the allotment of share.]

(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.

1 Subs. by Act 41 of 1974, s. 8, for certain words (w.e.f. 1-2-1975).

2 Ins. by s. 8, ibid. (w.e.f. 1-2-1975).

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1[(5) For the purposes of this section, it shall be deemed that permission has not been granted if the application for permission, where made, has not been disposed of within the time specified in sub-section (1).]

(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;

1 Subs. by Act 41 of 1974, s.8, for sub-section (5) (w.e.f. 1-2-1975).

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(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.

74.

Manner of reckoning fifth, eighth and tenth days in sections 72 and 73.

74. Manner of reckoning fifth, eighth and tenth days in sections 72 and 73. In reckoning for the purposes of sections 72 and 73, the fifth day [or the eighth day] another day, any intervening day which is a public holiday under the Negotiable Instruments Act, 1881 (36 of 1881), shall be disregarded, and if the fifth, or eighth 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.

75.

Return as to allotments.

75. Return as to allotments. (1) Whenever a company having a share capital makes any allotment of its shares, the company shall, within 2 [thirty days] 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:

3 [Provided that the company shall not show in such return any shares as having been allotted for cash if cash has not actually been received in respect of such allotment.]

(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

1 Subs. by Act 31 of 1988, s.11 (w.e.f. 15-6-1988).

2 Subs. by Act 31 of 1965, s. 62 and Sch., for " one month "
(w.e.f. 15-10-1965).

3 Added by s. 11, ibid. (w.e.f. 15-10-1965).

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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 ; and

1[(c) file with the Registrar-

(i)in the case of bonus shares, a return stating the number and nominal amount of such shares comprised in the allotment and the names, addresses and occupations of the allottees and a copy of the resolution authorising the issue of such shares;

(ii)in the case of issue of shares at a discount a copy of the resolution passed by the company authorising such issue together with a copy of the order of the Court sanctioning the issue and where the maximum rate of discount exceeds ten per cent., a copy of the orders of the Central Government permitting the issue at the higher percentage.]

(2) Where a contract such as is mentioned in clause (b) of subsection (1) is not reduced to writing, the company shall, within 2[thirty days] 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,(2 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 2 [thirty days] specified in subsections (1) and (2) for compliance with the requirements of this section 3[is or was inadequate, he may, on application made in that behalf by the company, whether before or after the expiry of the said period, extend

1 Subs. by Act 65 of 1960, s. 21, for cl. (c).

2 Subs. by Act 31 of 1965, s. 62 and Sch., for " one month " (w.e.f. 15-10-1965).

3 Subs. by s. 11, *ibid.*, for certain words, (w.e.f. 15-10-1965).

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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 1[thirty days] 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 :

2[Provided that in case of contravention of the proviso to clause (a) of sub-section (1), every such officer, and every promoter of the company who is guilty of the contravention shall be punishable with fine which may extend to five thousand rupees.]

(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

76.

Power to pay certain commissions and prohibition of payment of all other commissions, discounts, etc.

76. 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, or debentures of, the company, or

(b) his procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in, or debentures of, 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 in the case of shares, five per cent. of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is less, and in the case of debentures, two and a half per cent. of the price at which the debentures are issued or the amount or rate authorised by the articles, whichever is less;

1 Subs. by Act 31 of 1965, s. 62 and Sch., for " one month " (w.e.f. 15-10-1965).

2 Subs. by s. 11, *ibid.*, for the proviso (w.e.f. 15-10-1965).

(iii) the amount or rate per cent. of the commission paid or agreed to be paid is-

in the case of shares or debentures offered to the public for subscription, disclosed in the prospectus ; and

in the case of shares or debentures 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 or debentures, is issued, also disclosed in that circular or notice ; 1* * *

(iv) the number of shares or debentures which persons have agreed for a commission to subscribe absolutely or conditionally is disclosed in the manner aforesaid 2 [and]

2[(V)a copy of the contract for the payment of the commission is delivered to the Registrar at the time of delivery of the prospectus or the statement in lieu of prospectus for registration.]

(2) Save as aforesaid and save as provided in section 79, no company shall allot any of its shares or debentures or apply 3[any of its 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, or debentures of, the company, or

(b)his procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in, or debentures of, the company,

whether the shares, debentures 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.

1 The word " and" omitted by Act 31 of 1965, s. 12 (w.e.f. 15-10-1965).

2 Ins. by s. 12, ibid. (w.e.f. 15-10-1965).

3 Subs. by Act 65 of 1960, s. 22, for "any of its capital moneys".

(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, debentures or money from, a company shall have and shall be deemed always to have had power to apply any part of the shares, debentures 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.

1[(4A) For the removal of doubts it is hereby declared that no commission shall be paid under clause (a) of sub-section (1) to any person on shares or debentures which are not offered to the public for subscription:

Provided that where a person has subscribed or agreed to subscribe under clause (a) of sub-section (1) for any shares in, or debentures of, the company and before the issue of the prospectus or statement in lieu thereof any other person or persons has or have subscribed for any or all of those shares or debentures and that fact together with the aggregate amount of commission payable under this section in respect of such subscription is disclosed in such prospectus or statement, then, the company may pay commission to the first-mentioned person in respect of such subscription.]

(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.

77.

Restrictions on purchase by company or loans by company for purchase, of its own or its holding company's shares.

77. 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

1 Ins. by Act 31 of 1965, s. 12 (w.e.f. 15-10-1965).

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own shares, unless the consequent reduction of capital is effected and sanctioned in pursuance of sections 100 to 104 or of section 402.

(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 80 or under any corresponding provision in any previous companies law.

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Issue of Shares at Premium and Discount

78.

Application of premiums received on issue of shares.

78. 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.

79.

Power to issue shares at a discount.

79. 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 1 [Company Law Board];

1 Subs. by Act 41 of 1974, s. 9, for "Court" (w.e.f. 1-2-1975).

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(ii) the resolution specifies the maximum, rate of discount
1* * * at which the shares are to be issued:

2[Provided that no such resolution shall be sanctioned by the Company Law Board if the maximum rate of discount specified in the resolution exceeds ten per cent., unless that Board is of opinion that a higher percentage of discount may be allowed in the special circumstances of the case;]

(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 3[Company Law Board] or within such extended time as the 3[Company Law Board] may allow.

(3) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the 3[Company Law Board] for an order sanctioning the issue; and on any such application, the 3[Company Law Board], 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.

4[Issue and Redemption of Preference Shares]

80.

Power to issue redeemable preference shares.

80.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:

1 Certain words omitted by Act 41 of 1974, s. 9 (w.e.f. 1-2-1975).

2 Ins. by s. 9, ibid. (w.e.f. 1-2-1975).

3 Subs. by s. 9, ibid.. for "Court" (w.e.f. 1-2-1975).

4 Subs. by Act 31 of 1988, s. 12 (w.e.f. 15.6.1988).

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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 1[the capital redemption reserve account], 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 1[the capital redemption reserve account] 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 2[section 611], be deemed to be increased by the issue of shares in pursuance of this sub-section:

1 Subs. by Act 65 of 1960, s. 23, for "the capital redemption reserve fund".

2 Subs. by s. 23, *ibid.*, for "section 601".

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) 1[The capital redemption reserve account] 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.

2[(5A) Notwithstanding anything contained in this Act, no company limited by shares shall, after the commencement of the Companies (Amendment) Act, 1988, issue any preference share which is irredeemable or is redeemable after the expiry of a period of ten years from the date of its issue]

(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,

1 Subs. by Act 65 of 1960, s. 23, for "The capital redemption reserve fund".

2 Ins. by Act 31 of of 1988, s. 13 (w.e.f 15.6.1988).

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shall be punishable with fine which may extend to one thousand rupees.

80A.

Redemption of irredeemable preference shares, etc.

4[80A.Redemption of irredeemable preference shares, etc. (1) Notwithstanding anything contained in the terms of issue of any preference shares, every preference share issued before the commencement of the Companies (Amendment) Act, 1988,-

(a) which is irredeemable, shall be redeemed by the company within a period not exceeding five years from such commencement, or

(b) which is not redeemable before the expiry of ten years from the date of issue there-on in accordance with the terms of its issue and which had not been redeemed before such commencement, shall be redeemed by the company on the date on which such share is due for redemption or within a period not exceeding ten years from such commencement, whichever is earlier:

Provided that where a company is not in a position to redeem any such share within the period aforesaid and to pay the dividend, if any, due thereon (such shares being hereinafter referred to as unredeemed preference shares), it may, with the consent of the Company Law Board, on a petition made by it in this behalf and notwithstanding anything contained in this Act, issue further redeem-able preference shares equal to the amounts due (including the dividend thereon), in respect of the unredeemed preference shares, and on the issue of such

further redeemable preference shares, the unredeemed shares shall be deemed to have been redeemed.

(2) Nothing contained in section 106 or any scheme referred to in sections 391 to 395, or in any scheme made under section 396, shall be deemed to confer power on any class of shareholders by resolution or on any court or the Central Government to vary or modify the provisions of this section.

(3) If any default is made in complying with the provisions of this section,-

(a) the company making such default shall be punishable with fine which may extend to one thousand rupees for every day during which such default continues; and

(b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.]

Further issue of Capital

81.

Further issue of capital.

81. Further issue of capital. (1) 2 [Where at any time after the expiry of two years from the formation of a company or at any time after the expiry of one year from the allotment of shares in that company made for the first time after its formation, whichever is earlier, it is proposed to increase the subscribed capital of the company by allotment of further shares, then,]

(a) such 3 [further] 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 85.

4[(1A) Notwithstanding anything contained in sub-section (1), the further shares aforesaid may be offered to any persons [whether or

1 Ins. by Act 31 of 1988, s. 14 (w.e.f. 15.6.1988).

2 Subs. by Act 65 of 1960, s. 24, for certain words.

3 Subs. by s. 24, *ibid.*, for "new".

4 Ins. by s. 24, *ibid.*

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not those persons include the persons referred to in clause (a) of subsection (1)] in any manner whatsoever-

(a)if a special resolution to that effect is passed by the company in general meeting, or

(b)where no such special resolution is passed, if the votes cast (whether on a show of hands, or on a poll, as the case may be) in favour of the proposal contained in the resolution moved in that general meeting (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 proposal by members so entitled and voting and the Central Government is satisfied, on an application made by the Board of directors in this behalf, that the proposal is most beneficial to the company.]

(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.

1(3) Nothing in this section shall apply-

(a) to a private company; or

(b)to the increase of the subscribed capital of a public company caused by the exercise of an option attached to debentures issued or loans raised by the company-

(i)to convert such debentures or loans into shares in the

company, or

(ii) to subscribe for shares in the company:

2[Provided that the terms of issue of such debentures or the terms of such loans include a term providing for such option and such term-

(a) either has been approved by the Central Government before the issue of debentures or the raising of the loans or is in conformity with the rules, if any, made by that Government in this behalf ; and

1 Subs. by Act 65 of 1960, s. 24, for sub-section (3).

2 Subs. by Act 53 of 1963, s. 5, for the proviso (w.e.f. 1-1-1964).

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(b) in the case of debentures or loans other than debentures issued to, or loans obtained from, the Government or any institution specified by the Central Government in this behalf, has also been approved by a special resolution passed by the company in general meeting before the issue of the debentures or the raising of the loans.]]

1[(4) Notwithstanding anything contained in the foregoing provisions of this section, where any debentures have been issued to, or loans have been obtained from, the Government by a company, whether such debentures have been issued or loans have been obtained before or after the commencement of the Companies (Amendment) Act, 1963, the Central Government may, if in its opinion it is necessary in the public interest so to do, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to that Government to be reasonable in the circumstances of the case, even if the terms of issue of such debentures or the terms of such loans do not include a term providing for an option for such conversion.

(5) In determining the terms and conditions of such conversion, the Central Government shall have due regard to the following circumstances, that is to say, the financial position of the company, the terms of issue of the debentures or the terms of the loans, as the case may be, the rate of interest payable on the debentures or the loans, the capital of the company, its loan liabilities, its reserves, its profits during the preceding five years and the current market price of the shares in the company.

(6) A copy of every order proposed to be issued by the Central Government under sub-section (4) shall be laid in draft before each House of Parliament while it is in session for a total period of

thirty days which may be comprised in one session or in two or more successive sessions.

(7) If the terms and conditions of such conversion are not acceptable to the company, the company may, within thirty days from the date of communication to it of such order or within such further time as may be granted by the Court, prefer an appeal to the Court in regard to such terms and conditions and the decision of the Court on such appeal and, subject only to such decision, the order of the Central Government under sub-section (4) shall be final and conclusive.]

1 Ins. by Act 53 of 1963, s. 5 (w.e.f. 1-1-1964).

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PART IV

SHARE CAPITAL AND DEBENTURES

Nature, Numbering and Certificate of Shares

82.

Nature of shares.

82. 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.

83.

[Repeled]

83. Repealed by the Depositories Act, 1996 (22 of 1996) s.31 and Sch. (w.e.f. 20-9-1995).

84.

Certificate of shares.

84. Certificate of shares.1[(1)] 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.

2 [(2)] A certificate may be renewed or a duplicate of a certificate may be issued if such certificate-

(a) is proved to have been lost or destroyed, or

(b) having been defaced or mutilated or torn is surrendered to the company.

(3) If a company with intent to defraud renews a certificate or issues a duplicate thereof, the company shall be punishable with fine which may extend to ten thousand rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

(4) Notwithstanding anything contained in the articles of association of a company, the manner of issue or renewal of a certificate or issue of a duplicate thereof, the form of a certificate (original or renewed) or of a duplicate thereof, the particulars to be entered in the register of members or in the register of renewed or duplicate certificates, the form of such registers, the fee on payment of which, the terms and conditions, if any (including terms and conditions as to evidence and indemnity and the payment of out-of-pocket expenses incurred by a company in investigating evidence) on which a certificate may be renewed or a duplicate thereof may be issued, shall be such as may be prescribed.]

1 S. 84 re-numbered as sub-section (1) of that section by Act 65 of 1960, s. 25.

2 Ins. by s. 25, *ibid.*

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Kinds of Share Capital

85.

Two kinds of share capital.

85. 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 or repayment of capital, 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 or repayment of capital; 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,

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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.

86.

New issues of share capital to be only of two kinds.

86. 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.

87.

Voting rights.

87.Voting rights.(1) Subject to the provisions of section 89 and sub-section (2) of section 92-

(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 repayment or 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

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(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.-For the purposes of this clause, dividend shall be deemed to be due on preference shares in respect of any period, whether a dividend has been declared by the company on such shares for such period or not,-

(a) on the last day specified for the payment of such dividend for such period, in the articles or other instrument executed by the company in that behalf ; or

(b) in case no day is so specified, on the day immediately following such period.

(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 section 89 and sub-section (2) of section 92, 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.

88.

Prohibition of issue of shares with disproportionate rights.

88.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).

89.

Termination of disproportionately excessive voting rights in existing companies.

89.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 87 to equity shares in respect of which the same amount of capital has been paid up, the company shall, within a period of one year 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 87.

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(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 reappointment of a director or of a managing agent or secretaries and treasurers, or to any variation in the terms of an agreement between the company and a managing or wholtime director thereof or 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 subsection (1), the company shall, within one month of the expiry of the period of one year 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.

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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.

90.

Savings.

1[90.Savings. (1) Nothing in sections 85, 86, 88 and 89 shall, in the case of any shares issued by a public company before the commencement of this Act, affect any voting rights attached to the shares save as otherwise provided in section 89, or any rights attached to the shares as to dividend, capital or otherwise.

(2) Nothing in sections 85 to 89 shall apply to a private company, unless it is a subsidiary of a public company.

(3) For the removal of doubts, it is hereby declared that on and from the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), the provisions of section 87 shall apply in relation to the voting rights attached to preference shares issued by a public company before the 1st day of April, 1956, as they apply to the preference shares issued by a public company after that date.

Explanation.-For the purposes of this section references to a public company shall be construed as including references to a private company which is a subsidiary of a public company.]

Miscellaneous provisions as to share capital

91.

Calls on shares of same class to be made on uniform basis.

91.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.

92.

Power of company to accept unpaid share capital, although not called up.

92.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.

1 Subs. by Act 41 of 1974, S. 10, for section 90 (w.e.f. 1-2-1975).

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93.

Payment of dividend in proportion to amount paid up.

93. 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.

94.

Power of limited company to alter its share capital.

94. 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) subdivide 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.

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94A.

Share capital to stand increased where an order is made under section 81(4).

1[94A. Share capital to stand increased where an order is made under section 81(4). (1) Notwithstanding anything contained in this Act, where the Central Government has, by an order made under sub-section (4) of section 81, directed that any debenture or loan or any part thereof shall be converted into shares in a company, the conditions contained in the memorandum of such company shall, where such order has the effect of increasing the nominal share capital of the company, stand altered and the nominal share capital of such company shall stand increased by an amount equal to the amount of the value of the shares into which such debentures or loans or part thereof has been converted.

(2) Where, in pursuance of an option attached to debentures issued or loans raised by the company, any public financial institution proposes to convert such debentures or loans into shares in the company, the Central Government may, on the application of such public financial institution, direct that the conditions contained in the memorandum of such company shall stand altered and the nominal share capital of such company shall stand increased by an amount equal to the amount of the value of the shares into which such debentures or loans or part thereof has been converted.

(3) Where the memorandum of a company becomes altered, whether by reason of an order made by the Central Government under sub-section (4) of section 81 or sub-section (2) of this section, the Central Government shall send a copy of such order to the Registrar and also to the company and on receipt of such order, the company shall file in the prescribed form, within thirty days from the date of such receipt, a return to the Registrar with regard to the increase of share capital and the Registrar shall, on receipt of such order and return, carry out the unnecessary alterations in the memorandum of the company.

95.

Notice to Registrar of consolidation of share capital conversion of shares into stock, etc.

95. Notice to Registrar of consolidation of share capital conversion of shares into stock, 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;

1 Ins. by Act 41 of 1974, s. 11(w.e.f. 1-2-1975).

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- (e) redeemed any redeemable preference shares; or
- (f) cancelled any shares, otherwise than in connection with a reduction of share capital under sections 100 to 104;

the company shall within 1[thirty days] 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.

96.

Effect of conversion of shares into stock.

96. 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.

97.

Notice of increase of share capital or of members.

97. 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 2[thirty] 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

1 Subs. by Act 31 of 1965, s. 62 and Sch., for "one month" (w.e.f. 15-10 1965).

2 Subs. by s. 62 and Sch., ibid., for "fifteen" (w.e.f. 15-10-1965).

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punishable with fine which may extend to fifty rupees for every day during which the default continues.

98.

Power of unlimited company to provide for reserve share capital on re-registration.

98. 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.

99.

Reserve liability of limited company.

99. 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

100.

Special resolution for reduction of share capital.

100. 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".

101.

Application to Court for confirming order, objections by creditors, and settlement of list of objecting creditors.

101. 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 the 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

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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 share holder 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.

102.

Order confirming reduction and powers of court on making such order.

102. 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 101 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

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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,

103.

Registration of order and minute of reduction.

103. 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

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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 40.

104.

Liability of members in respect of reduced shares..

104.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 debt or claim, not entered on the list of creditors, and after the reduction the company is unable, within the meaning of section 434, 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.

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105.

Penalty for concealing name of creditor, etc.

105. 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

106.

Alteration of rights of holders of special classes of shares.

1[106. Alteration of rights of holders of special classes of shares. Where the share capital of a company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of not less than three-fourths of the issued shares of that class or with the sanction of a special resolution passed at a separate meeting of the holders of the issued

shares of that class--

(a) if provision with respect to such variation is contained in the memorandum or articles of the company, or

(b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class.]

107.

Rights of dissentient shareholders.

107.Rights of dissentient shareholders. (1) If in pursuance of any provision such as is referred to in section 106, 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 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

1 Subs. by Act 65 of 1960, s. 26, for s. 106.

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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 1[thirty] 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

108.

Transfer not to be registered except on production of instrument of transfer.

108. 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[3[(1A) Every instrument of transfer of shares shall be in such form as may be prescribed, and-

(a) every such form shall, before it is signed by or on behalf of the transferor and before any entry is made therein, be presented to the prescribed authority, being a person

1 Subs. by Act 31 of 1965, s. 62 and Sch., for "fifteen" (w.e.f. 15-10-1965).

2 Ins. by s. 13, *ibid.* (w.e.f. 1-4-1966).

3 Subs. by Act 37 of 1966, s. 2. for sub-sections (1A), (1B) and (1C) (w.e.f. 1-4-1966).

already in the service of the Government, who shall stamp or otherwise endorse thereon the date on which it is so presented, and

(b) every instrument of transfer in the prescribed form with the date of such presentation stamped or otherwise endorsed thereon shall, after it is executed by or on behalf of the transferor and the transferee and completed in all other respects, be delivered to the company,-

(i) in the case of shares dealt in or quoted on a recognised stock exchange, at any time before the date on which the register of members is closed, in accordance with law, for the first time after the date of the presentation of the prescribed form to the prescribed authority under clause (a) or within 1[twelve months] from the date of such presentation, whichever is latter;

(ii) in any other case, within two months from the date of such presentation.

(1B) Notwithstanding anything contained in sub-section (1A),-an instrument of transfer of shares, executed before the commencement of section 13 of the Companies (Amendment) Act, 1965, (31 of 1965). or executed after such commencement in a form other than the prescribed form, shall be accepted by a company,-

(a) in the case of shares dealt in or quoted on a recognised stock exchange, at any time not later than the expiry of six months from such commencement or the date on which the register of members is closed, in accordance with law, for the first time after such commencement, whichever is later;

(b) in any other case, at any time not later than the expiry of six months from such commencement.

(1C) Nothing contained in sub-sections (1A) and (1B) shall apply to-

(A) any share-

(i) which is held by a company in any other body corporate in the name of a director or nominee in pursuance of sub-section (2), or as the case may be, sub-section(3), of section 49, or

(ii) which is held by a corporation, owned or controlled by the Central Government or a State Government, in any other body corporate in the name of a director or nominee, or

1.Subs. by Act 31 of 1988, s.15 (w.e.f.15-6-1988).

(iii) in respect of which a declaration has been made to the Public Trustee under section 153B, if-

(1) the company or corporation, as the case may be, stamps or otherwise endorses, on the form of transfer in respect of such share, the date on which it decides that such share shall not be held in the name of the said director or nominee or, as the case may be, in the case of any share in respect of which any such declaration has been made to the Public Trustee, the Public Trustee stamps or otherwise endorses, on the form of transfer in respect of such share under his seal, the date on which the form is presented to him, and

(2) the instrument of transfer in such form, duly completed in all respects, is delivered to the-

(a) body corporate in, whose share such company or corporation has made investment in the name of its director or nominee, or

(b) company in which such share is held in trust, within two months of the date so stamped or otherwise endorsed ; or

(B) any share deposited by any person with-

(i) the State Bank of India, or

(ii) any scheduled bank, or

(iii) any banking company (other than a scheduled bank) or financial institution approved by the Central Government by notification in the Official Gazette (and any such approval may be accorded so as to be retrospective to any date not earlier than the 1st day of April, 1966), or

(iv) the Central Government or a State Government or any corporation owned or controlled by the Central Government or a State Government,

by way of security for the repayment of any loan or advance to, or for the performance of any obligation undertaken by, such person, if-

(1) the bank, institution, Government or corporation, as the case may be, stamps or otherwise endorses on the form of transfer of such share-

(a) the date on which such share is returned by it to the depositor, or

(b)in the case of failure on the part of the depositor to repay the loan or advance or to perform the obligation, the date on which such share is released for sale by such bank. institution, Government or corporation, as the case may be, or

(c)where the bank, institution, Government or corporation, as the case may be, intends to get such share registered in its own name, the date on which the instrument of transfer relating to such share is executed by it; and

(2)the instrument of transfer in such form, duly completed in all respects, is delivered to the company within two months from the date so stamped or endorsed.

Explanation.-Where any investment by a company or a corporation in the name of its director or nominee referred to in clause (A) (i) or clause (A) (ii), or any declaration referred to in clause (A) (iii), or any deposit referred to in clause (B), of this sub-section is made after the expiry of the period or date mentioned in clause (a) of sub-section (1B) or after the expiry of the period mentioned in clause (b) of that sub-section, as the case may be, the form of transfer, in respect of the share which is the subject of such investment, declaration or deposit, means the prescribed form; or

(C) any share which is held in any company by the Central Government or a State Government in the name of its nominee, except that every instrument of transfer which is executed on or after the 1st day of October, 1966, in respect of any such share shall be in the prescribed form.]

(1D) Notwithstanding anything in sub-section (1A) or sub-section (1B) 1[or sub-section (1C)], where in the opinion of the Central Government it is necessary so to do to avoid hardship in any case, that Government may on an application made to it in that behalf, extend the periods mentioned in those sub-sections by such further time as it may deem fit 1[whether such application is made before or after the expiry of the periods aforesaid]; and the number of extensions

1 Ins. by Act 37 of 1966, s. 2 (w.e.f. 1-4-1966).

granted hereunder and the period of each such extension shall be shown in the annual report laid before the Houses of Parliament under section 638.]

(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.

1[(3) Nothing contained in this section shall apply to transfer of security effected by the transferor and the transferee both of whom are entered as beneficial owners in the records of a depository.]

108A

Restriction on acquisition of certain shares.

2[108A. Restriction on acquisition of certain shares.(1) Except with the previous approval of the Central Government, no individual, firm, group, constituent of a group, body corporate or bodies corporate under the same management, shall jointly or severally acquire or agree to acquire, whether in his or its own name or in the name of any other person, any equity shares in a public company, or a private company which is a subsidiary of a public company, if the total nominal value of the equity shares intended to be so acquired exceeds, or would, together with the total nominal value of any equity shares already held in the company by such individual, firm, group, constituent of a group, body corporate or bodies corporate under the same management, exceed twenty-five per cent. of the paid-up equity share capital of such company.

(2) Where any individual, firm, group constituent of a group, body corporate or bodies corporate under the same management (hereafter in this Act referred to as the acquirer), is prohibited, by sub-section (1), from acquiring or agreeing to acquire except with the previous approval of the Central Government, any share of a public company or a private company which is a subsidiary of the company, no-

(a) company in which not less than fifty-one per cent of the share capital is held by the Central Government; or

(b) corporation (not being a company) established by or under any Central Act; or

(c) financial institution,

shall transfer or agree to transfer any share to such acquirer unless such acquirer has obtained the previous approval of the Central Government for the acquisition, or agreement for the acquisition, of such share.

108B

Restriction on transfer of shares.

108B.Restrictio n on transfer of shares. (1) Every body corporate or bodies corporate under the same management, holding, whether singly or in the aggregate, ten per cent. or more of the nominal value of the subscribed equity share capital of any other company shall, before transferring one or more of such shares, give to the Central Government an intimation of its or their proposal to transfer such share, and every such intimation shall include a statement as to the particulars of the share proposed to be transferred, the name and address of the person to whom the share is proposed to be transferred,

the share holding, if any, of the proposed transferee in the concerned company and such other particulars as may be prescribed.

(2) Where, on receipt of an intimation given under sub-section (1) or otherwise, the Central Government is satisfied that as a result of such transfer, a change in the composition of the Board of directors of the company is likely to take place and that such change would be prejudicial to the interests of the company or to the public interest, it may, by order, direct that-

(a) no such share shall be transferred to the proposed transferee:

Provided that no such order shall preclude the body corporate or bodies corporate from intimating in accordance with the provisions of sub-section (1), to the Central Government its or their proposal to transfer the share to any other person, or

(b) where such share is held in a company engaged in any industry specified in Schedule XV, such share shall be transferred to the Central Government or to such corporation owned or controlled by that Government as may be specified in the direction.

(3) Where a direction is made by the Central Government under clause (b) of sub-section (2), the share referred to in such direction shall stand transferred to the Central Government or to the Corporation specified therein, and the Central Government or the specified corporation, as the case may be, shall pay, in cash, to the body corporate or bodies corporate from which such share stands transferred, an amount equal to the market value of such share, within the time specified in sub-section (4).

Explanation.--In this sub-section, "market value" means, in the case of a share which is quoted on any recognised stock exchange, value quoted at such stock exchange on the date immediately preceding the date on which the direction is made, and, in any other case, such value as may be mutually agreed upon between the holder of the share and the Central Government or the specified corporation, as the case may be, or in the absence of such agreement, as may be determined by the court.

(4) The market value referred to in sub-section (3) shall be given forthwith, where there is no dispute as to such value or where such value has been mutually agreed upon, but where there is a dispute as to the market value, such value as is estimated by the Central Government or the corporation, as the case may be, shall be given forthwith and the balance, if any, shall be given within thirty days from the date when the market value is determined by the court.

(5) If the Central Government does not make any direction under sub-section (2) within sixty days from the date of receipt by it of the intimation given under sub-section (1), the provisions contained in sub-section (2) with regard to the transfer of such share shall not apply.

Restriction on the transfer of shares of foreign companies.

108C. Restriction on the transfer of shares of foreign companies. No body corporate or bodies corporate under the same management, which holds or hold in the aggregate, ten per cent. or more of the nominal value of the equity share capital of a foreign company, having an established place of business in India, shall transfer any share in such foreign company to any citizen of India or any body corporate incorporated in India except with the previous approval of the Central Government and such previous approval shall not be refused unless the Central Government is of opinion that such transfer would be prejudicial to the public interest.

108D

Power of Central Government to direct companies not to give effect to the transfer.

108D. Power of Central Government to direct companies not to give effect to the transfer. (1) Where the Central Government is satisfied that as a result of the transfer of any share or block of shares of a company, a change in the controlling interest of the company is likely to take place and that such change would be prejudicial to the interests of the company or to the public interest, that Government may direct the company not to give effect to the transfer of any such share or block of shares and-

(a) where the transfer of such share or block of shares has already been registered, not to permit the transferee or any nominee or proxy of the transferee, to exercise any voting or other rights attaching to such share or block of shares; and

(b) where the transfer of such share or block of shares has not been registered, not to permit any nominee or proxy of the transferor to exercise any voting or other rights attaching to such share or block of shares.

(2) Where any direction is given by the Central Government under sub-section (1), the share or the block of shares referred to therein shall stand retransferred to the person from whom it was acquired, and thereupon the amount paid by the transferee for the acquisition of such share or block of shares shall be refunded to him by the person to whom such share or block of shares stands or stand retransferred.

(3) If the refund referred to in sub-section (2) is not made within the period of thirty days from the date of the direction referred to in sub-section (1), the Central Government shall, on the application of the person entitled to get the refund, direct, by order, the refund of such amount and such order may be enforced as if it were a decree made by a civil court.

(4) The person to whom any share or block of shares stands or stand retransferred under sub-section (2) shall, on making refund under sub-section (2) or sub-section (3), be eligible to exercise voting or other rights attaching to such share or block of shares.

108E

Time within which refusal to be communicated.

108E. Time within which refusal to be communicated. Every request made to the Central Government for according its approval to the proposal for the acquisition of any share referred to in section 108A or the transfer of any share referred to in section 108C shall be presumed to have been granted unless, within a period of sixty days from the date of receipt of such request, the Central Government communicates to the person by whom the request was made, that the approval prayed for cannot be granted.

108F

Nothing in sections 108A to 108D to apply to Government companies, etc.

108F. Nothing in sections 108A to 108D to apply to Government companies, etc. Nothing contained in section 108A [except sub-section (2) thereof] shall apply to the transfer of any share to, and nothing in section 108B or section 108C or section 108D shall apply to the transfer of any share by-

- (a) any company in which not less than fifty-one per cent. of the share capital is held by the Central Government;
- (b) any corporation (not being a company) established by or under any Central Act;
- (c) any financial institution.

108G

Applicability of the provisions of sections 108A to 108F.

108G. Applicability of the provisions of sections 108A to 108F. The provisions of sections 108A to 108F (both inclusive) shall apply to the acquisition or transfer of shares or share capital by, or to, an individual, firm, group, constituent of a group, body corporate or bodies corporate under the same management, who or which-

- (a) is, in case of acquisition of shares or share capital, the owner in relation to a dominant undertaking and there would be, as a result of such acquisition, any increase-
 - (i) in the production, supply, distribution or control of any goods that are produced, supplied, distributed or controlled in India or any substantial part thereof by that dominant undertaking, or
 - (ii) in the provision or control of any services that are

rendered in India or any substantial part thereof by that dominant undertaking; or

(b) would be, as a result of such acquisition or transfer of shares or share capital, the owner of a dominant undertaking; or

(c) is, in case of ,transfer of shares or share capital, the owner in relations to a dominant undertaking.

108H

Penalty for acquisition or transfer of share in contravention of sections 108A to 108D.

108H. Construction of certain expressions used in sections 108A to 108G. The expressions "group", "same management", "financial institution", "dominant undertaking" and "owner" used in sections 108A to 108G (both inclusive), shall have the meanings respectively assigned to them in the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969).

3[108-I. Penalty for acquisition or transfer of share in contravention of sections 108A to 108D. (1) Any person who acquires any share in contravention of the provisions of section 108A shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(2) (a) Every body corporate which makes any transfer of shares without giving any intimation is required by section 108B, shall be punishable with fine which may extend to five thousand rupees.

(b) Where any contravention of the provisions of section 108B has been made by a company, every officer of the company who in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(3) (a) Every body corporate which makes any transfer of shares in contravention of the provisions of section 108C, shall be punishable with fine which may extend to five thousand rupees.

(b) Where any contravention of the provisions of section 108C has been made by a company, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

(4) (a) Every person who transfers any share in contravention of any order made by the Central Government under section 108B, or gives effect to any transfer of shares made in contravention of any direction made by the Central Government under section 108D, or who exercises any voting right in respect of any share in contravention of any direction made by the Central Government under section 108D, shall be punishable with imprisonment for a term which may extend to five

years and shall also be liable to fine.

(b) If any company gives effect to any voting or other right exercised in relation to any share acquired in contravention of the provisions of section 108B, or which gives effect to any voting right in contravention of any direction made by the Central Government under section 108D the company shall be punishable with fine which may extend to five thousand rupees, and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

1 Ins. by Act 22 of 1996, s.31 and Sch. (w.e.f. 20-9-1995).

2 Sections 108A to 108H were ins. by Act 41 of 1974, s. 12 (w.e.f. 1-2-1975) and omitted by Act 30 of 1984, s. 52 (w.e.f. 1-8-1984) now ins. by Act 58 of 1991, s. 28 (w.e.f. 27-9-1991).

3. Ins. by Act 58 of 1991, s.28 (w.e.f. 27-9-1991).

132C.

109.

Transfer by legal representative.

109.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.

110.

Application for transfer.

110.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 pre-paid 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.

111.

Power to refuse registration and appeal against refusal.

1[111.Power to refuse registration and appeal against refusal. (1) If a company refuses, whether in pursuance of any power of the company under its articles or otherwise, to register, the transfer of, or the transmission by operation of law of the right to, any shares or interest of a member in, or debentures of, the company, it shall, within two months from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferee and the transferor or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(2) The transferor or transferee, or the person who gave intimation of the transmission by operation of law, as the case may be, may appeal to the Company Law Board against any refusal of the company to register the transfer or transmission, or against any failure on its part within the period referred to in subsection (1), either to register the transfer or transmission or to send notice of its refusal to register the same.

(3) An appeal under sub-section (2) shall be made within two months of the receipt of the notice of such refusal or, where no notice has been sent by the company, within four months from the date on which the instrument of transfer, or the intimation of transmission, as the case may be, was delivered to the company.

(4) If-

(a) the name of any person-

(i) is, without sufficient cause, entered in the register of members of a company, or

(ii) after having been entered in the register, is, without sufficient cause, omitted therefrom; or

(b) default is made, or unnecessary delay takes place, in entering in the register the fact of any person having become, or ceased to be, a member [including a refusal under sub-section (1)],

the person aggrieved, or any member of the company, or the company,

may apply to the Company Law Board for rectification of the register.

(5) The Company Law Board, while dealing with an appeal preferred under sub-section (2) or an application made under sub-section (4) may, after hearing the parties, either dismiss the appeal or reject the application, or by order-

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

(6) The Company Law Board, while acting under sub-section (5), may, at its discretion make-

(a) such interim orders, including any orders as to injunction or stay, as it may deem fit and just;

(b) such orders as to costs as it thinks fit; and

(c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.

(7) On any application under this section, the Company Law Board-

(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;

(b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.

(8) The provisions of sub-sections (4) to (7) shall apply in relation to the rectification of the register of debenture-holders as they apply in relation to the rectification of the register of members.

(9) If default is made in giving effect to the orders of the Company Law Board under 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, and with a further fine which may extend to one hundred rupees for every day after the first day after which the default continues.

(10) Every appeal or application to the Company Law Board under sub-section (2) or sub-section (4) shall be made by a petition in writing and shall be accompanied by such fee as may be prescribed.

(11) In the case of a private company which is not a subsidiary of a public company, where the right to any shares or interest of a member in, or debentures of, the company is transmitted by a sale thereof held by a court or other public authority, the provisions of sub-sections (4) to (7) shall apply as if the company were a public

company:

Provided that the Company Law Board may, in lieu of an order under sub-section (5), pass an order directing the company to register the transmission of the right unless any member or members of the company specified in the order acquire the right aforesaid within such time as may, be allowed for the purpose by the order, on payment to the purchaser of the price paid by him therefore or such other sum as the Company Law Board may determine to be a reasonable compensation for the right in all the circumstances of the case.

(12) If default is made in complying with any of 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 fifty rupees for every day during which the default continues.

(13) Nothing in this section and section 108, 109 or 110 shall prejudice any power of a private company under its articles to enforce the restrictions contained therein against the right to transfer the shares of such company.

2[(14) In this section "company" means a private company and includes a private company which had become a public company by virtue of section 43A of this Act.]

1. Subs. by Act 31 of 1988, s.16 (w.e.f. 31-5-1991).

2. Ins. by Act 22 of 1996, S.31 and Sch. (w.e.f. 20-9-1995).

133.

111A

Rectification of register of transfer.

1[111A. Rectification of register of transfer. (1) In this section, unless the context otherwise requires, "company" means a company other than a company referred to in sub-section (14) of section 111 of this Act.

(2) Subject to the provisions of this section, the shares or debentures and any interest therein of a company shall be freely transferable.

(3) The Company Law Board may, on an application made by a depository, company, participant or investor or the Securities and Exchange Board of India within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of transmission was delivered to the company, as the case may, be, after such enquiry as it thinks fit, direct any company or depository to rectify register or records if the transfer of the shares or debentures is in

contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992), or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986).

(4) The Company Law Board while acting under sub-section (3), may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry.

(5) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Company Law Board.

(6) Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the Company Law Board, of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended.

(7) The provisions of sub-sections (5), (7), (9), (10) and (12) of section 111 shall, so far as may be, apply to the proceedings before the Company Law Board under this section as they apply to the proceedings under that section].

1. Ins. by Act 22 of 1986, s. 31 and Sch. (20-9-1995).

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112.

Certification of transfers.

112.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.

113.

Limitation of time for issue of certificates.

113.Limitation of time for issue of certificates. (1) 1[Every company, unless prohibited by any provision of law or of any order of any court, tribunal or other authority, shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within two months after the application for the registration of the transfer of any such shares, debentures or debenture stock, deliver, in accordance with the procedure laid down in section 53, the certificates of all shares, debentures and certificates of debenture stocks allotted or transferred:

Provided that the Company Law Board may, on an application being made to it in this behalf by the company, extend any of the periods within which the certificates of all debentures and debenture stocks allotted or transferred shall be delivered under this sub-section, to a further period not exceeding nine months, if it is satisfied that it is not possible for the company to deliver such certificates within the said periods.]

1. Subs. by Act 31 of 1988, s.17 (w.e.f. 15-6-1988).

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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.

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(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 [Company Law Board] 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.

2[(4) Notwithstanding anything contained in sub-section (1), where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.]

Share warrants

114.

Issue and effect of share warrants to bearer.

114. 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.

115.

Share warrants and entries in register of members.

115. 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 specified 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.

1. Subs. by Act 31 of 1988, s.17 (w.e.f. 31-5-1991).

2. Ins. by Act 22 of 1996, s.31 and Sch. (w.e.f. 20-9-1995).

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(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

116.

Penalty for personation of shareholder.

116. 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

117.

Debentures with voting rights not to be issued hereafter.

117. 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.

118.

Right to obtain copies of and inspect trust deed.

118. Right to obtain copies of and inspect 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 1 [such sum as may be prescribed]; and

1. Subs. by Act 31 of 1988, s.67 (w.e.f. 15-7-1988).

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(b) in the case of a trust deed which has not been printed, of 1 [such sum as may be prescribed 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 2[Company Law Board] 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.

119.

Liability of trustees for debenture holders.

119.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 commissions 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

1. Subs. by Act 31 of 1988, s.67 (w.e.f. 15-7-1988).

2. Subs. by s.67, ibid, (w.e.f. 31-5-1991).

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.

120.

Perpetual debentures.

120.Perpetual debentures. A condition contained in any debentures 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.

121.

Power to re-issue redeemed debentures in certain cases.

121.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.

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(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,

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reserved to a company by its debentures or the securities for the same.

122.

Specific performance of contract to subscribe for debentures.

122. 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.

123.

Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.

123. 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 530 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 530, are deemed to remain in force in the case therein mentioned, and subsection (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.

141.

PART V

REGISTRATION OF CHARGES

124.

"Charge" to include mortgage in this Part.

124."Charge" to include mortgage in this Part. In this Part, the expression " charge" includes a mortgage.

125.

Certain charges to be void against liquidator or creditors unless registered.

125.Certain charges to be void against liquidator or creditors unless 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 1[thirty] days after the date of its creation:

2[Provided that the Registrar may allow the particulars and instrument or copy as aforesaid to be filed within thirty days next following the expiry of the said period of thirty days on payment of such additional fee not exceeding ten times the amount of fee specified in Schedule X as the Registrar may determine, if the company satisfies the Registrar that it had sufficient cause for not filing the particulars and instrument or copy within that period.]

(2) Nothing in subsection (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;

1 Subs. by Act 31 of 1965, s. 62 and Sch., for " twenty-one " (w.e.f. 15-10-1965).

2. Subs. by Act 31 of 1988, s.18 (w.e.f. 15-6-1988).

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(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, 1 [thirty] days after the date on which the instrument creating or evidencing the charge or a copy thereof could, in due course of post and if despatched with due diligence, have been received in India, shall be substituted for 1[thirty] 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.

126.

Date of notice of charge.

126. Date of notice of charge. Where any charge on any property of a company required to be registered under section 125 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.

127.

Registration of charges on properties acquired subject to charge.

127. 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

1 Subs. by Act 31 of 1965. s. 62 and Sch., for " twenty-one "
(w.e.f. 15-10-1965),

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this Act within 1[thirty] days after the date on which the acquisition is completed:

Provided that, if the property is situate, and the charge was created, outside India, 1[thirty] days after the date on which a 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 1[thirty] 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.

128.

Particulars in case of series of debentures entitling holders pari passu.

128. 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 125, be sufficient, if there are filed with the Registrar, within 1[thirty] 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.

129.

Particulars in case of commission, etc., on debentures.

129. 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

1 Subs. by Act 31 of 1965, s. 62 and Sch., for "twenty-one"
(w.e.f. 15-10-1965).

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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 125 and 128 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.

130.

Register of charges to be kept by Registrar.

130. Register of charges to be kept by Registrar 1[(1) The Registrar shall, in respect of each company, cause to be kept a register containing the particulars of all the charges requiring registration under this Part.

(1A) Every company shall forward to the Registrar for being entered in the register kept under sub-section (1) the particulars of all the charges requiring registration under this Part in such form and manner, and after payment of, such fees as may be prescribed.

(1B) The particulars of the charges referred to in sub-section (1) shall relate to,-

(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 128 and 129;

(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.

(1C) The pages of the register shall be consecutively numbered and the Registrar shall-

(a) cause to be kept in such register in the prescribed form, the documents of charges filed in such form and manner as may be prescribed; and

(b) sign or initial every page of such register.

(2) After entering the particulars of all the charges required under 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 it].

(3) The Registrar kept in pursuance of this section shall be open to inspection by any person on payment of 1[such fee as may be prescribed] for each inspection.

131.

Index to register of charges.

131.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.

1. Subs. by Act 31 of 1988, s.19 (w.e.f. 17-4-1989).

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132.

Certificate of registration.

132.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.

133.

Endorsement of certificate of registration on debenture or certificate of debenture stock.

133.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 132, 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.

134.

Duty of company as regards registration and right of interested party.

134. 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.

135.

Provisions of Part to apply to modification of charges.

135. 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.

136.

Copy of instrument creating charge to be kept by company at registered office.

136. 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.

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137.

Entry in register of charges of appointment of receiver or manager.

137. 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 1[thirty] 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.

138.

Company to report satisfaction and procedure thereafter.

138. Company to report satisfaction and procedure thereafter. (1) The company shall give intimation to the Registrar of the payment or satisfaction 2[in full], of any charge relating to the company and requiring registration under this Part, within 3[thirty] 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 4* * * 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 139 otherwise than on receipt of an intimation from the company.

1. Subs. by Act 31 of 1965, s. 62 and Sch., for "fifteen" (w.e.f. 15-10-1965).

2 Subs. by Act 65 of 1960, s. 30, for " in whole or in part ".

3 Subs. by Act 31 of 1965, s. 62 and Sch., for "twenty-one" (w.e.f. 15-10-1965).

4 The words " in whole or in part, as the case may be," omitted by Act 65 of 1960, S. 30.

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139.

Power of Registrar to make entries of satisfaction and release in absence of intimation from company.

139. 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.

140.

Copy of memorandum of satisfaction to be furnished to company.

140. 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 138 or 139, he shall furnish the company with a copy of the memorandum.

141.

Rectification by Company Law Board of register of charges.

141. Rectification by Company Law Board of register of charges.
1[(1) The 2[Company Law Board], on being satisfied--

(a) that the omission to file with the Registrar the particulars of any charge created by a company or of any charge subject to which any property has been acquired by the company or of any modification of any such charge or of any issue of debentures of a series, or that the omission to register any charge within the time required by this Part, or that the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required by this Part, or that the omission or misstatement of any particular with respect to any such charge, modification or issue of debentures of a series or with respect to any memorandum of satisfaction or other entry made in pursuance of section 138 or 139, 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

1. Subs. by Act 65 of 1960, s. 31, for sub-section (1).

2. Subs. by Act 41 of 1974, s. 13, for "Court" (w.e.f. 1-2-1975).

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(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 1[Company Law Board] just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.]

(2) The 1[Company Law Board] may make such order as to, the costs of an application under sub-section (1) as it thinks fit.

(3) Where the 1[Company Law Board] 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.

142.

Penalties.

142.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, 2* * * 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.

1. Subs. by Act 41 of 1974, s. 13, for "Court" (w.e.f. 1-2-1975).
2.The words "in whole or in part" omitted by Act 65 of 1960, s. 32.

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143.

Company's register of charges.

143.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.

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(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.

144.

Right to inspect copies of instruments creating charges and company's register of charges.

144. 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 136, and the register of charges kept in pursuance of section 143, 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 143 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 1[such sum as may be prescribed] 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 2[Company Law Board] may also by order compel an immediate inspection of the said copies or register.

145.

Application of Part to charges requiring registration under it but not under previous law.

145. Application of Part to charges requiring registration under it but not under previous law. In respect of 1[any charge created before, and remaining unsatisfied at, 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, (7 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.

Nothing contained in this section shall be deemed to affect the relative priorities as they existed immediately before the commencement of this Act, as between charges on the same property.

1. Subs. by Act 31 of 1988, s.67 (w.e.f. 15-7-1988).

2. Subs. by s.67, ibid. (w.e.f. 31-5-1991).

3 Subs. by Act 65 of 1960, s, 33, for "any charge created before the commencement of this Act".

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PART VI

MANAGEMENT AND ADMINISTRATION

CHAP

GENERAL PROVISIONS

CHAPTER I.-GENERAL PROVISIONS

Registered Office and Name

146.

Registered office of company.

146.Registered office of company.(1) A company shall, as from the day on which it begins to carry on business, or as from the 1[thirtieth] 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 there in, shall be given within 2[thirty] 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 the default continues.

147.

Publication of name by Company.

147. Publication of name by Company. (1) Every company-

(a) shall paint or affix its name 3[and the address of its registered office], 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

1 Subs. by Act 31 of 1965, s. 62 and Sch., for "twenty-eighth" (w.e.f. 15-10-1965).

2 Subs. by s. 62 and Sch., ibid., for "twenty-eighth" (w.e.f. 15-10-1965).

3 Ins. by Act 65 of 1960, s, 34.

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legible; and if the characters employed therefore 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 1[and the address of its registered office) mentioned in legible characters in all its business letters, in all its bill heads and letter paper, and in all its notices, 2* * * and other official publications; 3[and also have its name so mentioned 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 1[and the address of its registered office], 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 1[and the address of its registered office], and for every day during which its name 1[and the address of its registered office], 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 4* * * or other official publication of the company wherein 5[its name and the address of its registered office are] not mentioned in the manner aforesaid;

1 Ins. by Act 65 of 1960, s. 34.

2 The words ", advertisements" omitted by s. 34, ibid.

3 Subs. by s. 34, ibid., for " and in all bills of exchange".

4 The word ",advertisement" omitted by s.34, ibid.

5 Subs. by s. 34, ibid., for " its name is".

(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.

148.

Publication of authorised as well as subscribed and paid-up capital.

148. 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 subsection (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

149.

Restrictions on commencement of business.

149. 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 1[one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole-time practice] 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 1[one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole-time practice] in the prescribed form, that clause (b) of this sub-section has been complied with.

2[(2A) Without prejudice to the provisions of sub-section (1) and sub-section (2) a company having a share capital, whether or not it has issued a prospectus inviting the public to subscribe for its shares, shall not at any time commence any business-

(a) if such company is a company in existence immediately before the commencement of the Companies (Amendment) Act, 1965 (31 of 1965), in relation to any of the objects stated in its memorandum in pursuance of clause (c) of sub-section (1) of section 13 ;

(b) if such company is a company formed after such commencement, in relation to any of the objects stated in its memorandum in pursuance of sub-clause (ii) of clause (d) of sub-section (1) of the said section,

2. Ins. by Act 31 of 1965, s. 15 (w.e.f. 15-10-1965).

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unless-

(i) the company has approved of the commencement of any such business by a special resolution passed in that behalf by it in general meeting; and

(ii) there has been filed with the Registrar a duly verified declaration by 1[one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole-time practice], in the prescribed form, that clause (i) or as the case may be, sub-section (2B) has been complied with;

and if the company commences any such business in contravention of this sub-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.

Explanation.-A company shall be deemed to commence any business within the meaning of clause (a) if and only if it commences any new business which is not germane to the business which it is carrying on at the commencement of the Companies (Amendment) Act, 1965 (31 of 1965), in relation to any of the objects referred to in the said clause.

(2B) Notwithstanding anything contained in sub-section (2A) where no such special resolution as is referred to in that sub-section is passed but the votes cast (whether on a show of hands or, as the case may be, on a poll) in favour of the proposal to commence any business contained in the resolution moved in that general meeting (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 proposal by members so entitled and voting, the Central Government may on an application made to it by the Board of directors in this behalf allow the company to commence such business as if the proposal had been passed by a special resolution by the company in general meeting.]

(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, also 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

1. Subs. by Act 31 of 1988, s.20 (w.e.f. 15-6-1988).

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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 applications 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.

1* * * * *

Registers of members and debenture holders

150.

Register of members.

150. 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, * * * 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.

1 Sub-section (8) omitted by Act 65 of 1960, s. 35.

2 The words "distinguishing each share by its number," omitted by Act 22 of 1996, s.31 and Sch. (w.e.f. 20-9-1995).

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151.

Index of members.

151. 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.

152.

Register and index of debenture holders.

152. Register and index of debenture holders. (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, 1* * * 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-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.

1. The words "distinguishing each debenture by its number," omitted by Act 22 of 1996, s.31 and Sch. (w.e.f. 20-9-1996).

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(4) Sub-sections (1) to (3) shall not apply with respect to debentures which, ex facie, are payable to the bearer thereof.

152A

Register and index of beneficial owners.

[152A. Register and index of beneficial owners. The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be an index of members and register and index of debenture holders, as the case may be, for the purposes of this Act.]

153.

Trusts not to be entered on register.

153.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 2* * *.

153A

Appointment of public trustee.

3[153A.Appointment of public trustee. The Central Government may, by notification in the Official Gazette, appoint a person as public trustee to discharge the functions and to exercise the rights and powers conferred on him by or under this Act.

153B

Declaration as to shares and debentures held in trust.

153B.Declaration as to shares and debentures held in trust. (1) Notwithstanding anything contained in section 153, where any shares in, or debentures of, a company are held in trust by any person (hereinafter referred to as the trustee), the trustee shall, within such time and in such form as may be prescribed, make a declaration to the public trustee.

(2) A copy of the declaration made under sub-section (1) shall be sent by the trustee to the company concerned, within twenty-one days, after the declaration has been sent to the public trustee.

(3) (a) If a trustee fails to make a declaration as required by this section, he shall be punishable with fine which may extend to five thousand rupees and in the case of a continuing failure, with a further fine which may extend to one hundred rupees for every day during which the failure continues.

(b) If a trustee makes in a declaration aforesaid any statement which is false and which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to two years and also with fine.

(4) The provisions of this section and section 187B shall not apply in relation to a trust-

(a) where the trust is not created by instrument in writing;
or

(b) even if the trust is created by instrument in writing,
4[where the value of the shares in, or debentures of, a company held in trust]-

(i) does not exceed one lakh of rupees, or

(ii) exceeds one lakh of rupees but does not exceed either five lakhs of rupees or twenty-five per cent. of

1 Ins. by Act 22 of 1996, s.31 and Sch. (w.e.f. 20-9-1995).

2 The words " or be receivable by the Registrar" omitted by Act 53 of 1963, s. 6 (w.e.f. 1-1-1964).

3 Ins. by s. 7, ibid. (w.e.f. 1-1-1964).

4 Subs. by Act 31 of 1965, s. 16, for certain words (w.e.f. 15-10-1965).

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the paid-up share capital of the company, whichever is less.]

1[Explanation.-The expression " the value of the shares in, or debentures of, a company " in clause (b) means,-

(i) in the case of shares or debentures acquired by way of allotment or transfer for consideration, the cost of acquisition thereof, and

(ii) in any other case, the paid-up value of the shares or debentures.]

154.

Power to close register of members of debenture holders.

154.Power to close register of members of 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 aggregate 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.

2* * * * *

1 Ins. by Act 31 of 1965, s. 16 (w.e.f. 15-10-1965).

2. Omitted by Act 31 of 1988, s.21 (w.e.f. 31-5-1991).

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Foreign registers of members or debenture holders

157.

Power for company to keep foreign register of members of debentureholders.

157. Power for company to keep foreign register of members of debenture holders. (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 1[thirty days] 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 1[thirty days] 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.

158.

Provisions as to foreign registers.

158. 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.

1 Subs. by Act 31 of 1965, s. 62 and Sch., for " one month "
(w.e.f. 15-10-1965).

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(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

159.

Annual return to be made by company having a share capital.

159. Annual return to be made by company having a share capital. (1) Every company having a share capital shall, within 1[sixty] days from the day on which each of the annual general meetings referred to in

section 166 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,

1 Subs. by Act 31 of 1965, s. 62 and Sch., for " forty-two"
(w.e.f. 15-10-1965).

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- (f) its members and debenture holders, past and present, and
- (g) its directors, managing directors, managing agents, secretaries and treasurers, 1[managers and secretaries], past and present :

2[Provided that if 3[any of the five] 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 to past and present members and the shares held and transferred by them, the return in question may contain only such of the particulars 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 number of shares held by a member.

Explanation.-Any reference in this section or in section 160 or 161 or in any other section or in Schedule V to the day on which an annual general meeting is held or to the date of the annual general meeting shall, where the annual general meeting for any year has not been held, be construed as a reference to the latest day on or before which that meeting should have been held in accordance with the provisions of this Act.]

(2) The said return shall be in the Form set out in Part II of Schedule V or as near thereto as circumstances admit 2[and where the return is filed even though the annual general meeting has not been held on or before the latest day by which it should have been held in

with the return a statement specifying the reasons for not holding the annual general meeting]:

(c) the conditions subject to which any manufacturing 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.

160.

Annual return to be made by company not having a share capital.

160. Annual return to be made by company not having a share capital. (1) Every company not having a share capital shall, within under section 65.

Meetings referred to in section 166 is held, prepare and file with the

1 Subs. by Act 65 of 1960, s. 38, for "and managers".

2 Ins. by s. 38, *ibid.*

3. Subs. by Act 31 of 1988, s.22 (w.e.f. 15-6-1988).

4 Subs. by Act 31 of 1965, s. 62 and ch., for " forty-two " (w.e.f. 15-10-1965).

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Registrar a return stating the following particulars as they stood on that day: -

(a) the address of the registered office of the company;

1[(aa) the names of members and the respective dates on which they became members and the names of persons who ceased to be members since the date of the annual general meeting of the immediately preceding year, and the dates on which they so ceased;]

(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, 2[its manager and its secretary] as are set out in section 303.

(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.

161.

Further provisions regarding annual return and certificate to be annexed thereto.

161. Further provisions regarding annual return and certificate to be annexed thereto. (1) The copy of the annual return filed with the Registrar under section 159 or 160, as the case may be, shall be signed both by a director and by the 3[* * *] 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:

4[Provided that where the annual return is filed by a company whose shares are listed on a recognised stock exchange, the copy of such annual return shall also be signed by a secretary in whole-time practice].

(2) There shall also be filed with the Registrar along with the return a certificate signed by 5[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 ; 6* * *

7[(aa) that since the date of the last annual return the transfer of all shares and debentures and the issue of all further certificates of shares and debentures have been appropriately recorded in the books maintained for the purpose; and]

1. Ins by Act 65 of 1960, s. 39.

2 Subs by s. 39, *ibid.*, for " and its manager".

3 The words "managing agent, secretaries and treasurers," omitted by Act 31 of 1988, S.23 (w.e.f. 15-6-1988).

4 Ins. by s.23, *ibid.* (w.e.f. 15-6-1988).

5 Subs. by s.23, *ibid.* (w.e.f. 15-6-1988).

6 The word "and" omitted by Act 65 of 1960, s. 40,

7 Ins. by s. 40, *ibid.*

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(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.

162.

Penalty and interpretation.

162. Penalty and interpretation. (1) If a company fails to comply with any of the provisions contained in section 159, 160 or 161, 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 159, 160, and 161, 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

163.

Place of keeping, and inspection of, registers and returns.

163. 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 159 and 160, together with the copies of certificates and documents required to be annexed thereto under sections 160 and 161, shall be kept at the registered office of the company:

1[Provided that such registers, indexes, returns and copies of certificates and documents or any or more of them may, instead of being kept at the registered office of the company, be kept at any other place within the city, town or village in which the registered office is situate, if--

(i) such other place has been approved for this purpose by a special resolution passed by the company in general meeting, 2 [and]

3* * * * *

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1. Ins. by Act 65 of 1960, s. 41.
 2. Ins. by Act 31 of 1965, s. 17 (w.e.f. 15-10-1965).
 3. Cl. (ii) omitted by s. 17, ibid. (w.e.f. 15-10-1965).
-

162C.

(iii) the Registrar has been given in advance a copy of the proposed special resolution.]

1[(1A) Notwithstanding anything contained in sub-section (1), the Central Government may make rules for the preservation and for the disposal, whether by destruction or otherwise, of the registers, indexes,

1 Ins. by Act 65 of 1960, s. 41.

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returns, and copies of certificates and other documents referred to in sub-section (1).]

(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--

(a) of any member or debenture holder, without fee; and

(b) of any other person, on payment of 1[such sum as may be prescribed] 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 1[such sum as may be

prescribed] 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 of default continues.

(6) The 2[company Law Board] 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.

164.

Registers, etc., to be evidence.

164.Registers, etc., to be evidence. The register of members, the register of debenture holders, and the annual returns, certificates and statements referred to in

1. Subs. by Act 31 of 1988, s.67 (w.e.f. 15-7-1988).

2. Subs. by s.67, ibid. (w.e.f. 31-5-1991).

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sections 159, 160 and 161 shall be prima facie evidence of any matters directed or authorised to be inserted therein by this Act.

Meetings and Proceedings

165.

Statutory meeting and statutory report of company.

165.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 there out, 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 there out, 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 changes, if any which

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have occurred in 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 therefore ;

(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 1* * *, 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.

1 The words " on capital account " omitted by Act 65 of 1960, s. 42.

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(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.

166.

Annual general meeting.

166. Annual general meeting. 1[(1) Every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it ; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that a company may hold its first annual general meeting within a period of not more than eighteen months from the date of its incorporation ; and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year:

Provided further 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 period not exceeding three months.]

(2) Every annual general meeting shall be called for a time during business hours, on a day that is not a public holiday, and shall be

1 Subs. by Act 65 of 1960, s. 43, for sub-section (1).

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held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate 1* * *:

2[Provided that the Central Government may exempt any class of

companies from the provisions of this sub-section subject to such conditions as it may impose:

Provided further that-

(a) a public company or a private company which is a subsidiary of a public company, may by its articles fix the time for its annual general meetings and may also by a resolution passed in one annual general meeting fix the time for its subsequent annual general meetings; and

(b) a private company which is not a subsidiary of a public company, may in like manner and also by a resolution agreed to by all the members thereof, fix the times as well at the place for its annual general meeting.]

167.

Power of company Law Board to call annual general meeting.

167. Power of company Law Board to call annual general meeting. (1) If default is made in holding an annual general meeting in accordance with section 166, the 3[Company Law Board] may, not with standing anything in this Act or in the articles of the company, 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 3[Company Law Board] 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 3[Company Law Board] be deemed to be an annual general meeting of the company.

168.

Penalty for default in complying with section 166 or 167.

168. Penalty for default in complying with section 166 or 167. If default is made in holding a meeting of the company in accordance with section 166, or in complying with any directions of the Central Government under sub-section (1) of section 167, 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[and

1 The words "and the notices calling the meeting shall specify it at the annual general meeting" omitted by Act 65 of 1960, s. 43.

2 Ins. by s. 43, *ibid.*

3. Subs. by Act 31 of 1988, s.67 (w.e.f. 31-5-1991).

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in the case of a continuing default, with a further fine which may extend to two hundred and fifty rupees for every day after the first during which such default continues].

169.

Calling of extraordinary general meeting on requisition.

169. 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

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not less than one-tenth of such of the paid-up 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 Board 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 189.

(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.

170.

Section 171 to 186 to apply to meetings.

170. Section 171 to 186 to apply to meetings. (1) The provisions of sections 171 to 186-

(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

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(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 176, 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 171 to 175 and sections 177 to 186 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.

171.

Length of notice for calling meeting.

171. Length of notice for calling meeting. (1) A general meeting of a 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.

172.

Contents and manner of service of notice and persons on whom it is to be served.

172, 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.

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(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 53;

(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 53 in the case of any member or members of the company:

1[Provided that where the notice of a meeting is given by advertising the same in a newspaper circulating in the neighbourhood of the registered office of the company under sub-section (3) of section 53, the statement of material facts referred to in section 173 need not be annexed to the notice as required by that section but it shall be mentioned in the advertisement that the statement has been forwarded

to the 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.

173.

Explanatory statement to be annexed to notice.

173.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.

1 Ins. by Act 65 of 1960, s. 45.

172.

(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 1[the nature of the concern or interest], if any, therein, of every director, the managing agent, if any, the secretaries and treasurers, if any, and the manager, if any:

2[Provided that where any item of special business as aforesaid to be transacted at a meeting of the company relates to, or affects, any other company, the extent of shareholding interest in that other company of every director, the managing agent, if any, the secretaries and treasurers, if any, and the manager, if any, of the first-mentioned company shall also be set out in the statement if the extent of such shareholding interest is not less than twenty per cent. of the paid-up share capital of that other company.]

(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.

174.

Quorum for meeting.

174. Quorum for meeting. (1) Unless the articles of the company provide for a larger number, five members personally present in the case of 3[public company (other than a public company which has become such by virtue of section 43A), and two members personally present in the case of any other company,] shall be the quorum for a meeting of the company.

(2) Unless the articles of the company otherwise provide, the provisions of sub-sections (3), (4) and (5) shall apply with respect to the meetings of a public or private company.

(3) If within half an hour from the time appointed for holding a meeting of the company, a quorum is not present, the meeting, if called upon the requisition of members, shall stand 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.

(5) If at the adjourned meeting also, a quorum is not present within half an hour from the time appointed for holding the meeting the members present shall be a quorum.

1. Subs. by Act 65 of 1960, s. 46, for "the nature and extent of the interest".

2. Ins. by s. 46, *ibid.*

3. Subs. by Act 31 of 1965, s. 18, for certain words (w.e.f. 15-10-1965).

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175.

Chairman of meeting.

175. 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.

176.

Proxies.

176.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; but a proxy so appointed shall not have any right 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.

1[(3) Any provision contained in the articles of a public company, or of a private company which is a subsidiary of a public company, which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document necessary to, show the validity or otherwise relating to

1 Subs. by Act 65 of 1960, s. 47, for sub-section (3).

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the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for

such deposit.]

(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 subsection 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.

177.

Voting to be by show of hands in first instance.

177.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 179, be decided on a show of hands.

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178.

Chairman's declaration of result of voting by show of hands to beconclusive.

178.Chairman's declaration of result of voting by show of hands to be conclusive. A declaration by the chairman in pursuance of section 177 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.

179.

Demand for poll.

179.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,--

1 [(a)in the case of a public company having a share capital, by any members present in person or by proxy and holding shares in the company-

(i)which confer a power to vote on the resolution not being less than one tenth of the total voting power in respect of the resolution, or

(ii)on which an aggregate sum of not less than fifty thousand rupees has been paid up,

(b) in the case of a private company having a share capital, 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) in the case of any other company, 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].

(2)The demand for a poll may be withdrawn at any time by the person or persons who made the demand.

180.

Time of taking poll.

180. 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 175) shall be taken at such time not being later than forty-

1. Subs. by Act 31 of 1988, s.24 (w.e.f. 15-6-1988).

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eight hours from the time when the demand was made, as the chairman may direct.

181.

Restriction on exercise of voting right of members who have not paid calls,
etc.

181. 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.

182.

Restrictions on exercise of voting right in other cases to be void.

182. 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 right 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 181.

183.

Right member to use his votes differently.

183. Right 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.

184.

Scrutineers at poll.

184.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.

185.

Manner of taking poll and result thereof.

185. 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.

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186.

Power of Company Law Board to order meeting to be called.

186.Power of Company Law Board 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 l[Company Law Board] 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 1[Company Law Board] thinks fit; and

(b) give such ancillary or consequential directions as the 1[Company Law Board] 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.

187.

Representation of corporations at meetings of companies and of creditors.

187. 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

1 Subs. by Act 41 of 1974, s. 14, for "Court" (w.e.f. 1-2-1975).

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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 1[an individual member), creditor or holder of debentures of the company.

187A

Representation of the President and Governors in meetings of companies of which they are members.

2[187A. Representation of the President and Governors in meetings of companies of which they are members. (1) The President of India or the Governor of a State if he is a member of a company, may appoint such person as he thinks fit to act as his representative at any meeting of the company or at any meeting of any class of members of the company.

(2) A person appointed to act as aforesaid shall, for the purposes of this Act, be deemed to be a member of such a company and shall be entitled to exercise the same rights and powers (including the right to vote by proxy) as the President or, as the case may be, the Governor could exercise as a member of the company.]

187B

Exercise of voting rights in respect of shares held in trust.

3[187B. Exercise of voting rights in respect of shares held in trust. (1) Save as otherwise provided in section 153B but notwithstanding anything contained in any other provisions of this Act or any other law or any contract, memorandum or articles, where any shares in a company are held in trust by a person (hereinafter referred to as trustee), the rights and powers (including the right to vote by proxy) exercisable at any meeting of the company or at any meeting of any class of members of the company by the trustee as a member of the company shall-

(a) cease to be exercisable by the trustee as such member.
and

(b) become exercisable by the public trustee.

(2) The public trustee may, instead of himself attending the meeting, and exercising the rights and powers, as aforesaid, appoint as his proxy an officer of Government or the trustee himself to attend such meeting and to exercise such rights and powers in accordance with the directions of the public trustee :

Provided that where the trustee is appointed by the public trustee as his proxy, the trustee shall be entitled, notwithstanding anything

1. Subs. by Act 65 of 1960, s. 48, for "a member".
 2. Ins. by s. 49, *ibid.*
 3. Ins. by Act 53 of 1963, s. 8 (w.e.f. 1-12-1964).
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contained in any other provisions of this Act, to exercise such rights and powers in the same manner as he would have been but for the provisions of this section.

(3) The public trustee may abstain from exercising the rights and powers conferred on him by this section if in his opinion the objects of the trust or the interests of the beneficiaries of the trust are not likely to be adversely affected by such abstention.

(4) If for any reason the trustee considers that the public trustee should not abstain from exercising the rights and powers conferred on him by this section and the exercise of such rights and powers is necessary in order to safeguard the objects of the trust or the interests of the beneficiaries of the trust, he, may by writing communicate his views in this behalf to the public trustee but the public trustee may in his discretion either accept such views or reject the same.

(5) No suit, prosecution or other legal proceeding shall lie against the public trustee at the instance of the trustee or any person on his behalf or any other person on the ground that the public trustee has abstained from exercising the rights and powers conferred on him by this section.

(6) In order to enable the public trustee to exercise the rights and powers aforesaid, the public trustee shall also be entitled to receive and inspect all books and papers under this Act, which a member is entitled to receive and inspect.]

187C

Declaration by persons not holding beneficial interest in any share.

1[187C. Declaration by persons not holding beneficial interest in any share. (1) Notwithstanding anything contained in section 150 section 153B or section 187B, a person, whose name is entered, at the commencement of the Companies (Amendment) Act, 1974, (41 of 1974) or at any time thereafter, in the register of members of a company as the holder of a share in that company but who does not hold the beneficial interest in such share, shall, within such time and in such form as may be prescribed, make a declaration to the company specifying the name and other particulars of the person who holds the beneficial interest in such share.

(2) Notwithstanding anything contained elsewhere in this Act, a person who holds a beneficial interest in a share or a class of

shares of a company shall, within thirty days from the commencement of the Companies (Amendment) Act, 1974, (41 of 1974) or within thirty days after

1. Ins. by Act 41 of 1974, s. 15 (w.e.f. 1-2-1975).

178B

his becoming such beneficial owner, whichever is later, make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.

(3) Whenever there is a change in the beneficial interest in such shares the beneficial owner shall, within thirty days from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.

(4) Notwithstanding anything contained in section 153 where any declaration referred to in sub-section (1), sub-section (2) or sub-section (3) is made to a company, the company shall make a note of such declaration, in its register of members and shall file, within thirty days from the date of receipt of the declaration by it, a return in the prescribed form with the Registrar with regard to such declaration.

(5) (a) If any person, being required by the provisions of sub-section (1), sub-section (2) or sub-section (3), to make a declaration, fails without any reasonable excuse, to do so, he shall be punishable with fine which may extend to one thousand rupees for every day during which the failure continues.

(b) 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 hundred rupees for every day during which the default continues.

(6) Any charge, promissory note or any other collateral agreement, created, executed or entered into in relation to any share, by the ostensible owner thereof, or any hypothecation by the ostensible owner of any share, in respect of which a declaration is required to be made under the foregoing provisions of this section, but not so declared, shall not be enforceable by the beneficial owner or any person claiming through him.

(7) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend in accordance with the provisions of section 206, and the obligation shall, on such payment, stand discharged.

178C.

187D

Investigation of beneficial ownership of shares in certain cases.

187D. Investigation of beneficial ownership of shares in certain cases. Where it appears to the Central Government that there are good reasons, so to do, it may appoint one or more Inspectors to investigate and report as to whether the provisions of section 187C have been complied with with regard to any share, and thereupon the provisions of section 247 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section.]

188.

Circulation of members' re-solutions.

188.Circulation of members' re-solutions. (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 any business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under subsection (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.

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(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 1[Company Law Board] satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the 1[Company Law Board] may order the company's costs on an application under this section

1. Subs. by Act 31 of 1988, s.67 (w.e.f. 31-5-1991).

to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(6) A banking company shall not be bound to circulate any statement under this section, if, in the opinion of its Board of directors, the circulation will injure the interests of the company.

(7) 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.

(8) 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.

189.

Ordinary and special resolutions.

189. 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.

190.

Resolutions requiring special notice.

190. 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

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intention to move the resolution shall be given to the company not less than 1[fourteen 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[(2) The company shall, immediately after the notice of the intention to move any such resolution has been received by it, give its members notice of the resolution 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 seven days before the meeting.]

191.

Resolutions passed at adjourned meetings.

191. 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.

192.

Registration of certain resolutions and agreements.

192. Registration of certain resolutions and agreements. (1) A copy of every resolution 3[(together with a copy of the statement of material facts annexed under section 173 to the notice of the meeting in which such resolution has been passed)] or agreement to which this section applies shall, within 4[thirty] 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 5[a copy of every resolution referred to in sub-section (1) which has the effect of altering the articles and a copy of every agreement referred to in that sub-section] 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.

1 Subs. by Act 65 of 1960, s. 50, for "twenty-eight days".

2 Subs. by s. 50, *ibid.*, for sub-sections (2) and (3).

3 Ins. by s. 51, *ibid.*

4 Subs. by Act 31 of 1965, s. 62 and Sch., for "fifteen" (w.e.f. 15-10-1965).

5 Subs. by Act 65 of 1960, s. 51, for "a copy of every such resolution or agreement".

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(3) Where articles have not been registered, a printed copy of every 1[resolution or agreement referred to in sub-section (1)] 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 member; 2* * *

3[(ee) resolutions passed by a company-

(i) according consent to the exercise by its Board of directors of any of the powers under clause (a), clause (d) and clause (e) of sub-section (1) of section 293;

1 Subs. by Act 65 of 1960, s. 51, for "such resolution or agreement".

2 The word "and" omitted by s. 51, *ibid.*

3 Ins. by s. 51, *ibid.*

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(ii) approving the appointment of sole selling agents under 1[section 294 or section 294AA]; and]

(f) resolutions requiring a company to be wound up voluntarily passed in pursuance of sub-section (1) of section 484;

2[(g) copies of the terms and conditions of appointment of a sole selling agent appointed under section 294 or of a sole selling agent or other person appointed under section 294AA.]

1 Subs. by Act 41 of 1974, s. 16, for "section 294" (w.e.f. 1-2-1975).

2 Ins. by s. 16, *ibid.* (w.e.f. 1-2-1975).

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(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.

193.

Minutes of proceedings of general meetings and of Board and other meetings.

193. Minutes of proceedings of general meetings and of Board and other meetings. 1[(1) Every company shall cause minutes of all proceedings of every general meeting and of all proceedings of every meeting of its Board of directors or of every committee of the Board, to be kept by making within 2[thirty] days of the conclusion of every such meeting concerned, entries thereof in books kept for that purpose with their pages consecutively numbered.

(1A) Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting in such books shall be dated and signed-

(a) in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting ;

(b) in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of 2[thirty] days or in the event of the death or inability of that chairman within that period, by a director duly authorised by the Board for the purpose.

(1B) In no case the minutes of proceedings of a meeting shall be attached to any such book as aforesaid by pasting or otherwise.]

(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

1 Subs. by Act 65 of 1960, s. 52, for sub-section (1).

2 Subs. by Act 31 of 1965, s. 62 and Sch. for " fourteen " (w.e.f. 15-10-1985).

(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.

194.

Minutes to be evidence.

1[194. Minutes to be evidence. Minutes of meetings kept in accordance with the provisions of section 193 shall be evidence of the proceedings recorded therein.]

195.

Presumptions to be drawn where minutes duly drawn and signed.

195.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 2[have been kept in accordance with the provisions of section 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.

196.

Inspection of minute books of general meetings.

196. 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

1. Subs. by Act 65 of 1960, s. 53, for s. 194.

2. Subs. by s. 54, *ibid.*, for certain words.

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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 1[such sum as may be prescribed] 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 2[company Law Board] 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.

197.

Publication of reports of proceedings of general meetings.

197. 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 193 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.

1[Prohibition of simultaneous appointment of different categories of managerial personnel

197A

Company not to appoint or employ certain different categories of managerial personnel at the same time.

197A. Company not to appoint or employ certain different categories of managerial personnel at the same time. Notwithstanding anything contained in this Act or any other law or any agreement or instrument, no company shall, after the commencement of the Companies (Amendment) Act, 1960, (65 of 1960) appoint or employ at the same time, or after the expiry of six months from such commencement, continue the appointment or employment at the same time, of more than one of the following categories of managerial personnel, namely:-

- (a) managing director,
- (b) managing agent,

1 Subs. by Act 31 of 1988, S.67 (w.e.f. 15-7-1988).

2 Subs. by s.67, ibid. (w.e.f. 31-5-1991).

3 Ins. by Act 65 of 1960, s.55.

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- (c) secretaries and treasurers, and
- (d) manager.]

Managerial remuneration, etc.

198.

Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.

1 [198. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits. (1) The total managerial remuneration payable by a public company or a private

company which is a subsidiary of a public company, to its directors and its managing agent, secretaries and treasurers or manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in sections 349, 350 and 351, except that the remuneration of the directors shall not be deducted from the gross profits :

Provided that nothing in this section shall affect the operation of sections 352 to 354 and 356 to 360.

(2) The percentage aforesaid shall be exclusive of any fees payable to directors under sub-section (2) of section 309.

(3) Within the limits of the maximum remuneration specified in sub-section (1), a company may pay a monthly remuneration to its managing or whole-time director in accordance with the provisions of section 309 or to its manager in accordance with the provisions of section 387.

2[(4) Notwithstanding anything contained in sub-sections (1) to (3), but subject to the provisions of section 269, read with Schedule XIII, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration any sum [exclusive of any fees payable to directors under sub-section (2) of section 309], except with the previous approval of the Central Government.]

1 Subs by Act 65 of 1960, s. 56, for s. 198.

2 Subs. by Act 31 of 1988, s.25 (w.e.f. 15-6-1988).

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Explanation.-For the purposes of this section and sections 309, 310, 311, 348, 352, 381 and 387, "remuneration" shall include,-

(a) any expenditure incurred by the company in providing any rent-free accommodation, or any other benefit or amenity in respect of accommodation free of charge, to any of the persons specified in sub-section (1);

(b) any expenditure incurred by the company in providing any other benefit or amenity free of charge or at a concessional rate to any of the persons aforesaid ;

(c) any expenditure incurred by the company in respect of any obligation or service which, but for such expenditure by the company, would have been incurred by any of the persons aforesaid ; and

(d) any expenditure incurred by the company to effect any

insurance on the life of, or to provide any pension, annuity or gratuity for, any of the persons aforesaid or his spouse or child.]

199.

Calculation of commission, etc., in certain cases.

199. 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 349, 350 and 351.

(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 one year from such commencement; and thereafter shall become subject to the provisions of sub-section (1).

200.

Prohibition of tax-free payments.

200. 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

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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.

201.

Avoidance of provisions relieving liability of officers and auditorsof company.

201.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 633 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

202.

Undischarged insolvent not to manage companies.

202.Undischarged insolvent not to manage companies. (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.

203.

Power to restrain fraudulent person from managing companies.

203. Power to restrain fraudulent person 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 542 ; 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 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 as 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

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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 1* * *.

(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

204.

Restriction on appointment of firm or body corporate to office or place of profit under a company.

204. Restriction on appointment of firm or body corporate to office or place of profit under a company. 2[(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, secretaries and treasurers or trustee for the holders of debentures of the company, for a term exceeding five years at a time:

Provided that the initial appointment or employment of a firm or body corporate to or in any office or place of profit as aforesaid may,

1. Certain words omitted by Act 31 of 1965, s. 19 (w.e.f. 15-10-1965).

2. Subs. by Act 65 of 1960, s. 57. for sub-section (1).

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with the approval of the Central Government, be made for a term not exceeding ten years.]

(2) Sub-section (1) shall not apply to the appointment or employment of a firm or body corporate as a technician or a consultant,-

(i) unless the firm or body corporate aforesaid is already the managing agent or secretaries and treasurers of the company; or

(ii) unless a partner in the firm, aforesaid, or a director or member of the body corporate aforesaid being a private company, or a director of the body corporate aforesaid not being a private company, is-

already the managing agent of the company;

or a member of the firm, a director or member of the private company, or a director of the body corporate not being a private company, which firm, private company or body corporate is already the managing agent or the secretaries and treasurers of the company.

(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 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 not be sanctioned earlier than two years from the date on which it is to come into force.

(5) 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 this section, if the person holding it l[obtains from the company anything] by way of remuneration, whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise.

1 Subs. by Act 65 of 1960, s. 57, for "obtains anything".

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(6) This section shall not apply to a private company, unless it is a subsidiary of a public company.

204A

Restrictions on the appointment of former managing agents or secretaries and treasurers to any office.

1[204A. Restrictions on the appointment of former managing agents or secretaries and treasurers to any office. (1) Except with the previous approval of the-

(a) company in general meeting, and

(b) Central Government,

no company shall, during a period of five years from the commencement of the Companies (Amendment) Act, 1974, (41 of 1974.) appoint as secretary, consultant or adviser or to any other office, by whatever name called,-

(i) any individual, firm or body corporate who, or which, had at any time after the 15th day of August, 1960, been holding office as the managing agents or secretaries and treasurers of the company, or

(ii) any associate of the managing agents or secretaries and treasurers as aforesaid :

Provided that where any such appointment has been made before the commencement of the Companies (Amendment) Act, 1974, (41 of 1974.) no such appointment shall be continued by the company after a period of six months from such commencement unless such appointment has been approved by the company in general meeting and the Central Government before the expiry of the said period.

(2) (a) Where-

(i) any individual, firm or body corporate, who, or which, had at any time after the 15th day of August, 1960, been holding office as the managing agents or secretaries and treasurers of the company, or

(ii) any associate of the managing agents or secretaries and treasurers as aforesaid;

has been appointed by such company at any time during a period of five years preceding the 3rd day of April, 1970, or at any time after that date, as its secretary, consultant or adviser, or to any other office under it, by whatever name called, the Central Government may, if it appears to it that there is good reason for so doing, require the

1 Ins. by Act 41 of 1974, s. 17 (w.e.f. 1-2-1975).

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company to furnish to it such information as it may consider necessary, with regard to the terms and conditions of the appointment of such individual, firm or body corporate as secretary, consultant or adviser or as the holder of such other office, for the purpose of determining whether or not such terms and conditions are prejudicial to the interest of the company.

(b) If the company refuses or neglects to furnish any such information, the Central Government may appoint a competent person to investigate and report on the terms and conditions of appointment to any of the offices referred to in clause (a) and the provisions of section 240A shall, so far as may be, apply, to such investigation, as they apply to any other investigation made under any other provision of this Act.

(c) If, after perusal of the information furnished by the company, or, as the case may be, the report submitted by the person appointed under clause (b), the Central Government is of opinion that

the terms and conditions of appointment to any of the offices referred to in clause (a) are prejudicial to the interests of the company, it may, by order, make such variations in those terms and conditions as would, in its opinion, no longer render such terms and conditions of appointment prejudicial to the interests of the company.

(d) As from such date as may be specified by the Central Government in the order aforesaid, the appointment referred to in clause (a) shall be regulated by the terms and conditions as varied by that Government.

(3) For the purposes of this section, the expression "appointment" includes re-appointment, employment and re-employment.]

Dividends and manner and time of payment thereof

205.

Dividend to be paid only out of profits.

1[205. Dividend to be paid only out of profits. (1) No dividend shall be declared or paid by a company for any financial year except out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2) or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with those provisions and remaining undistributed or out of both or out of moneys provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government:

1 Subs. by Act 65 of 1960, s. 58, for s. 205.

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Provided that-

(a) if the company has not provided for depreciation for any previous financial year or years which falls or fall after the commencement of the Companies (Amendment) Act, 1960, (65 of 1960.) it shall, before declaring or paying dividend for any financial year provide for such depreciation out of the profits of that financial year or out of the profits of any other previous financial year or years;

(b) if the company has incurred any loss in any previous financial year or years, which falls or fall after the commencement of the Companies (Amendment) Act, 1960, (65 of 1960.) then, the amount of the loss or an amount which is equal to the amount provided for depreciation for that year or those years whichever is less, shall be set off against the profits of the company for the year for which dividend is proposed to be declared or paid or against the profits of the company for any previous financial year or years, arrived at

in both cases after providing for depreciation in accordance with the provisions of subsection (2) or against both;

(c) the Central Government may, if it thinks necessary so to do in the public interest, allow any company to declare or pay dividend for any financial year out of the profits of the company for that year or any previous financial year or years without providing for depreciation :

Provided further that it shall not be necessary for a company to provide for depreciation as aforesaid where dividend for any financial year is declared or paid out of the profits of any previous financial year or years which falls or fall before the commencement of the companies (Amendment) Act, 1960.(65 of 1960.)

(2) For the purpose of sub-section (1), depreciation shall be provided either-

(a) to the extent specified in section 350; or

(b) in respect of each item of depreciable asset, for such an amount as is arrived at by dividing ninety-five per cent. of the original cost thereof to the company by the specified period in respect of such asset; or

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(c) on any other basis approved by the Central Government which has the effect of writing off by way of depreciation ninety-five per cent. of the original cost to the company of each such depreciable asset on the expiry of the specified period; or

(d) as regards any other depreciable asset for which no rate of depreciation has been laid down by 1[this Act or any rules made thereunder], on such basis as may be approved by the Central Government by any general order published in the Official Gazette or by any special order in any particular case :

Provided that where depreciation is provided for in the manner laid down in clause (b) or clause (c), then, in the event of the depreciable asset being sold, discarded, demolished or destroyed the written down value thereof at the end of the financial year in which the asset is sold, discarded, demolished or destroyed, shall be written off in accordance with the proviso to section 350.

2 [(2A) Notwithstanding anything contained in sub-section (1), on and from the commencement of the Companies (Amendment) Act, 1974, (41 of 1974) no dividend shall be declared or paid by a company for any financial year out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions

of subsection (2), except after the transfer to the reserves of the company of such percentage of its profits for that year, not exceeding ten per cent., as may be prescribed :

Provided that nothing in this sub-section shall be deemed to prohibit the voluntary transfer by a company of a higher percentage of its profits to the reserves in accordance with such rules as may be made by the Central Government in this behalf.]

3[(2B) A company which fails to comply with the provisions of section 80A shall not, so long as such failure continues, declare any dividend on its equity shares.]

(3) No dividend shall be payable except in cash:

Provided that nothing in this sub-section shall be deemed to prohibit the capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company.

(4) Nothing in this section shall be deemed to affect in any manner the operation of section 208.

1 Subs. by Act 31 of 1988, s.26 (w.e.f. 15-6-1988).

2 Ins. by Act 41 of 1974, s. 18 (w.e.f. 1-2-1975).

3 Ins. by Act 31 of 1988, s.26 (w.e.f. 15-6-1988).

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(5) For the purposes of this section-

(a) "specified period" in respect of any depreciable asset shall mean the number of years at the end of which at least ninety-five per cent. of the original cost of that asset to the company will have been provided for by way of depreciation if depreciation were to be calculated in accordance with the provisions of section 350;

(b) any dividend payable in cash may be paid by cheque or warrant sent through the post directed to the registered address of the shareholder entitled to the payment of the dividend or in the case of joint shareholders, to the registered address of that one of the joint shareholders which is first named on the register of members, or to such person and to such address as the shareholder or the joint shareholders may in writing direct.]

205A

Unpaid dividend to be transferred to special dividend account.

1[205A. Unpaid dividend to be transferred to special dividend account. (1) Where, after the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), a dividend has been declared by a company but has not been paid, 2[or claimed] within forty-two days, from, the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of forty-two days, transfer the total amount of dividend which remains unpaid 2[or unclaimed] within the said period of forty-two days, to a special account to be opened by the company in that behalf in any scheduled bank, to be called "Unpaid Dividend Account of..... Company Limited/Company (Private) Limited".

3[Explanation.- In this sub-section, the expression "dividend which remains unpaid" means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed.]

(2) Where the whole or any part of any dividend, declared by a company before the commencement of the Companies (Amendment) Act, 1974, (41 of 1974.) remains unpaid at such commencement, the company shall, within a period of six months from such commencement, transfer such unpaid amount to the account referred to in sub-section (1).

(3) Where, owing to inadequacy or absence of profits in any year, any company proposes to declare dividend out of the accumulated profits earned by the company in previous years and transferred by it to the reserves, such declaration of dividend shall not be made

1 Ins. by Act 41 of 1974, s. 19 (w.e.f. 1-2-1975).

2 Subs. by Act 31 of 1988, s. 27 (w.e.f. 15.6.88)

3 Ins. by s.27, ibid.

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except in accordance with such rules as may be made by the Central Government in this behalf, and, where any such declaration is not in accordance with such rules, such declaration shall not be made except with the previous approval of the Central Government.

(4) If the default is made in transferring the total amount referred to in sub-section (1) or any part thereof to the unpaid dividend account of the concerned company, the company shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent. per annum and the interest accruing on such amount shall enure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

(5) Any money transferred to the unpaid dividend account of a company in pursuance of this section which remains unpaid or unclaimed for a period of three years from the date of such transfer, shall be transferred by the company to the general revenue account of the Central Government but a claim to, any money so transferred to the general revenue account may be preferred to the Central Government by the person to whom the money is due and shall be dealt with as if such transfer to the general revenue account had not been made, the order, if any, for payment of the claim being treated as an order for refund of revenue.

(6) The company shall, when making any transfer under sub-section (5) to the general revenue account of the Central Government any unpaid or unclaimed dividend, 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 transfer, the nature of the sums, the names and last known addresses of the person entitled to receive the sum, the amount to which each person is entitled and the nature his claim thereto and such other particulars as may be prescribed.

(7) The company shall be entitled to a receipt from the Reserve Bank of India for any money transferred by it to the general revenue account of the Central Government and such receipt shall be an effectual discharge of the company in respect thereof.

(8) If a company fails to comply 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 hundred rupees for every day during which the failure continues.

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205B

Payment of unpaid or unclaimed dividend.

205B. Payment of unpaid or unclaimed dividend. Any person claiming to be entitled to any money transferred under sub-section (5) of section 205A to the general revenue account of the Central Government, may 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 company or otherwise, that such person is entitled to the whole or any part of the money claimed, 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.]

206.

Dividend not to be paid except to registered shareholders or to their order or to their bankers.

206. 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 114, 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.

206A

Right to dividend rights shares and bonus shares to be held in abeyance pending registration of transfer of shares.

2[206A. Right to dividend rights shares and bonus shares to be held in abeyance pending registration of transfer of shares. Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall, notwithstanding anything contained in any other provision of this Act,-

(a) transfer the dividend in relation to such shares to the special account referred to in section 205A unless the company is authorised by the registered holder of such share in writing to pay such dividend to the transferee specified in such instrument of transfer; and

(b) keep in abeyance in relation to such shares any offer of rights shares under clause (a) of sub-section (1) of section 81 and any issue of fully paid-up bonus shares in pursuance of sub-section (3) of section 205.]

207.

Penalty for failure to distribute dividends within forty-two days.

207. Penalty for failure to distribute dividends within forty-two days. Where a dividend has been declared by a company but has not been paid, or the warrant in respect thereof has not been posted, within 1[forty-two days] 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;

1 Ins. by Act 31 of 1988, s.28 (w.e.f. 15-6-1988).

2 Subs. by Act 65 of 1960, s. 59, for "three months".

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(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 the 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

208.

Power of company to pay interest out of capital in certain cases.

208. 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.

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(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, (10 of 1895.) or the Indian Tramways Act, 1902, (4 of 1902.) applies.

Accounts

209.

Books of account to be kept by company.

209. Books of account to be kept by company. 1[(1) Every company shall keep at its registered office 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; 2* * *

(c) the assets and liabilities of the company ; 3[and]

3[(d) in the case of a company pertaining to any class of companies engaged in production, processing, manufacturing or mining activities, such particulars relating to utilisation of material or labour or to other items of cost as may be prescribed, if such class of companies is required by the Central Government to include such particulars in the books of Account:]

Provided that all or any of the books of account aforesaid may be kept at such other place in India as the Board of directors may decide and when the Board of directors so decides, the company shall, within seven days of the decision, file with the Registrar a notice in writing giving the full address of that other place.]

(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

1 Sub. by Act 65 of 1960, s. 60, for sub-section (1).

2 The word " and" omitted by Act 31 of 1965, s. 20 (w.e.f. 15-10-1965).

3 Ins. by s. 20, ibid. (w.e.f. 15-10-1965).

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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 subsection (1).

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,-

(a) if there are not kept such books as are necessary to give a true and fair view of the state of affairs of the company or branch office, as the case may be, and to explain its transactions; and

(b) if such books are not kept on accrual basis and according to the double entry system of accounting.]

2[(4) 2* * * The books of account and other books and papers shall be open to inspection by any director during business hours.

4[(4A) The books of account of every company relating to a period of not less than eight years immediately preceding the current year 4[together with the vouchers relevant to any entry in such books ,of account] shall be preserved in good order:

Provided that in the case of a company incorporated less than eight years before the current year, the books of account for the entire period preceding the current year 5[together with the vouchers relevant to any entry in such books of account] shall be so preserved.]

(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 6 [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 consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of

1 Subs. by Act 31 of 1988, s.29 (w.e.f. 15-6-1988).

2 Subs. by Act 31 of 1965, s. 20, for sub-section (4) (w.e.f, 15-10-1965).

3 The brackets and letter "(a)" and (clauses (b), (c) and (d) omitted by Act 41 of 1974, s. 20) (w.e.f. 1-2 1975).

4 Ins. by Act 65 of 1960, s. 60.

5 Ins. by Act 31 of 1965, s. 20 (w.e.f. 15-10-1965).

6 Subs. by Act 65 of 1960, s. 60, for "fine which may extend lo one thousand rupees"

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this section, it shall be a defence to prove 1* * * 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 :

2[Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.]

(6) The persons referred to in sub-section (5) are the following, namely:-

(a) where the company has a managing agent, 3[secretaries and treasurers or managing director or manager], such managing agent, 3[secretaries and treasurers or managing director or manager] 4[and all officers and other employees and agents [as defined in sub-section (6) of section 240 but excluding bankers, auditors and legal advisers] of 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;
5* * *

(d) where the company has neither a managing agent nor 6[secretaries and treasurers nor managing director nor manager, every director of the company]; 4[and]

4[(e) whether or not a company has a managing agent or secretaries and treasurers, every officer and other employee and agent (defined as aforesaid) of the company.]

(7) If any person, not being a person referred to in sub-section (6), having been charged by the managing agent, secretaries and treasurers, 2[managing director, manager] or Board of directors, as

1 The words "that he had reasonable ground to believe, and did believe", omitted by Act 65 of 1960, s. 60.

2 Ins. by s. 60, *ibid.*

3 Subs. by s. 60, *ibid.*, for "or secretaries and treasurers".

4 Ins. by Act 31 of 1965, s. 20 (w.e.f. 15-10-1965).

5 The word "and" omitted by s. 20, *ibid.* (w e.f. 15-10-1965).

6 Subs. by Act 65 of 1960, s. 60, for "secretaries and treasurers, every director of the company".

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the case may be, with the duty of seeing that the requirements of this section are complied with, makes default in doing so, he shall, in respect of each offence, be punishable with 1[imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both].

209A

Inspection of books of account, etc., of companies.

2[209A. Inspection of books of account, etc., of companies (1)
The books of account and other books and papers of every company shall
be open to inspection during business hours-

(i) by the Registrar, or

(ii) by such officer of Government as may be authorised by
the Central Government in this behalf:

Provided that such inspection may be made without giving any
previous notice to the company or any officer thereof.

(2) It shall be the duty of every director, other officer or
employee of the company to produce to the person making inspection
under sub-section (1), all such books of account and other books and
papers of the company in his custody or control and to furnish him
with any statement, information or explanation relating to the affairs
of the company as the said person may require of him within such time
and at such place as he may specify.

(3) It shall also be the duty of every director, other officer
or employee of the company to give to the person making inspection
under this section all assistance in connection with the inspection
which the company may be reasonably expected to give.

(4) The person making the inspection under this section may, during
the course of inspection,-

(i) make or cause to be made copies of books of account and
other books and papers, or

(ii) place or cause to be placed any marks of identification
thereon in token of the inspection having been made.

(5) Notwithstanding anything contained in any other law for the
time being in force or any contract to the contrary, any person making
an inspection under this section shall have the same powers, as are
vested in a civil court under the Code of Civil Procedure,

1 Subs. by Act 65 of 1960, s. 60, for "fine which may extend to
one thousand rupees".

2 Ins. by Act 41 of 1974, s. 21 (w.e.f. 1-2-1975).

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1908 (5 of 1908), while trying a suit, in respect of the following
matters, namely:-

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by such person;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of the company at any place.

(6) Where an inspection of the books of account and other books and papers of the company has been made under this section, the person making the inspection shall make a report to the Central Government.

(7) Any officer authorised to make an inspection under this section shall have all the powers that a Registrar has under this Act in relation to the making of inquiries.

(8) 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 shall not be less than five thousand rupees, and also with imprisonment for a term not exceeding one year.

(9) Where a director or any other officer of a company has been convicted of an offence under this section he shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified for holding such office in any company, for a period of five years from such date.]

210.

Annual accounts and balance sheet.

210. Annual accounts and balance sheet. (1) At every annual general meeting of a company held in pursuance of section 166, 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

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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

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precede the day of the meeting by more than nine months ; and

1[(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 six months, or in cases where an extension of time has been granted for holding the meeting under the second proviso to subsection (1) of section 166, by more than six 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 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.

(6) If any person, not being a director of the company, having been charged by the Board of directors with the duty of seeing that the provisions of this section are complied with, makes default in doing so, 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 no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

1 Subs. by Act 65 of 1960, s. 61, for cl. (b).

2 The words " that he had reasonable ground to believe, and did believe" omitted by s. 61, *ibid.*

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211.

Form and contents of balance sheet and profit and loss account.

211. Form and contents of balance sheet and profit and loss account. 1[(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 or in such other form as may be approved by the Central Government either generally or in any particular case; and in preparing the balance sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance sheet under the heading " Notes " at the end of that Part:

Provided that nothing contained in this subsection shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity or to any other class of company for which a form of balance sheet has been specified in or under the Act governing such class of company.]

(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 :

Provided that nothing contained in this sub-section shall apply to any insurance or banking company 2 [or any company engaged in the generation or supply of electricity], or to any other class of company for which a form of profit and loss account has been specified in or under the Act governing such class of company.

(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 I [public 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

1 Subs. by Act 65 of 1960, s. 62, for sub-section (1).

2 Ins. by s. 62, *ibid.*

3 Subs. by s. 62 *ibid.* for "national interest"

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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 ; (4 of 1838.)

(ii) in the case of a banking company, any matters which are not required to be disclosed by the Banking Companies Act, 1949 ; (10 of 1994)

(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 1[both the Indian Electricity Act, 1910, (9 of 1910) and the Electricity (Supply) Act, 1948]; (54 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, subsection (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 209 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 I 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 2* * * that a competent and reliable person was charged with the duty of seeing that the provisions of this section and the other requirements

1 Subs. by Act 65 of 1960; s. 62, for " the Electricity (Supply) Act, 1948 (54 of 1948) " .

2 The words "that he had reasonable ground to believe and did believe" omitted by S. 62, *ibid.*

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aforesaid 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.

(8) If any person, not being a person referred to in sub-section (6) of section 209, having been charged by the managing agent, secretaries and treasurers, 1[managing director or manager,] or Board of directors, as the case may be, with the duty of seeing that the provisions of this section and the other requirements aforesaid are complied with, makes default in doing so, 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 no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

212.

Balance sheet of holding company to include certain particulars as to its subsidiaries.

212. 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); the statement referred to in sub-section (5), if any ; and
- (g) the report referred to in sub-section (6), if any.

(2) 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,-

- (i) as at the end of the financial year of the subsidiary, where such financial year coincides with the financial year of the holding company;

 1 Ins. by Act 65 of 1960, s. 62.

2 Subs. by s. 63, *ibid.*, for cl. (a).

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- (ii) as at the end of the financial year of the subsidiary last before that of the holding company where the financial year of the subsidiary does not coincide with that of the holding company;]

(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 subsection (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) 1[Where the financial year of the subsidiary does not coincide with that of the holding company, 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

1 Subs. by Act 65 of 1960, s. 63, for "the financial year aforesaid".

(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 itself the subsidiary of another body corporate ; and

(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

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(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 209 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 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.

(10) If any person, not being a person referred to in sub-section (6) of section 209, having been charged by the managing agent, secretaries and treasurers, 2[managing director, manager,] or Board of directors, as the case may be, with the duty of seeing that the provisions of this section are complied with, makes default in doing so, he shall, in respect of each offence, be punishable with

1 The words "that he had reasonable ground to believe, and did believe," omitted by Act 65 of 1960, s. 63.

2 Ins. by s. 63, *ibid.*

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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 no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

213.

Financial year of holding company and subsidiary.

213. 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.

214.

Rights of holding company's representatives and members.

214.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 235 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.

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215.

Authentication of balance sheet and profit and loss account.

215.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 subsection (2) of section 29 of the Banking Companies Act, 1949; (10 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 subsection (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.

216.

Profit and loss account to be annexed and auditors' report to be attached to balance sheet.

216. 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 1[(including the auditors' separate special or supplementary report, if any)] shall be attached thereto.

217.

Board's report.

217. 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 2* * * in such balance sheet 3* * *

1 Ins. by Act 65 of 1960, s. 64.

2 The word "either" omitted by s. 65, *ibid.*

3 The words "or in a subsequent balance sheet; and" omitted by s. 65, *ibid.*

(c) the amount, if any, which it recommends should be paid by way of dividend;

1[(d) material changes and commitments, if any; affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance sheet relates and the date of the report.]

2[(e) the conservation of energy technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed.]

(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[(2A) (a) The Board's report shall also include a statement showing the name of every employee of the company who-

(i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than 4[such sum as may be prescribed]; or

(ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than 4[such sum per month as may be prescribed; or]

5[(iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two per cent., of the equity shares of the company.

(b) The statement referred to in clause (a) shall also indicate,-

(i) whether any such employee is a relative of any director or manager of the company and if so, the name of such director, and

(ii) such other particulars as may be prescribed.

Explanation.- "Remuneration" has the meaning assigned to it in the Explanation to section 198.]

1 Ins. by Act 65 of 1960, s. 65.

2 Added by Act 31 of 1988, s. 30 (w.e.f. 1.4.1989).

3 Ins. by Act 41 of 1974, s. 22 (w.e.f. 1-2-1975).

4 Subs. by Act 31 of 1988, s.30 (w.e.f. 15-6-1988).

5 Ins. by s. 30, ibid. (w.e.f. 15.6.1988).

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(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 222, in an addendum to that report, on every reservation, qualification or adverse remark contained in the auditors' report.

(4) The Board's report and any addendum thereto shall be signed by its chairman if he is authorised in that behalf by the Board; and where he is not so authorised, shall be signed by such number of directors as are required to sign the balance sheet and the profit and loss account of the company by virtue of sub-sections (1) and (2) of section 215.

(5) If any person, being a director of a company, fails to take all reasonable steps to comply with the provisions of subsections (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

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prove 1* * * 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.

(6) If any person, not being a director, having been charged by the Board of directors with the duty of seeing that the provisions of sub-sections (1) to (3) are complied with, makes default in doing so, 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.

218.

Penalty for improper issue, circulation or publication of balancesheet or profit and loss account.

218. 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 215 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 212, are required to be attached to the balance sheet, (iii) the auditors' report, and (iv) the Board's report referred to in section 217

the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

219.

Right of member to copies of balance sheet and auditors' report.

219 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, 2[to every trustee for the holders of any debentures issued by the company, whether such member 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 or trustees, being persons so entitled:]

1 The words "that he had reasonable ground to believe, and did believe, " omitted by Act 65 of 1960, s. 65.

2 Subs. by Act 31 of 1988, s. 31 (w.e.f. 17.4.1989)

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; 1* * *

(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; 1* * *

1[(iv) in the case of a company whose shares are listed on a recognised stock exchange, if the copies of the documents aforesaid are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents aforesaid, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting]

(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.