

COMPANIES ACT, 1956
[Act No. 1 OF 1956]

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COMPANIES ACT, 1956
[act no. 1 of 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 :

PART I : PRELIMINARY

1. SHORT TITLE, COMMENCEMENT AND EXTENT

(1) This Act may be called the Companies Act, 1956.

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

(3) It extends to the whole of India :

Provided 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

In this Act, unless the context otherwise requires, -

¹[(1) "abridged prospectus" means a memorandum containing such salient features of a prospectus as may be prescribed ;]

²[(1A) "alter" and "alteration" shall include the making of additions and omissions ;]

³[(1B) "Appellate Tribunal" means the National Company Law Appellate Tribunal constituted under sub-section (1) of section 10FR ;]

(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 Schedule annexed to the Indian Companies Act, 1913 (7 of 1913), or in Table A in Schedule I annexed to this Act ;

(3) [Omitted by the Companies (Amendment) Act, 2000 with effect from 13-12-2000 ;]

(4) [Omitted by the Companies (Amendment) Act, 2000 with effect from 13-12-2000 ;]

(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 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, vouchers, writings, and documents ;

(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,

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 ;

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

(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 ;

⁴[(12A) "depository" has the same meaning as in the Depositories Act, 1996 (22 of 1996) ;]

⁴[(12B) "derivative" has the same meaning as in clause (aa) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) ;]

(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 ;

⁴[(14A) "dividend" includes any interim dividend ;]

(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 ;

⁴[(15A) "employees stock option" means the option given to the whole-time directors, officers or employees of a company, which gives such directors, officers or employees the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a pre-determined price ;]

(16) "existing company" means an existing company as defined in section 3 ;
(17) "financial year" means, in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in annual general meeting is made up, whether that period is a year or not ;

Provided that, in relation to an insurance company, "financial year" shall mean the calendar year referred to in sub-section (1) of section 11 of the Insurance Act, 1938 (4 of 1938) ;

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

(18A) [Omitted by the MRTPE (Amendment) Act, 1984, with effect from 1-8-1984 ;]

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

⁴[(19A) "hybrid" means any security which has the character of more than one type of security, including their derivatives ;]

⁵[(19AA) "industrial company" means a company which owns one or more industrial undertakings ;

(19AB) "industrial undertaking" means any undertaking, pertaining to any industry carried on in one or more factories or units by any company, as defined in clause (aa) of section 3 of the Industries (Development and Regulation) Act, 1951 (65 of 1951) but does not include a small-scale industrial undertaking as defined in clause (j) of that section ;]

⁴[(19B) "information memorandum" means a process undertaken prior to the filing of a prospectus by which a demand for the securities proposed to be issued by a company is elicited, and the price and the terms of issue for such securities is assessed, by means of a notice, circular, advertisement or document;]

(20) [Omitted by the (J & K Extension of Laws) Act, 1956;]

(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;

⁴[(23A) "listed public companies" means a public company which has any of its securities listed in any recognised stock exchange;]

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

(25) [Omitted by the Companies (Amendment) Act, 2000 with effect from 13-12-2000;]

(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 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 :

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 ;

(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 ;

⁶[(29A) "net worth" means the sum total of the paid-up capital and free reserves after deducting the provisions or expenses as may be prescribed.

Explanation. - For the purposes of this clause, "free reserves" means all reserves created out of the profits and share premium account but does not include reserves created out of revaluation of assets, write back of depreciation provisions and amalgamation ;]

⁷[(30) "officer" includes any director, manager or secretary 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 ;]

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

⁴[(31A) "option in securities" has the same meaning as in clause (d) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) ;]

⁶[(31AA) "operating agency" means any group of experts consisting of persons having special knowledge of business or industry in which the sick industrial company is engaged and includes public financial institution, State level institution, scheduled bank or any other person as may be specified as the operating agency by the Tribunal;]

(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, sub-section (3) of section 550, section 552 and sub-section (3) of section 555, prescribed by rules made by the Supreme Court in consultation with ⁸[the Tribunal], and as respects the other provisions of this

Act including sub-section (5) of section 503, 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 any document described or issued as a prospectus and includes any notice, circular, advertisement or other document 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 ;

(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) [Omitted by the Companies (Amendment) Act, 2000 with effect from 13-12-2000 ;]

³[(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 ;]

¹⁰[(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 full-time employment ;]

⁴[(45AA) "securities" means securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and includes hybrids ;]

¹¹[(45B) "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 ;

⁴[(46A) "share with differential rights" means a share that is issued with differential rights in accordance with the provisions of section 86;]

⁶[(46AA) "sick industrial company" means an industrial company which has.-

(i) the accumulated losses in any financial year equal to fifty per cent, or more of its average net worth during four years immediately preceding such financial year ; or

(ii) failed to repay its debts within any three consecutive quarters on demand made in writing for its repayment by a creditor or creditors of such company ;]

⁶[(46AB) "State level institution" means any of the following institutions, namely : -

(a) the State Financial Corporations established under section 3 or section 3A and institutions notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951) ;

(b) the State Industrial Development Corporations registered under this Act ;]

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

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

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

⁶[(49A) "Tribunal" means the National Company Law Tribunal constituted under sub-section (1) of section 10FB ;]

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

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1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 2. Clause (1) renumbered as (1A) by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 3. Inserted by the Companies (Second Amendment) Act, 2002 w.e.f. 1-4-2003
 4. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 5. Inserted by the Companies (Second Amendment) Act, 2002 w.e.f. 1-4-2003
 6. Inserted by the Companies (Second Amendment) Act, 2002 w.e.f. 1-4-2003
 7. Substituted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000. Prior to its substitution, clause (30), read as under :

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

(a) where the managing agent, 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 ;

(c) [Omitted by the Companies (Amendment) Act, 1974 w.e.f. 1st August, 1975],

but, save in sections 477, 478, 539, 543, 545, 621, 625 and 633, does not include an auditor ;'

8. Substituted for 'High Courts' by the Companies (Second Amendment) Act, 2002 w.e.f. 1-4-2003

9. Substituted by the Companies (Amendment) Act, 1988 w.e.f. 1-12-1988.

10. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

11. Inserted by the Depositories Act, 1996 w.r.e.f. 20-9-1995.

¹[2A. INTERPRETATION OF CERTAIN WORDS AND EXPRESSIONS

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.]

1. Inserted by the Depositories Act, 1996 w.r.e.f. 20-9-1995.

3. DEFINITIONS OF "COMPANY", "EXISTING COMPANY", "PRIVATE COMPANY" AND "PUBLIC COMPANY"

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

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

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

(a) any Act or Acts relating to companies in force before the Indian Companies Act, 1866 (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

(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 States (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

(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), insofar as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu & Kashmir) Act, 1968 (25 of 1968), insofar as other corporations are concerned ; and

(g) the Portuguese Commercial Code, insofar as it relates to "*sociedades anonimas*" ;

(iii) "private company" ¹[means a company which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed, and by its articles, -]

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

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

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

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

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

²[(d) prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives:]

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 ;

³[(iv) "public company" means a company which -

(a) is not a private company ;

(b) has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed ;

(c) is a private company which is a subsidiary of a company which is not a private company.]

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

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

(b) [Omitted by the J&K (Extension of Laws) Act, 1956].

⁴[(3) Every private company, existing on the commencement of the Companies (Amendment) Act, 2000, with a paid-up capital of less than one lakh rupees shall, within a period of two years from such commencement, enhance its paid-up capital to one lakh rupees.

- (4) Every public company, existing on the commencement of the Companies (Amendment) Act, 2000, with a paid-up capital of less than five lakh rupees shall, within a period of two years from such commencement, enhance its paid-up capital to five lakh rupees.
- (5) Where a private company or a public company fails to enhance its paid-up capital in the manner specified in sub-section (3) or sub-section (4), such company shall be deemed to be a defunct company within the meaning of section 560 and its name shall be struck off from the register by the Registrar.
- (6) A company registered under section 25 before or after the commencement of Companies (Amendment) Act, 2000 shall not be required to have minimum paid-up capital specified in this section.]

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1. Substituted for "means a company which, by its articles,-" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 2. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 3. Substituted for the clause (iv) by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000. Prior to substitution clause (iv) read as under :
'(iv) "public company" means a company which is not a private company.'
 4. Sub-sections (3), (4), (5) and (6) inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

4. MEANING OF "HOLDING COMPANY" AND "SUBSIDIARY"

- (1) For the purposes of this Act, a company shall, subject to the provisions of sub-section (3), be deemed to be a subsidiary of another if, but only if, -
- (a) that other controls the composition of its Board of directors ; or
 - (b) that other -
 - (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.

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 ¹[***] or manager of, or to any other office or employment in, that other company ; or
- (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 ;

(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.

(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.

1. Words ", managing agent, secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

4A. PUBLIC FINANCIAL INSTITUTIONS

(1) Each of the financial institutions specified in this sub-section 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) ;
- (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) ;

¹[(vi) the Infrastructure Development Finance Company Limited, a company formed and registered under this Act ;]

²[(vii) *the securitisation company or the reconstruction company which has obtained a certificate of registration under sub-section (4) of section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.*]

(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.

1. Inserted by the Companies (Amendment) Act 1999, w.r.e.f. 31-10-1998.

2. Inserted by the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 w.e.f. 21-6-2002.

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.]

1. Substituted by the Companies (Amendment) Act, 1988 w.e.f. 15-7-1988.

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.

7. INTERPRETATION OF "PERSON IN ACCORDANCE WITH WHOSE DIRECTIONS OR INSTRUCTIONS DIRECTORS ARE ACCUSTOMED TO ACT"

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

8. POWER OF CENTRAL GOVERNMENT TO DECLARE AN ESTABLISHMENT NOT TO BE A BRANCH OFFICE

The Central Government may, by order, declare that in the case of any company, any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company, or any 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

Save as otherwise expressly provided in the Act -

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

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

10. JURISDICTION OF COURTS

(1) The Court having jurisdiction under this Act shall be -

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

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

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

(a) in respect of companies generally, by sections 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

[Omitted by the Companies Tribunal (Abolition) Act, 1967, with effect from 1-7-1967.]

10B. PROCEDURE OF TRIBUNAL

[Omitted by the Companies Tribunal (Abolition) Act, 1967, with effect from 1-7-1967.]

10C. POWERS OF TRIBUNAL

[Omitted by the Companies Tribunal (Abolition) Act, 1967, with effect from 1-7-1967.]

10D. APPEALS AGAINST DECISIONS, ETC., OF THE TRIBUNAL

[Omitted by the Companies Tribunal (Abolition) Act, 1967, with effect from 1-7-1967.]

PART IA BOARD OF COMPANY LAW ADMINISTRATION

10E. CONSTITUTION OF BOARD OF COMPANY LAW ADMINISTRATION

¹[(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 ²*[conferred on it, before the commencement of the Companies (Second Amendment) Act, 2002]* 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 ²*[conferred on it before the commencement of the Companies (Second Amendment) Act, 2002]* by the Central Government, by notification in the Official Gazette under the provisions of this Act or that other law. (2) The Company Law Board shall consist of such number of members, not exceeding nine, as the Central Government deems fit, to be appointed by that Government by notification in the Official Gazette :

³**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, 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.]

⁴[(2A) The members of the Company Law Board shall possess such qualifications and experience as may be 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.

(4A) [Omitted by the Companies (Amendment) Act, 1988, with effect from 31-5-1991.]

(4B) ³[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 ;

(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 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 sections 193 and 228 of the Indian Penal Code (45 of 1860), and for the purpose of section 196 of that Code.

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.]

1. Substituted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

2. Substituted for "conferred on it" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

3. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

4. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 4-8-1989.

5. Substituted for "Without prejudice to the provisions of sub-section (4A), the Board, with the previous approval of the Central Government" by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

¹[10F. APPEALS AGAINST THE ORDERS OF THE COMPANY LAW BOARD

Any person aggrieved by any decision or order of the Company Law Board ²[made before the commencement of the Companies (Second Amendment) Act, 2002] 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.]

1. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

2. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

¹[10FA. DISSOLUTION OF COMPANY LAW BOARD

(1) On and from the commencement of the Companies (Second Amendment) Act, 2002, the Board of Company Law Administration constituted under sub-section (1) of section 10E shall stand dissolved.

(2) On the dissolution of the Company Law Board, the persons appointed as Chairman, Vice-Chairman and members and officers and other employees of that Board and holding office as such immediately before such commencement shall vacate their respective offices and no such Chairman, Vice-Chairman and member and officer and other employee shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service :

Provided that every officer or other employee, who has been, immediately before the dissolution of the Company Law Board, appointed on deputation basis to that Board, shall, on such dissolution, stand reverted to his parent cadre, Ministry or Department, as the case may be :

Provided further that every officer and other employee of the Company Law Board employed on regular basis by that Board, shall become, on and from the dissolution of the Board, the officer and employee, respectively, of the Central Government with the same rights and privileges as to pension, gratuity and other like benefits as would have been admissible to him if the rights in relation to that Board had not been transferred to, and vested in, the Central Government and shall continue to do so unless and until his employment in the Central Government is duly terminated or until his remuneration, terms and conditions of employment are duly altered by that Government :

Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force, the transfer of the services of any officer or other employee employed in the Company Law Board, to the Central Government shall not entitle such officer or other employee to any compensation

under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, Tribunal (including the Tribunal under this Act) or other authority :

Provided also that where the Company Law Board has established a provident fund, superannuation fund, welfare fund or other fund for the benefit of the officers and other employees employed in that Board, the monies relatable to the officers and other employees whose services have been transferred by or under this Act to the Central Government shall, out of the monies standing, on the dissolution of the Company Law Board to the credit of such provident fund, superannuation fund, welfare fund or other fund, stand transferred to, and vest in, the Central Government and such monies which stand so transferred shall be dealt with by that Government in such manner as may be prescribed.

(3) All matters or proceedings or cases pending before the Company Law Board on or before the constitution of the Tribunal under section 10FB, shall, on such constitution, stand transferred to the National Company Law Tribunal and the said Tribunal shall dispose of such cases in accordance with the provisions of this Act.]

1. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

¹[PART IB NATIONAL COMPANY LAW TRIBUNAL

1. Part IB, consisting of sections 10FB to 10 FP, and Part IC, consisting of sections 10FQ to 10GF, inserted by the Companies (Second Amendment) Act, 2002 w.e.f. 1-4-2003

10FB. CONSTITUTION OF NATIONAL COMPANY LAW TRIBUNAL

The Central Government shall, by notification in the Official Gazette, constitute a Tribunal to be known as the National Company Law Tribunal to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.

10FC. COMPOSITION OF TRIBUNAL

The Tribunal shall consist of a President and such number of Judicial and Technical Members not exceeding sixty-two, as the Central Government deems fit, to be appointed by that Government, by notification in the Official Gazette.

10FD. QUALIFICATIONS FOR APPOINTMENT OF PRESIDENT AND MEMBERS

(1) *The Central Government shall appoint a person who has been, or is qualified to be, a Judge of a High Court as the President of the Tribunal.*

(2) *A person shall not be qualified for appointment as Judicial Member unless he -*

(a) *has, for at least fifteen years, held a judicial office in the territory of India ; or*

(b) *has, for at least ten years been an advocate of a High Court, or has partly held judicial office and has been partly in practice as an advocate for a total period of fifteen years ; or*

(c) *has held for at least fifteen years a Group `A' post or an equivalent post under the Central Government or a State Government [including at least three years of service as a Member of the Indian Company Law Service (Legal Branch) in Senior Administrative Grade in that service] ; or*

(d) *has held for at least fifteen years a Group `A' post or an equivalent post under the Central Government (including at least three years of service as a Member of the Indian Legal Service in Grade I of that service).*

(3) *A person shall not be qualified for appointment as Technical Member unless he -*

(a) *has held for, at least fifteen years a Group `A' post or an equivalent post under the Central Government or a State Government [including at least three years of service as a Member of the Indian Company Law Service, (Accounts Branch) in Senior Administrative Grade in that service] ; or*

(b) *is, or has been, a Joint Secretary to the Government of India under the Central Staffing Scheme, or any other post under the Central Government or a State Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India for at least five years and has adequate knowledge of, and experience in, dealing with problems relating to company law ; or*

(c) *is, or has been, for at least fifteen years in practice as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949); or*

(d) *is, or has been, for at least fifteen years in practice as a cost accountant under the Costs and Works Accountants Act, 1959 (23 of 1959); or*

(e) *is, or has been, for at least fifteen years working experience as a secretary in whole-time practice as defined in clause (45A) of section 2 of this Act and is a member of the Institute of the Companies Secretaries of India constituted under the Company Secretaries Act, 1980 (56 of 1980) ; or*

(f) *is a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty years in, science, technology, economics, banking, industry, law, matters relating to industrial finance, industrial management, industrial reconstruction, administration, investment, accountancy, marketing or any other matter, the special knowledge of, or professional experience in, which would be in the opinion of the Central Government useful to the Tribunal ; or*

(g) *is, or has been, a Presiding Officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 (14 of 1947) ; or*

(h) *is a person having special knowledge of, and experience of not less than fifteen years in, the matters relating to labour.*

Explanation. - *For the purposes of this Part, -*

- (i) "Judicial Member" means a Member of the Tribunal appointed as such under sub-section (2) of section 10FD and includes the President of the Tribunal ;
- (ii) "Technical Member" means a Member of the Tribunal appointed as such under sub-section (3) of section 10FD.

10FE. TERM OF OFFICE OF PRESIDENT AND MEMBERS

The President and every other Member of the Tribunal shall hold office as such for a term of three years from the date on which he enters upon his office but shall be eligible for re-appointment :

Provided that no President or other Member shall hold office as such after he has attained, -

- (a) in the case of the President, the age of sixty-seven years ;
- (b) in the case of any other Member, the age of sixty-five years :

Provided further that the President or other Member may retain his lien with his parent cadre or Ministry or Department, as the case may be, while holding office as such.

10FF. FINANCIAL AND ADMINISTRATIVE POWERS OF MEMBER ADMINISTRATION

The Central Government shall designate any Judicial Member or Technical Member as Member Administration who shall exercise such financial and administrative powers as may be vested in him under the rules which may be made by the Central Government :

Provided that the Member Administration shall have authority to delegate such of his financial and administrative powers as he may think fit to any other officer of the Tribunal subject to the condition that such officer shall, while exercising such delegated powers continue to act under the direction, superintendence and control of the Member Administration.

10FG. SALARY, ALLOWANCES AND OTHER TERMS AND CONDITIONS OF SERVICE OF PRESIDENT AND OTHER MEMBERS

The salary and allowances and other terms and conditions of service of the President and other Members of the Tribunal shall be such as may be prescribed :

Provided that neither the salary and allowances nor the other terms and conditions of service of the President and other Members shall be varied to their disadvantage after their appointment.

10FH. VACANCY IN TRIBUNAL

(1) *In the event of the occurrence of any vacancy in the office of the President of the Tribunal by reason of his death, resignation or otherwise, the senior-most Member shall act as the President of the Tribunal until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.*

(2) *When the President is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member or, as the case may be, such one of the Members of the Tribunal, as the Central Government, may, by notification, authorise in this behalf, shall discharge the functions of the President until the date on which the President resumes his duties.*

(3) *If, for reason other than temporary absence, any vacancy occurs in the office of the President or a Member, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.*

10FI. RESIGNATION OF PRESIDENT AND MEMBER

The President or a Member of the Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office :

Provided that the President or a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of the term of office, whichever is the earliest.

10FJ. REMOVAL AND SUSPENSION OF PRESIDENT OR MEMBER

(1) *The Central Government may, in consultation with the Chief Justice of India, remove from office the President or any Member of the Tribunal, who -*

- (a) *has been adjudged an insolvent ; or*
- (b) *has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude ; or*
- (c) *has become physically or mentally incapable of acting as such President or Member of the Tribunal ; or*
- (d) *has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member of the Tribunal ; or*
- (e) *has so abused his position as to render his continuance in office prejudicial to the public interest :*

Provided that no such President or a Member shall be removed on any of the grounds specified in clauses (b) to (e) without giving him reasonable opportunity of being heard in respect of those charges.

(2) *The President or a Member of the Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such President or a Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.*

(3) The Central Government may suspend from office the President or Member of the Tribunal in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (2) until the Central Government has passed orders on receipt of the report of the Judge of the Supreme Court on such reference.

(4) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the President or a Member referred to in sub-section (2).

10FK. OFFICERS AND EMPLOYEES OF TRIBUNAL

(1) The Central Government shall provide the Tribunal with such officers and other employees as it may deem fit.

(2) The officers and other employees of the Tribunal shall discharge their functions under the general superintendence of the Member Administration.

(3) The salaries and allowances and other terms and conditions of service of the officers and other employees of the Tribunal shall be such as may be prescribed.

10FL. BENCHES OF TRIBUNAL

(1) Subject to the provisions of this section, the powers of the Tribunal may be exercised by Benches, constituted by the President of the Tribunal, out of which one shall be a Judicial Member and another shall be a Technical Member referred to in clauses (a) to (f) of sub-section (3) of section 10FD :

Provided that it shall be competent for the Members authorised in this behalf to function as a Bench consisting of a single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President of the Tribunal may, by general or special order, specify :

Provided further that if at any stage of the hearing of any such case or matter, it appears to the Member of the Tribunal that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the President of the Tribunal or, as the case may be, referred to him for transfer to such Bench as the President may deem fit.

(2) The President of the Tribunal shall, for the disposal of any case relating to rehabilitation, restructuring or winding up of the companies, constitute one or more Special Benches consisting of three or more Members, each of whom shall necessarily be a Judicial Member, a Technical Member appointed under any of the clauses (a) to (f) of sub-section (3) of section 10FD, and a Member appointed under clause (g) or clause (h) of sub-section (3) of section 10FD :

Provided that in case a Special Bench passes an order in respect of a company to be wound up, the winding up proceedings of such company may be conducted by a Bench consisting of a Single Member.

(3) If the Members of a Bench differ in opinion on any point or points, it shall be decided according to the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Tribunal for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of Members of the Tribunal who have heard the case, including those who first heard it.

(4) There shall be constituted such number of Benches, as may be notified by the Central Government.

(5) In addition to the other Benches, there shall be a Principal Bench at New Delhi presided over by the President of the Tribunal.

(6) The Principal Bench of the Tribunal shall have powers of transfer of proceedings from any Bench to another Bench of the Tribunal in the event of inability of any Bench from hearing any such proceedings for any reason:

Provided that no transfer of any proceedings shall be made under this sub-section except after recording the reasons for so doing in writing.

10FM. ORDER OF TRIBUNAL

(1) The Tribunal may, after giving the parties to any proceeding before it, an opportunity of being heard, pass such orders thereon as it thinks fit.

(2) The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the parties.

(3) The Tribunal shall send a copy of every order passed under this section to all the parties concerned.

10FN. POWER TO REVIEW

The Tribunal shall have power to review its own orders.

10FO. DELEGATION OF POWERS

The Tribunal may, by general or special order, delegate, subject to such conditions and limitations, if any, as may be specified in the order, to any Member or officer or other employee of the Tribunal or other person authorised by the Tribunal to manage any industrial company or industrial undertaking or any operating agency, such powers and duties under this Act as it may deem necessary.

10FP. POWER TO SEEK ASSISTANCE OF CHIEF METROPOLITAN MAGISTRATE AND DISTRICT MAGISTRATE

(1) The Tribunal or any operating agency, on being directed by the Tribunal may, in order to take into custody or under its control all property, effects and actionable claims to which a sick industrial company is or appears to be entitled,

request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any property, books of account or any other document of such sick industrial company, be situate or be found, to take possession thereof, and the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, shall, on such request being made to him, -

(a) take possession of such property, books of account or other documents ; and

(b) cause the same to be entrusted to the Tribunal or the operating agency.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority on any ground whatsoever.

11 PART 1C APPELLATE TRIBUNAL

1. Part 1C inserted by the Companies (Second Amendment) Act, 2002 w.e.f. 1-4-2003.

10FQ. APPEAL FROM ORDER OF TRIBUNAL

(1) Any person aggrieved by an order or decision of the Tribunal may prefer an appeal to the Appellate Tribunal.

(2) No appeal shall lie to the Appellate Tribunal from an order or decision made by the Tribunal with the consent of parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order or decision made by the Tribunal is received by the appellant and it shall be in such form and accompanied by such fee as may be prescribed :

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from not filing the appeal in time.

(4) On receipt of an appeal preferred under sub-section (1), the Appellate Tribunal shall, after giving parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and parties to the appeal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of the receipt of the appeal.

10FR. CONSTITUTION OF APPELLATE TRIBUNAL

(1) The Central Government shall, by notification in the Official Gazette, constitute with effect from such date as may be specified therein, an Appellate Tribunal to be called the "National Company Law Appellate Tribunal" consisting of a Chairperson and not more than two Members, to be appointed by that Government, for hearing appeals against the orders of the Tribunal under this Act.

(2) The Chairperson of the Appellate Tribunal shall be a person who has been, a Judge of the Supreme Court or the Chief Justice of a High Court.

(3) A Member of the Appellate Tribunal shall be a person of ability, integrity, and standing having special knowledge of, and professional experience of not less than twenty-five years in, science, technology, economics, banking, industry, law, matters relating to labour, industrial finance, industrial management, industrial reconstruction, administration, investment, accountancy, marketing or any other matter, the special knowledge of, or professional experience in which, would be in the opinion of the Central Government useful to the Appellate Tribunal.

10FS. VACANCY IN APPELLATE TRIBUNAL, ETC

(1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death, resignation or otherwise, the senior-most Member of the Appellate Tribunal shall act as the Chairperson of the Appellate Tribunal until the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(2) When the Chairperson of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member or, as the case may be, such one of the Members of the Appellate Tribunal, as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

(3) If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

10FT. TERM OF OFFICE OF CHAIRPERSON AND MEMBERS

The Chairperson or a Member of the Appellate Tribunal shall hold office as such for a term of three years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of three years :

Provided that no Chairperson or other Member shall hold office as such after he has attained, -

- (a) *in the case of the Chairperson, the age of seventy years ;*
- (b) *in the case of any other Member, the age of sixty-seven years.*

10FU. RESIGNATION OF CHAIRPERSON AND MEMBERS

The Chairperson or a Member of the Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office :

Provided *that the Chairperson or a Member of the Appellate Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.*

10FV. REMOVAL AND SUSPENSION OF CHAIRPERSON AND MEMBERS OF APPELLATE TRIBUNAL

(1) The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any Member of the Appellate Tribunal, who -

- (a) has been adjudged an insolvent ; or*
- (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude ; or*
- (c) has become physically or mentally incapable of acting as such Chairperson or Member of the Appellate Tribunal ; or*
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member of the Appellate Tribunal ; or*
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest.*

(2) The Chairperson or a Member of the Appellate Tribunal shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may suspend from office the Chairperson or a Member of the Appellate Tribunal in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (2) until the Central Government has passed orders on receipt of the report of the Judge of the Supreme Court on such reference.

(4) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairperson or a Member referred to in sub-section (2).

10FW. SALARY, ALLOWANCES AND OTHER TERMS AND CONDITIONS OF SERVICE OF CHAIRPERSON AND MEMBERS

(1) The salary and allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall be such as may be prescribed.

(2) The salary, allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal shall not be varied to their disadvantage after appointment.

10FX. SELECTION COMMITTEE

(1) The Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal shall be appointed by the Central Government on the recommendations of a Selection Committee consisting of -

- (a) Chief Justice of India or his nominee -Chairperson ;*
- (b) Secretary in the Ministry of Finance and Company Affairs -Member ;*
- (c) Secretary in the Ministry of Labour -Member ;*
- (d) Secretary in the Ministry of Law and Justice (Department of Legal Affairs or Legislative Department) -Member ;*
- (e) Secretary in the Ministry of Finance and Company -Member.*

Affairs (Department of Company Affairs)

(2) The Joint Secretary in the Ministry or Department of the Central Government dealing with this Act shall be the Convenor of the Selection Committee.

(3) The Central Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal and six months before the superannuation or end of tenure of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal, make a reference to the Selection Committee for filling up of the vacancy. (4) The Selection Committee shall recommend within one month a panel of three names for every vacancy referred to it.

(5) Before recommending any person for appointment as the Chair- person and Members of the Appellate Tribunal and President and Members of the Tribunal, the Selection Committee shall satisfy itself that such person does not have financial or other interest which is likely to affect prejudicially his functions as such Chairperson or Member of the Appellate Tribunal or President or Member of the Tribunal, as the case may be.

(6) No appointment of the Chairperson and Members of the Appellate Tribunal and President and Members of the Tribunal shall be invalidated merely by reason of any vacancy or any defect in the constitution of the Selection Committee.

10FY. CHAIRPERSON, ETC., TO BE PUBLIC SERVANTS

The Chairperson, Members, officers and other employees of the Appellate Tribunal and the President, Members, officers and other employees of the Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

10FZ. PROTECTION OF ACTION TAKEN IN GOOD FAITH

No suit, prosecution or other legal proceedings shall lie against the Appellate Tribunal or its Chairperson, Member, officer or other employee or against the Tribunal, its President, Member, officer or other employee or operating agency or liquidator or any other person authorised by the Appellate Tribunal or the Tribunal in the discharge of any function under this Act for any loss or damage caused or likely to be caused by any act which is in good faith done or intended to be done in pursuance of this Act.

10FZA. PROCEDURE AND POWERS OF TRIBUNAL AND APPELLATE TRIBUNAL

(1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely : -

- (a) summoning and enforcing the attendance of any person and examining him on oath ;
- (b) requiring the discovery and production of documents ;
- (c) receiving evidence on affidavits ;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office ;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions ;
- (g) dismissing a representation for default or deciding it ex parte ;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte ; and
- (i) any other matter which may be prescribed by the Central Government.

(3) Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send in case of its inability to execute such order, to the court within the local limits of whose jurisdiction, -

- (a) in the case of an order against a company, the registered office of the company is situate ; or
- (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Tribunal and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

10G. POWER TO PUNISH FOR CONTEMPT

The Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of itself as the High Court has and may exercise, for this purpose under the provisions of the Contempt of Courts Act, 1971 (70 of 1971), shall have the effect subject to modifications that -

- (a) the reference therein to a High Court shall be construed as including a reference to the Appellate Tribunal ;
- (b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such law officers as the Central Government may specify in this behalf.

10GA. STAFF OF APPELLATE TRIBUNAL

(1) The Central Government shall provide the Appellate Tribunal with such officers and other employees as it may think fit.

(2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson of the Appellate Tribunal.

(3) The salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal shall be such as may be prescribed.

10GB. CIVIL COURT NOT TO HAVE JURISDICTION

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force.

10GC. VACANCY IN TRIBUNAL OR APPELLATE TRIBUNAL NOT TO INVALIDATE ACTS OR PROCEEDINGS

No act or proceeding of the Tribunal or the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of existence of any vacancy or defect in the establishment of the Tribunal or the Appellate Tribunal, as the case may be.

10GD. RIGHT TO LEGAL REPRESENTATION

The applicant or the appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any officer to present his or its case before the Tribunal or the Appellate Tribunal, as the case may be.

Explanation. - For the purposes of this section, -

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Companies Secretaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act ;

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act ;

(d) "legal practitioner" means an advocate, a vakil or any attorney of any High Court, and includes a pleader in practice.

10GE. LIMITATION

The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to an appeal made to the Appellate Tribunal.

10GF. APPEAL TO SUPREME COURT

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such decision or order.

Provided *that the Supreme 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

(1) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law.

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

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

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

(5) Every person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine which may extend to ¹[ten] thousand rupees.

Memorandum of association

12. MODE OF FORMING INCORPORATED COMPANY

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

(2) Such a company may be either-

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

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

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

13. REQUIREMENTS WITH RESPECT TO MEMORANDUM

(1) The memorandum of every company shall state-

- (a) the name of the company with "Limited" as the last word of the name in the case of a public limited company, and with "Private Limited" as the last words of the name in the case of a private limited company ;
- (b) the State in which the registered office of the company is to be situate ;
- (c) in the case of a company in existence immediately before the commencement of the Companies (Amendment) Act, 1965 (31 of 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 which the company is to be registered and the division thereof into shares of a fixed amount ;
- (b) no subscriber of the memorandum shall take less than one share ; and
- (c) each subscriber of the memorandum shall write opposite to his name the number of shares he takes.

14. FORM OF MEMORANDUM

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

15. PRINTING AND SIGNATURE OF MEMORANDUM

The memorandum shall-

- (a) be printed,
- (b) be divided into paragraphs numbered consecutively, and
- (c) be signed by each subscriber (who shall add his address, description and occupation, if any), in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation, if any.

15A. SPECIAL PROVISION AS TO ALTERATION OF MEMORANDUM CONSEQUENT ON ALTERATION OF NAME OF STATE OF MADRAS

Where, in the memorandum of association of a company in existence immediately before the commencement of the Madras State (Alteration of Name) Act, 1968 (53 of 1968), it is stated that Madras 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 Tamil Nadu for the reference to the State of Madras, and the Registrar of the State of Tamil Nadu shall make necessary alterations in the memorandum of association and the certificate of incorporation of the said company.

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

- (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 ¹[***] 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. Words ", managing agent secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

¹[17. SPECIAL RESOLUTION AND CONFIRMATION BY CENTRAL GOVERNMENT REQUIRED FOR ALTERATION 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 ; or
- (b) to attain its main purpose by new or improved means ; or
- (c) to enlarge or change the local area of its operations ; or
- (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company ; or
- (e) to restrict or abandon any of the objects specified in the memorandum; or
- (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 of the provisions of memorandum relating to the change of the place of its registered office from one State to another shall not take effect unless it is confirmed by the Central Government on petition.

(3) Before confirming the alteration, the Central Government 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 Central Government, be affected by the alteration ; and
- (b) that, with respect to every creditor who, in the opinion of the Central Government, is entitled to object to the alteration, and who signifies his objection in the manner directed by the Central Government, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured :

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

(4) The Central Government 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 of appearing before the Central Government and state his objections and suggestions, if any, with respect to the confirmation of the alteration.

(5) The Central Government may make an order confirming the alteration 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 Central Government 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 Central Government may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Central Government 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 for any such purchase.]

1. Substituted by Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to substitution section 17 read as under :

"17. *Special resolution and confirmation by Company Law Board required for alteration 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 ; or
- (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 ;
- (g) to amalgamate with any other company or body of persons.

(2) The alteration of the provisions of memorandum relating to the change of the place of its registered office from one State to another shall not take effect unless it is confirmed by the Company Law Board on petition.

(3) Before confirming the alteration, the 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 Company Law Board, be affected by the alteration ; and
- (b) that, with respect to every creditor who, in the opinion of the Company Law Board, is entitled to object to the alteration, and who signifies his objection in the manner directed by the 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 Company Law Board :

Provided that the 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).

(4) The 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 Company Law Board and state his objections and suggestions, if any, with respect to the confirmation of the alteration.

(5) The Company Law Board may make an order confirming the alteration 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 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 Company Law Board may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the 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 for any such purchase."

¹[17A. CHANGE OF REGISTERED OFFICE WITHIN A STATE

(1) No company shall change the place of its registered office from one place to another within a State unless such change is confirmed by the Regional Director.

(2) The company shall make an application in the prescribed form to the Regional Director for confirmation under sub-section (1).

(3) The confirmation referred to in sub-section (1), shall be communicated to the company within four weeks from the date of receipt of application for such change.

Explanation.-For the removal of doubts, it is hereby declared that the provisions of this section shall apply only to the companies which change the registered office from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies within the same State.

(4) The company shall file, with the Registrar a certified copy of the confirmation by the Regional Director for change of its registered office under this section, within two months from the date of confirmation, together with a printed copy of the memorandum as altered and the Registrar shall register the same and certify the registration under his hand within one month from the date of filing of such document.

(5) The certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and confirmation have been complied with and henceforth the memorandum as altered shall be the memorandum of the company.]

1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 1-3-2001.

18. ALTERATION TO BE REGISTERED WITHIN THREE MONTHS

¹[(1) A company shall file with the Registrar-

(a) a special resolution passed by a company in relation to clauses (a) to (g) of sub-section (1) of section 17, within one month from the date of such resolution ; or

(b) a certified copy of the order of the ²[Central Government] made under sub-section (5) of that section confirming the alteration, within three months from the date of order,

as the case may be, together with a printed copy of the memorandum as altered and the Registrar shall register the same and certify the registration under his hand within one month from the date of 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 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 ⁴[Central Government] may, at any time, by order, extend the time for the filing of documents or for the registration of the alteration under this section by such period as it thinks proper.

1. Substituted by the Companies (Amendment) Act, 1996 w.e.f. 1-3-1997. Prior to substitution, sub-section (1) read as under :

"(1) A certified copy of the order of the 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. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

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.

(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[Central Government] 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[Central Government] may, on sufficient cause shown, revive the order on application made within a further period of one month.

1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

Provisions with respect to names of companies

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.

¹[(2) Without prejudice to the generality of the foregoing power, a name which is identical with, or too nearly resembles,-

(i) The name by which a company in existence has been previously registered, or

(ii) a registered trade mark, or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999,

may be deemed to be undesirable by the Central Government within the meaning of sub-section (1).

(3) The Central Government may, before deeming a name as undesirable under clause (ii) of sub-section (2), consult the Registrar of Trade Marks.]

1. Sub-sections (2) and (3) substituted for sub-section (2) by the Trade Marks Act, 1999. Prior to its substitution, sub-section (2) read as under :

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

21. CHANGE OF NAME BY COMPANY

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

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

(1) 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-

(i) 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, or

(ii) on an application by a registered proprietor of a trade mark, is in the opinion of the Central Government identical with, or too nearly resembles, a registered trade mark of such proprietor under the Trade Marks Act, 1999, such 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

(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[**Provided** that no application under clause (ii) made by a registered proprietor of a trade mark after five years of coming to notice of registration of the company shall be considered by the Central Government.]

(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 ³[one thousand] rupees for every day during which the default continues.

1. Substituted for the portion beginning with "If, through" and ending with "the first-mentioned company-" by the Trade Marks Act, 1999. Prior to its substitution the substituted portion read as under :
"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-"
2. Inserted by the Trade Marks Act, 1999.
3. Substituted for "one hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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 NAME 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.

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,the Central Government may, by licence, authorise the company by a special resolution to change its name, including or consisting of the omission of the word "Limited" or the words "Private Limited" ; and section 23 shall apply to a change of name under this sub-section as it applies to a change of name under section 21.
- (4) A firm may be a member of any association or company licensed under this section, but on the dissolution of the firm, its membership of the association or company shall cease.
- (5) A licence may be granted by the Central Government under this section on such conditions and subject to such regulations as it thinks fit, and those conditions and regulations shall be binding on the body to which the licence is granted, and where the grant is under sub-section (1), shall, if the Central Government so directs, be inserted in the memorandum or in the articles, or partly in the one and partly in the other.
- (6) 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 directions, 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.
- (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).

(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 ¹[five thousand] rupees for every day during which the default continues.

1. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

Articles of association

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

(1) In the case of an unlimited company, the articles shall state the number of members with which the company is to be registered and, if the company has a share capital, the amount of share capital with which the company is to be registered.

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

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

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, insofar 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

The articles of association of any company, not being a company limited by shares, shall be in such one of the forms in Tables C, D and E in Schedule I as may be applicable, or in a form as near thereto as circumstances admit :

Provided that nothing in this section shall be deemed to prevent a company from including any additional matters in its articles insofar 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

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.

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 :

Provided that no alteration made in the articles under this sub-section 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.

(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 1860 or either of them, extend to altering any provisions in Table B annexed to Act No. 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

(1) Subject to the provisions of this section,-

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

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

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

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

General provisions with respect to memorandum and articles

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 pleader 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 ³[***], 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.

⁴[*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 full-time 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.

1. Substituted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

2. Substituted for "a chartered accountant practising in India" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

3. The words "managing agent, secretaries and treasurers" omitted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

4. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

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.

(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

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

(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

(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

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

Provided that this section shall not apply-

(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

(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) ¹[***] ; and

(d) every other agreement and every resolution referred to in section 192, if and insofar 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 ²[five hundred] rupees.

1. Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for `fifty' by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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, ¹[***], 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 ²[one hundred] rupees for each copy so issued.

1. Words "in the agreement referred to in clause (c) of sub section (1) of section 39 or in any other agreement" omitted by Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for `ten' by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000

Membership of company

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 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.

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

1. Inserted by the Depositories Act, 1996 w.r.e.f. 20-9-1995.

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.

(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

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[Central Government], 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[Central Government] just and expedient, order that the company be relieved from such consequences as aforesaid.

1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

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 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.]

(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, 1974, or incorporated thereafter, is not, during the relevant period, less than ²[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, or

(b) where the aforesaid percentage has been first so held before the commencement of the Companies (Amendment) Act, 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.

³[(1C) Where, after the commencement of the Companies (Amendment) Act, 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.

³[(2A) Where a public company referred to in sub-section (2) becomes a private company on or after the commencement of the Companies (Amendment) Act, 2000, such company shall inform the Registrar that it has become a private company and thereupon the Registrar shall substitute the word 'private company' for the word 'public company' 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 within four weeks from the date of application made by the company.]

(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.

(6) & (7) [Omitted by the Companies (Amendment) Act, 1988, with effect from 15-6-1988.]

(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, ⁵[***]

(b) [Omitted by the Companies (Amendment) Act, 1988, with effect from 15-6-1988],

(c) that the private company, irrespective of its paid-up share capital, did not have, during the relevant period, an average annual turnover of ⁶[such amount as is referred to in sub-section (1A) or more],

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

(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.

⁷[(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.]

⁸[(11) Nothing contained in this section, except sub-section (2A), shall apply on and after the commencement of the Companies (Amendment) Act, 2000.]

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, 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 ;

⁴[(c) "deposit" has the same meaning as in section 58A.]

1. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

2. Substituted for "rupees one crore" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

3. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

4. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

5. The word "or" omitted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

6. Substituted for "rupees one crore or more," by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

7. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

8. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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 articles in such a manner that they no longer include the provisions which, under clause (iii) of sub-section (1) of section 3, are required to be included in the articles of a company in order to constitute it a private company, the company,-

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

(b) shall, within a period of 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 that Schedule, shall set out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

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

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

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1. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 2. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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

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

Contracts and deeds, investments, seal, etc.

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

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

(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

(1) Save as otherwise provided in sub-sections (2) to (5) 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

(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.

(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 insofar 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

(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 within 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 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 investments 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 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 sub-sections (1) to (8), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ²[fifty] thousand rupees.

(10) If any inspection required under sub-section (8) is refused, the ³[Central Government] 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" include stock and debentures.

1. Inserted by the Depositories Act, 1996 w.r.e.f. 20-9-1995.

2. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

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 agent's authority has been given to the person dealing with him.

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

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

Service of documents

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 a 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.]

1. Inserted by the Depositories Act, 1996 w.r.e.f. 20-9-1995.

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

(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 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) 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 joint-holders 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

Save as otherwise expressly provided in this Act, a document or proceeding requiring authentication by a company may be signed by a director, ¹[***] the manager, the secretary or other authorised officer of the company, and need not be under its common seal.

1. Words ", the managing agents, the secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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

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.

¹[55A. POWERS OF SECURITIES AND EXCHANGE BOARD OF INDIA

The provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend shall, -

(a) in case of listed public companies ;

(b) in case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by the Securities and Exchange Board of India ; and

(c) in any other case, be administered by the Central Government.

Explanation. - For the removal of doubts, it is hereby declared that all powers relating to all other matters including the matters relating to prospectus, statement *in lieu* of prospectus, return of allotment, issue of shares and redemption of irredeemable preference shares shall be exercised by the Central Government, the ²[Tribunal] or the Registrar of Companies, as the case may be].

1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
2. Substituted for 'Company Law Board' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

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 a memorandum containing such salient features of a prospectus as may be prescribed] which complies with the requirements of this section :

²[**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 ²[**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 ¹[fifty] thousand rupees.

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

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

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

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, 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.

1. Substituted for "by a prospectus" by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

2. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

3. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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.

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) 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),¹[***]
(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 prescribed²[,and]

²[(c) the company is not in default in the repayment of any deposit or part thereof and any interest thereupon in accordance with the terms and conditions of such deposit.]

(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 terms¹[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.

(c) Where, before the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), any deposit was received by a company in contravention of 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 (2 of 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 sub-section (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 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 the manner or condition prescribed under that sub-section or in contravention of the provisions of sub-section (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 ¹[ten] lakh rupees but shall not be less than ²[fifty] 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.

(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.

¹[(9) Where a company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the ²[Tribunal] 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 ²[Tribunal] 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 ²[Tribunal] 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 ³[five hundred] for every day during which such non-compliance continues.]

⁴[(11) A depositor may, at any time, make a nomination and the provisions of sections 109A and 109B shall, as far as may be, apply to the nomination made under this sub-section.]

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.

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1. The word "and" omitted by the Companies (Amendment) Act, 1996 w.e.f. 1-3-1997.
 2. Inserted by the Companies (Amendment) Act, 1996 w.e.f. 1-3-1997.
 3. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 1-9-1989.
 4. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 5. Substituted for "five", by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 6. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 1-9-1989.
 7. Substituted for 'Company Law Board' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).
 8. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 9. Inserted by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998.

¹[58AA. SMALL DEPOSITORS

(1) Every company, which accepts deposits from small depositors, shall intimate to the ²[Tribunal] any default made by it in repayment of any such deposits or part thereof or any interest thereupon.

(2) The intimation under sub-section (1) shall, -

(a) be given within sixty days from the date of default ;

(b) include particulars in respect of the names and addresses of each small depositor, the principal sum of deposits due to them and interest accrued thereupon.

Explanation. - For the removal of doubts, it is hereby declared that the intimation under this section shall be given on monthly basis.

(3) Where a company has made a default in repayment of any deposit or part thereof or any interest thereupon to a small depositor, the ²[Tribunal], on receipt of intimation under sub-section (1) shall, -

(a) exercise, on its own motion, powers conferred upon it by sub-section (9) of section 58A ;

(b) pass an appropriate order within a period of thirty days from the date of receipt of intimation under sub-section (1) :

Provided that ³[the Tribunal] may pass order after expiry of the period of thirty days, after giving the small depositors an opportunity of being heard:

Provided further that it shall not be necessary for a small depositor to be present at the hearing of the proceeding under this sub-section.

(4) No company shall, at any time, accept further deposits from small depositors, unless each small depositor, whose deposit has matured, had been paid the amount of the deposit and the interest accrued thereupon:

Provided that nothing contained in this sub-section shall apply to -

(a) any deposit which has been renewed by the small depositor voluntarily ; or

(b) any deposit, whose repayment has become impracticable due to the death of the small depositor or whose repayment has been stayed by a competent court or authority.

(5) Every company, which has on any occasion made a default in the repayment of a deposit or part thereof or any interest thereupon to a small depositor, shall state, in every future advertisement and application form inviting deposits from the public, the total number of small depositors and amount due to them in respect of which such default has been made.

(6) Where any interest accrued on deposits of the small depositors has been waived, the fact of such waiver shall be mentioned by the company in every advertisement and application form inviting deposits issued after such waiver.

(7) Where a company had accepted deposits from small depositors and subsequent to such acceptance of deposits, obtains funds by taking a loan for the purposes of its working capital from any bank, it shall first utilise the funds so obtained for the repayment of any deposit or any part thereof or any interest thereupon to the small depositor before applying such funds for any other purpose.

(8) Every application form, issued by a company to a small depositor for accepting deposits from him, shall contain a statement to the effect that the applicant had been apprised of -

(a) every past default by the company in the repayment of deposit or interest thereon, if any, such default has occurred ; and

(b) the waiver of interest under sub-section (6), if any, and reasons therefor.

(9) Whoever knowingly fails to comply with the provisions of this section or comply with any order of the ¹[Tribunal] shall be punishable with imprisonment which may extend to three years and shall also be liable to fine for not less than five hundred rupees for every day during which such non-compliance continues.

(10) If a company or any other person contravenes any provision of this section, every person, who at the time the contravention was committed, was a director of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(11) The provisions of section 58A shall, as far as may be, apply to the deposits made by a small depositor under this section.

Explanation. - For the purposes of this section, "a small depositor" means a depositor who has deposited in a financial year a sum not exceeding twenty thousand rupees in a company and includes his successors, nominees and legal representatives.

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1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 2. Substituted for 'Company Law Board' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).
 3. Substituted for 'the Board' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).
 4. Substituted for 'Company Law Board' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

¹[58AAA. DEFAULT IN ACCEPTANCE OR REFUND OF DEPOSITS TO BE COGNIZABLE

(1) Notwithstanding anything contained in sections 621 and 624, every offence connected with or arising out of acceptance of deposits under section 58A or section 58AA shall be cognizable offence under the Code of Criminal Procedure, 1973 (2 of 1974).

(2) No court shall take cognizance of any offence under sub-section (1) except on a complaint made by the Central Government or any officer authorised by it in this behalf.]

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1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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

(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 ¹[fifty] 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.

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1. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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.

(2) Every prospectus to which sub-section (1) applies shall, on the face of it, -

(a) state that a copy has been delivered for registration as required by this section ; and

(b) specify any documents required by this section to be endorsed on or attached to the copy so delivered, or refer to statements included in the prospectus which specify those documents.

(3) The Registrar shall not register a prospectus 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 ¹[fifty] thousand rupees. sign the prospectus depending on the circumstances of each case [*Circular No. 5(59)-CL-VI/65, dated 1st December, 1965*].

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1. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

¹[60A. SHELF PROSPECTUS

(1) Any public financial institution, public sector bank or scheduled bank whose main object is financing shall file a shelf prospectus.

(2) A company filing a shelf prospectus with the Registrar shall not be required to file prospectus afresh at every stage of offer of securities by it within a period of validity of such shelf prospectus.

(3) A company filing a shelf prospectus shall be required to file an information memorandum on all material facts relating to new charges created, changes in the financial position as have occurred between the first offer of securities, previous offer of securities and the succeeding offer of securities within such time as may be prescribed by the Central Government, prior to making of a second or subsequent offer of securities under the shelf prospectus.

(4) An information memorandum shall be issued to the public along with shelf prospectus filed at the stage of the first offer of securities and such prospectus shall be valid for a period of one year from the date of opening of the first issue of securities under that prospectus :

Provided that where an update of information memorandum is filed every time an offer of securities is made, such memorandum together with the shelf prospectus shall constitute the prospectus.

Explanation. - For the purpose of this section, -

(a) "financing" means making loans to or subscribing in the capital of, a private industrial enterprise engaged in infrastructural financing or, such other company as the Central Government may notify in this behalf ;

(b) "shelf prospectus" means a prospectus issued by any financial institution or bank for one or more issues of the securities or class of securities specified in that prospectus.]

1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

¹[60B. INFORMATION MEMORANDUM

(1) A public company making an issue of securities may circulate information memorandum to the public prior to filing of a prospectus.

(2) A company inviting subscription by an information memorandum shall be bound to file a prospectus prior to the opening of the subscription lists and the offer as a red-herring prospectus, at least three days before the opening of the offer.

(3) The information memorandum and red-herring prospectus shall carry same obligations as are applicable in the case of a prospectus.

(4) Any variation between the information memorandum and the red-herring prospectus shall be highlighted as variations by the issuing company.

Explanation. - For the purposes of sub-sections (2), (3) and (4), "red-herring prospectus" means a prospectus which does not have complete particulars on the price of the securities offered and the quantum of securities offered.

(5) Every variation as made and highlighted in accordance with sub-section (4) above shall be individually intimated to the persons invited to subscribe to the issue of securities.

(6) In the event of the issuing company or the underwriters to the issue have invited or received advance subscription by way of cash or post-dated cheques or stock-invest, the company or such underwriters or bankers to the issue shall not encash such subscription moneys or post-dated cheques or stock-invest before the date of opening of the issue, without having individually intimated the prospective subscribers of the variation and without having offered an opportunity to such prospective subscribers to withdraw their application and cancel their post-dated cheques or stock-invest or return of subscription paid.

(7) The applicant or proposed subscriber shall exercise his right to withdraw from the application on any intimation of variation within seven days from the date of such intimation and shall indicate such withdrawal in writing to the company and the underwriters.

(8) Any application for subscription which is acted upon by the company or underwriters or bankers to the issue without having given enough information of any variations, or the particulars of withdrawing the offer or opportunity for cancelling the post-dated cheques or stock-invest or stop payments for such payments shall be void and the applicants shall be entitled to receive a refund or return of its post-dated cheques or stock-invest or subscription moneys or cancellation of its application, as if the said application had never been made and the applicants are entitled to receive back their original application and interest at the rate of fifteen per cent from the date of encashment till payment of realisation.

(9) Upon the closing of the offer of securities, a final prospectus stating therein the total capital raised, whether by way of debt or share capital and the closing price of the securities and any other details as were not complete in the red-herring prospectus shall be filed in a case of a listed public company with the Securities and Exchange Board and Registrar, and in any other case with the Registrar only.]

1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

61. TERMS OF CONTRACT MENTIONED IN PROSPECTUS OR STATEMENT IN LIEU OF PROSPECTUS, NOT TO BE VARIED

A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement *in lieu* of prospectus, except subject to the approval of, or except on authority given by, the company in general meeting.

62. CIVIL LIABILITY FOR MIS-STATEMENTS IN PROSPECTUS

(1) Subject to the provisions of this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to every person who subscribes

for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement included therein, that is to say,

- (a) every person who is a director of the company at the time of the issue of the prospectus ;
- (b) every person who has authorised himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of time ;
- (c) every person who is a promoter of the company ; and
- (d) every person who has authorised the issue of the prospectus :

Provided that where, under section 58, the consent of a person is required to the issue of a prospectus and he has given that consent, or where, under 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 there under, he, on becoming aware of any untrue statement therein, withdrew his consent to the prospectus and gave reasonable public notice of the withdrawal and of the reason therefor ; or
- (d) that -

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true ; and

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or 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 has 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

- (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 ¹[fifty] 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 sub-section (3) of section 60.

1. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

64. DOCUMENT CONTAINING OFFER OF SHARES OR DEBENTURES FOR SALE TO BE DEEMED PROSPECTUS

- (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company ; and all enactments and rules of law as to the contents of prospectuses and as to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, shall apply with the modifications specified in sub-sections (3), (4) and (5), and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.
- (2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown -
- (a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot ; or
- (b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the shares or debentures had not been received by it.
- (3) Section 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

- (1) For the purposes of the foregoing provisions of this Part -
- (a) a statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included ; and
- (b) where the omission from a prospectus of any matter is calculated to mislead, the prospectus shall be deemed, in respect of such omission, to be a prospectus in which an untrue statement is included.
- (2) For the purposes of sections 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

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

(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 :

¹[**Provided** that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more :

Provided further that nothing contained in the first proviso shall apply to the non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).

(3A) Notwithstanding anything contained in sub-section (3), the Securities and Exchange Board of India shall, in consultation with the Reserve Bank of India, by notification in the Official Gazette, specify the guidelines in respect of offer or invitation made to the public by a public financial institution specified under section 4A or non-banking financial company referred to in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934).]

(4) Without prejudice to the generality of sub-section (3), a provision in a company's articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded in the manner set forth in that sub-section.

(5) The provisions of this Act relating to private companies shall be construed in accordance with the provisions contained in sub- sections (1) to (4).

1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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 ¹[one lakh] rupees, or with both.

1. Substituted for "ten thousand" by the Companies (Amendment) Act, 2000 w.e.f.

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.

¹[**68B. INITIAL OFFER OF SECURITIES TO BE IN DEMATERIALIZED FORM IN CERTAIN CASES**

Notwithstanding anything contained in any other provisions of this Act, every listed public company, making initial public offer of any security for a sum of rupees ten crores or more, shall issue the same only in dematerialised form by complying with the requisite provisions of the Depositories Act, 1996 (22 of 1996) and the regulations made there-under.]

1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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 stated in the prospectus as the minimum amount which, in the opinion of the Board of directors, must be raised by the issue of share capital in order to provide for the matters specified in clause 5 of Schedule II has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company, whether in cash or by a cheque or other instrument which has been paid.

- (2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in money, and is in this Act referred to as "the minimum subscription".
- (3) The amount payable on application on each share shall not be less than five per cent of the nominal amount of the share.
- (4) All moneys received from applicants for shares shall be deposited and kept deposited in a Scheduled Bank-
- (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 on 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 ¹[fifty] thousand rupees.
- (5) If the conditions aforesaid have not been complied with on the expiry of one hundred and twenty days after the first issue of the prospectus, all moneys received from applicants for shares shall be forthwith repaid to them without interest ; and if any such money is not so repaid within one hundred and thirty days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of six per cent per annum from the expiry of the one hundred and thirtieth day :
- Provided** that a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.
- (6) Any condition purporting to require or bind any applicant for shares to waive compliance with any requirement of this section shall be void.
- (7) This section, except sub-section (3) thereof, shall not apply in relation to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

1. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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.
- (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 ¹[ten] 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 ²[fifty] 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.

1. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "five", by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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

(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 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 ¹[fifty] 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.

1. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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, states 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 recognised 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[***] 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 recognised 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 applied ⁵[under sub-section (1)], 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.]

[Proviso omitted by the Companies (Amendment) Act, 1988 with effect from 15-6-1988.]

(2A) Where permission has been granted by the recognised 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.]

[Proviso omitted by the Companies (Amendment) Act, 1988 with effect from 15-6-1988.]

(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 ²[fifty] 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 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 ³[fifty] thousand rupees.

(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.

(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 ;

(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.

1. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

2. Renumbered by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

3. Substituted for "application has been, or will be," by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

4. The words "if the permission has not been applied for before the tenth day after the first issue of the prospectus, or, where such permission has been applied for before that day," omitted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

5. Substituted for "for as aforesaid" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

6. Substituted for "the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the eighth day : " by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

7. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

8. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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, ¹[or the eighth day] after another day, any intervening day which is a public holiday under the Negotiable Instruments Act, 1881 (26 of 1881), shall be disregarded, and if the fifth, ²[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.

1. Substituted for "the eighth day, or the tenth day" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.
2. Substituted for "eighth, or tenth day" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

75. RETURN AS TO ALLOTMENTS

(1) Whenever a company having a share capital makes any allotment of its shares, the company shall, within 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 :

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 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

(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 ¹[Tribunal] sanctioning the issue and where the maximum rate of discount exceeds ten per cent, a copy of the order of the Central Government permitting the issue at the higher percentage.

(2) Where a contract such as is mentioned in clause (b) of sub-section (1) is not reduced to writing, the company shall, within 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 thirty days specified in sub-sections (1) and (2) for compliance with the requirements of this section 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 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 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 ²[five thousand] rupees for every day during which the default continues :

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 ¹[fifty] 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.

1. Substituted for 'Court' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f.

3. Substituted for "five", by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

Commissions and discounts

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 ;

(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 ;
(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 ; and
(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 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.

(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.

(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 ¹[five thousand] rupees.

1. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f.

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 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 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 ¹[***] 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 ²[ten] 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.

1. Words ", managing agents, secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "one", by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

¹[77A. POWER OF COMPANY TO PURCHASE ITS OWN SECURITIES

(1) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2) of this section and section 77B, a company may purchase its own shares or other specified securities (hereinafter referred to as "buy-back") out of -

(i) its free reserves ; or

(ii) the securities premium account ; or

(iii) the proceeds of any shares or other specified securities :

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

(2) No company shall purchase its own shares or other specified securities under sub-section (1), unless -

(a) the buy-back is authorised by its articles ;

(b) a special resolution has been passed in general meeting of the company authorising the buy-back :

²**Provided** that nothing contained in this clause shall apply in any case where-

(a) the buy-back is or less than ten per cent of the total paid-up equity capital and free reserves of the company ; and

(b) such buy-back has been authorised by the Board by means of a resolution passed at its meeting :

Provided further that no offer of buy-back shall be made within a period of three hundred and sixty-five days reckoned from the date of the preceding offer of buy-back, if any.

Explanation. - For the purposes of this clause, the expression "offer of buy-back" means the offer of such buy-back made in pursuance of the resolution of the Board referred in the first proviso;]

(c) the buy-back is or less than twenty-five per cent of the total paid-up capital and free reserves of the company :

Provided that the buy-back of equity shares in any financial year shall not exceed twenty-five per cent of its total paid-up equity capital in that financial year ;

(d) the ratio of the debt owed by the company is not more than twice the capital and its free reserves after such buy-back :

Provided that the Central Government may prescribe a higher ratio of the debt than that specified under this clause for a class or classes of companies.

Explanation. - For the purposes of this clause, the expression "debt" includes all amounts of unsecured and secured debts ;

(e) all the shares or other specified securities for buy-back are fully paid-up ; (f) The buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by the Securities and Exchange Board of India in this behalf ; and

(g) the buy-back in respect of shares or other specified securities other than those specified in clause (f) is in accordance with the guidelines as may be prescribed.

(3) The notice of the meeting at which special resolution is proposed to be passed shall be accompanied by an explanatory statement stating -

(a) a full and complete disclosure of all material facts ;

(b) the necessity for the buy-back ;

(c) the class of security intended to be purchased under the buy-back ;

(d) the amount to be invested under the buy-back ; and

(e) the time limit for completion of buy-back.

(4) Every buy-back shall be completed within twelve months from the date of passing the special resolution ¹[or a resolution passed by the Board] under clause (b) of sub-section (2).

(5) The buy-back under sub-section (1) may be -

(a) from the existing security holders on a proportionate basis ; or

(b) from the open market ; or

(c) from odd lots, that is to say, where the lot of securities of a public company, whose shares are listed on a recognised stock exchange, is smaller than such marketable lot, as may be specified by the stock exchange ; or

(d) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

(6) Where a company has passed a special resolution under clause (b) of sub-section (2) ¹[or the Board has passed a resolution under the first proviso to clause (b) of that sub-section] to buy-back its own shares or other securities under this section, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board of India a declaration of solvency in the form as may be prescribed and verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year of the date of declaration adopted by the Board, and signed by at least two directors of the company, one of whom shall be the managing director, if any :

Provided that no declaration of solvency shall be filed with the Securities and Exchange Board of India by a company whose shares are not listed on any recognised stock exchange.

(7) Where a company buy-back its own securities, it shall extinguish and physically destroy the securities so bought-back within seven days of the last date of completion of buy-back.

(8) Where a company completes a buy-back of its shares and other specified securities under this section, it shall not make further issue of the same kind of shares (including allotment of further shares under clause (a) of sub-section (1) of section 81) or other specified securities within a period of ²[six] months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

(9) Where a company buy-back its securities under this section, it shall maintain a register of the securities so bought, the consideration paid for the securities bought-back, the date of cancellation of securities, the date of extinguishing and physically destroying of securities and such other particulars as may be prescribed.

(10) A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board of India, a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed : **Provided** that no return shall be filed with the Securities and Exchange Board of India by a company whose shares are not listed on any recognised stock exchange.

(11) If a company makes default in complying with the provisions of this section or any rules made thereunder, or any regulations made under clause (f) of sub-section (2), the company or any officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both.

Explanation. - For the purposes of this section, -

(a) "specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time ;

(b) "free reserves" shall have the meaning assigned to it in clause (b) of *Explanation* to section 372A.]

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1. Inserted by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998.
 2. Inserted by the Companies (Amendment) Act, 2001 w.r.e.f. 23-10-2001.
 3. Inserted by the Companies (Amendment) Act, 2001 w.r.e.f. 23-10-2001.
 4. Inserted by the Companies (Amendment) Act, 2001 w.r.e.f. 23-10-2001.
 5. Substituted for "twenty four" by the Companies (Amendment) Act, 2001 w.r.e.f.

¹[77AA. TRANSFER OF CERTAIN SUMS TO CAPITAL REDEMPTION RESERVE ACCOUNT

Where a company purchases its own shares out of free reserves, then a sum equal to the nominal value of the share so purchased shall be

transferred to the capital redemption reserve account referred to in clause (d) of the proviso to sub-section (1) of section 80 and details of such transfer shall be disclosed in the balance sheet.]

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1. Inserted by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998.

¹[77B. PROHIBITION FOR BUY-BACK IN CERTAIN CIRCUMSTANCES

(1) No company shall directly or indirectly purchase its own shares or other specified securities -

(a) through any subsidiary company including its own subsidiary companies ; or

(b) through any investment company or group of investment companies ; or

(c) if a default, by the company, in repayment of deposit or interest payable thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon to any financial institution or bank is, subsisting. (2) No company shall directly or indirectly purchase its own shares or other specified securities in case, such company has not complied with the provisions of sections 159, 207 and 211.]

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1. Inserted by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998.

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 ¹[securities] 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 ¹[securities] premium account were paid-up share capital of the company.

(2) The ¹[securities] 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 ¹[securities] premium account.

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5. Substituted for "share" by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998.

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[Central Government] ;

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

Provided that no such resolution shall be sanctioned by the ¹[Central Government] if the maximum rate of discount specified in the resolution exceeds ten per cent, unless ²[the Central Government] 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 ¹[Central Government] or within such extended time as the ¹[Central Government] may allow.

(3) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the ¹[Central Government] for an order sanctioning the issue ; and on any such application, the ¹[Central Government], 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.

³[**Provided that in the case of revival and rehabilitation of Sick Industrial Companies under chapter VIA, the provisions of this section shall have effect as if for the words `Central Government, the words `Tribunal' had been substituted.]**

(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 ⁴[five hundred] rupees.

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1. Substituted for `Company Law Board' by the Companies (Second Amendment) Act, 2002
 2. Substituted for `Company Law Board' by the Companies (Second Amendment) Act, 2002.
 3. Substituted for `the Board' by the Companies (Second Amendment) Act, 2002.
 4. Inserted by the Companies (Second Amendment) Act, 2002.
 5. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

¹[79A. ISSUE OF SWEAT EQUITY SHARES

(1) Notwithstanding anything contained in section 79, a company may issue sweat equity shares of a class of shares already issued if the following conditions are fulfilled, namely :

(a) the issue of sweat equity shares is authorised by a special resolution passed by the company in the general meeting ;

(b) the resolution specifies the number of shares, current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued ;

(c) not less than one year has, at the date of the issue, elapsed since the date on which company was entitled to commence business ;

(d) the sweat equity shares of a company, whose equity shares are listed on a recognised stock exchange, are issued in accordance with the regulations made by the Securities and Exchange Board of India in this behalf : **Provided** that in the case of a company whose equity shares are not listed on any recognised stock exchange, the sweat equity shares are issued in accordance with the guidelines as may be prescribed.

Explanation I. - For the purposes of this sub-section, the expression "a company" means company incorporated, formed and registered under this Act and includes its subsidiary company incorporated in a country outside India.

Explanation II. - For the purposes of this Act, the expression "sweat equity shares" means equity shares issued by the company to employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

(2) All the limitations, restrictions and provisions relating to equity shares shall be applicable to such sweat equity shares issued under sub- section (1).]

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1. Inserted by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998.

¹[**Issue and redemption of 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 :

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 ²[security premium account], before the shares are redeemed ;

(d) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to a reserve fund, to be called the capital redemption reserve 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 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 section 611, be deemed to be increased by the issue of shares in pursuance of this sub-section :

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this sub-section unless the old shares are redeemed within one month after the issue of the new shares.

(5) The capital redemption reserve 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.

¹[(5A) Notwithstanding anything contained in this Act, no company limited by shares shall, after the commencement of the Companies (Amendment) Act, 1996, issue any preference share which is irredeemable or is redeemable after the expiry of a period of twenty 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, shall be punishable with fine which may extend to ²[ten] thousand rupees.

1. Substituted by the Companies (Amendment) Act, 1996 w.e.f. 1-3-1997. Prior to substitution sub-section (5A) read as under :

"(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."

2. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted for "Redeemable preference shares" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

4. Substituted for "share premium account" by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998.

¹[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 thereon 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 ²[Tribunal], on a petition made by it in this behalf and notwithstanding anything contained in this Act, issue further redeemable 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 ³[any court or the Tribunal] 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 ⁴[ten] 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.]

1. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

2. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

3. Substituted for "any court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

4. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

Further issue of capital

81. FURTHER ISSUE OF CAPITAL

(1) 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 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.

(1A) Notwithstanding anything contained in sub-section (1), the further shares aforesaid may be offered to any persons [whether or not those persons include the persons referred to in clause (a) of sub-section (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.

(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 :

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

(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.

(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.

PART IV: SHARE CAPITAL AND DEBENTURES

Nature, numbering and certificate of shares

82. NATURE OF ¹[SHARES OR DEBENTURES]

The ¹[shares or debentures] or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.

1. Substituted for "shares" by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998.

¹[83. NUMBERING OF SHARES

Each share in a company having a share capital shall be distinguished by its appropriate number :

Provided that nothing in this section shall apply to the shares held with a depository.]

1. Inserted by the Depositories Related Laws (Amendment) Act, 1997 w.e.f. 15-1-1997. Earlier existing section 83 was omitted by the Depositories Act, 1996 w.r.e.f. 20-9-1995.

84. CERTIFICATE OF SHARES

(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) 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 ¹[one lakh] 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 ¹[one lakh] 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. Substituted for "ten thousand" by the Companies (Amendment) Act, 2000 w.e.f.

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, 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.

¹[86. NEW ISSUES OF SHARE CAPITAL TO BE ONLY OF TWO KINDS

The share capital of a company limited by shares shall be of two kinds only, namely : -

(a) equity share capital -

(i) with voting rights ; or

(ii) with differential rights as to dividend, voting or otherwise in accordance with such rules and subject to such conditions as may be prescribed ;

(b) preference share capital].

1. Substituted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000. Prior to its substitution, section 86 read as under :

¹86. *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

(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

(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

¹[Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.]

1. Prior to its omission, section 88 read as under :

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).¹

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.

(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 : -

¹[(a) any resolution relating to the appointment or re-appointment of a director or to any variation in the terms of an agreement between the company and a managing or whole-time director thereof].

(b) any resolution relating to the appointment of buying or selling agents ;

(c) ²[***].

(3) If, by reason of the failure of the requisite proportion of any class of members to agree, it is not found possible to comply with the provisions of sub-section (1), the company shall, within one month of the expiry of the period of 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 ³[ten] 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 interest of the company or of any class of shareholders therein or of the creditors or any class of creditors thereof.

Every order of exemption made by the Central Government under this sub-section shall be laid before both Houses of Parliament as soon as may be after it is made.

1. Substituted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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, 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

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

(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.

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

(1) A limited company having a share capital, may, if so authorised by its articles, alter the conditions of its memorandum as follows, that is to say, it may -

(a) increase its share capital by such amount as it thinks expedient by issuing new shares ;

(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares ;

(c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination ;

(d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived ;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section shall be exercised by the company in general meeting and shall not require to be confirmed by the Court.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

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

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 ;

(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 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 ¹[five hundred] rupees for every day during which the default continues.

1. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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

(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 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 punishable with fine which may extend to ¹[five hundred] rupees for every day during which the default continues.

1. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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

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

(1) Subject to confirmation by the ¹[Tribunal], 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".

1. Substituted for 'court' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

101. APPLICATION TO ¹[TRIBUNAL] 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 ¹[Tribunal] 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 ¹[Tribunal] 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 ¹[Tribunal] is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction ;

(b) the ¹[Tribunal] 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 ¹[Tribunal] 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 ¹[Tribunal] 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 ¹[Tribunal] after the like inquiry and adjudication as if the company were being wound up by the ¹[Tribunal].

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the ¹[Tribunal] 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.

1. Substituted for 'court' by the Companies (Second Amendment) Act, 2002.

102. ORDER CONFIRMING REDUCTION AND POWERS OF ¹[TRIBUNAL] ON MAKING SUCH ORDER

(1) The ¹[Tribunal], 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 been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the ¹[Tribunal] 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 ¹[Tribunal] directs the reasons for reduction or such other information in regard thereto as the ¹[Tribunal] may think expedient with a view to giving proper information to the public, and, if the ¹[Tribunal] 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.

1. Substituted for 'court' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

103. REGISTRATION OF ORDER AND MINUTE OF REDUCTION

(1) The Registrar -

(a) on production to him of an order of the ¹[Tribunal] 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 ¹[Tribunal] 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 ¹[Tribunal] may direct.

(4) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein.

(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning and for the purposes of section 40.

1. Substituted for 'court' by the Companies (Second Amendment) Act, 2002.

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 ¹[Tribunal], 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.

1. Substituted for 'court' by the Companies (Second Amendment) Act, 2002.

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

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 the holders 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

(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 the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the ¹[Tribunal] 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 ¹[Tribunal].

(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 ¹[Tribunal], after hearing the applicant and any other persons who apply to the ¹[Tribunal] to be heard and appear to the ¹[Tribunal] 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 ¹[Tribunal] on any such application shall be final.

(5) The company shall, within 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 ²[five hundred] rupees.

1. Substituted for 'court' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

Transfer of shares and debentures

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.

(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 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 later ;

(ii) in any other case, presentation 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

(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) 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 whether such application is made before or after the expiry of the periods aforesaid ; and the number of extensions 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 a security effected by the transferor and the transferee both of whom are entered as beneficial owners in the records of a depository.]

1. Substituted for "two" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

2. Inserted by the Depositories Act, 1996 w.r.e.f. 20-9-1995.

¹[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 a public 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.]

1. Inserted by the MRTP (Amendment) Act, 1991 w.r.e.f. 27-9-1991.

¹[108B. RESTRICTION 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 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, and shareholding, 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, the 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.]

1. Inserted by the MRTP (Amendment) Act, 1991 w.r.e.f. 27-9-1991.

¹[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].

1. Inserted by the MRTP (Amendment) Act, 1991 w.r.e.f. 27-9-1991.

¹[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 re-transferred 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 re-transferred.

(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 rights attaching to such share or block of shares.]

1. Inserted by the MRTP (Amendment) Act, 1991 w.r.e.f. 27-9-1991.

¹[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.]

1. Inserted by the MRTP (Amendment) Act, 1991 w.r.e.f. 27-9-1991.

¹[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.]

1. Inserted by the MRTP (Amendment) Act, 1991 w.r.e.f. 27-9-1991.

¹[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

1. Inserted by the MRTP (Amendment) Act, 1991 w.r.e.f. 27-9-1991.

¹[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)].

1. Inserted by the MRTP (Amendment) Act, 1991 w.r.e.f. 27-9-1991.

¹[108I. 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 ²[fifty] thousand rupees, or with both.

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

(b) Where any contravention of the provisions of section 108B, 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 ²[fifty] 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 ²[fifty] 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 ²[fifty] 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 ²[fifty] 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 ²[fifty] thousand rupees, or with both.]

1. Inserted by the MRTP (Amendment) Act, 1991 w.r.e.f. 27-9-1991.

2. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

** Vide MCA Circular No. 30/2011 dated 23.05.2011 Secs. 108A to 108I have become redundant and will have no legal force.

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.

¹[109A NOMINATION OF SHARES

(1) Every holder of shares in, or holder of debentures of, a company may, at any time, nominate, in the prescribed manner, a person to whom his shares in, or debentures of, the company shall vest in the event of his death.

(2) Where the shares in, or debentures of, a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, a person to whom all the rights in the shares or debentures of the company shall vest in the event of death of all the joint holders.

(3) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such shares in, or debentures of, the company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the shares in, or debentures of, the company, the nominee shall, on the death of the shareholder or holder of debentures of, the company or, as the case may be, on the death of the joint holders becomes entitled to all the rights in the shares or debentures of the company or, as the case may be, all the joint holders, in relation to such shares in, or debentures of, the company to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(4) Where the nominee is a minor, it shall be lawful for the holder of the shares, or holder of debentures, to make the nomination to appoint, in the prescribed manner, any person to become entitled to shares in, or debentures of, the company, in the event of his death, during the minority.]

1. Inserted by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998.

¹[109B. TRANSMISSION OF SHARES

(1) Any person who becomes a nominee by virtue of the provisions of section 109A, upon the production of such evidence as may be required by the Board and subject as hereinafter provided, elect, either -

(a) to be registered himself as holder of the share or debenture, as the case may be ; or
(b) to make such transfer of the share or debenture, as the case may be, as the deceased shareholder or debenture holder, as the case may be, could have made.

(2) If the person being a nominee, so becoming entitled, elects to be registered as holder of the share or debenture, himself, as the case may be, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased shareholder or debenture holder, as the case may be.

(3) All the limitations, restrictions and provisions of this Act relating to the right to transfer and the registration of transfers of shares or debentures shall be applicable to any such notice or transfer as aforesaid as if the death of the member had not occurred and the notice or transfer were a transfer signed by that shareholder or debenture holder, as the case may be.

(4) A person, being a nominee, becoming entitled to a share or debenture by reason of the death of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share or debenture except that he shall not, before being registered a member in respect of his share or debenture, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company :

Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the share or debenture, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share or debenture, until the requirements of the notice have been complied with.]

1. Inserted by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998.

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 prepaid registered post to the transferee at the address given in the instrument of transfer, and shall be deemed to have been duly delivered at the time at which it would have been delivered in the ordinary course of post.

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 ²[Tribunal] 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 sub-section (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 ²[Tribunal] for rectification of the register.

(5) The ²[Tribunal], 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 ³[Tribunal], 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 ³[Tribunal] -

(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 ³[Tribunal] under this section, the company and every officer of the company who is in default shall be punishable with fine which may extend to ⁴[ten] thousand rupees, and with a further fine which may extend to ⁵[one thousand] rupees for every day after the first day after which the default continues.

(10) Every appeal or application to the ³[Tribunal] 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 ⁶[Tribunal] 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 therefor or such other sum as the ⁶[Tribunal] 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 ⁷[five hundred] 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].

⁸[(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. Substituted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

2. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

3. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

4. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

5. Substituted for "one hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

6. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

7. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

8. Inserted by the Depositories Act, 1996 w.r.e.f. 20-9-1995.

¹[111A. RECTIFICATION OF REGISTER ON 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 :

²[**Provided** that if a company without sufficient cause refuses to register transfer of shares within two months from the date on which the instrument of transfer or the intimation of transfer, as the case may be, is delivered to the company, the transferee may appeal to the ³[Tribunal] and it shall direct such company to register the transfer of shares].

⁴[(3) The ³[Tribunal] may, on an application made by a depository, company, participant or investor or the Securities and Exchange Board of India, if the transfer of 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), or any other law for the time being in force, 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 the transmission was delivered to the company, as the case may be, after such inquiry as it thinks fit, direct any depository or company to rectify its register or records].

(4) The ⁵[Tribunal] 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 ³[Tribunal].

(6) Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the ⁵[Tribunal], 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 ¹[Tribunal] under this section as they apply to the proceedings under that section].

1. Inserted by the Depositories Act, 1996 w.r.e.f. 20-9-1995.
2. Inserted by the Depositories Related Laws (Amendment) Act, 1997 w.e.f. 15-1-1997.
3. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).
4. Substituted by the Depositories Related Laws (Amendment) Act, 1997 w.e.f. 15-1-1997. Prior to substitution, sub-section (3) read as under :
 "(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)."
5. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

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 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.

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 ²[Central Government] 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].

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 ³[five thousand] rupees for every day during which the default continues.

- (3) If any company on which a notice has been served requiring it to make good any default in complying with the provisions of sub-section (1), fails to make good the default within ten days after the service of the notice, the ⁴[Central Government] 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.

⁴[(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].

1. Substituted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.
2. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).
3. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
4. Inserted by the Depositories Act, 1996 w.r.e.f. 20-9-1995.

Share warrants

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

(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.

(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 ¹[five hundred] rupees for every day during which the default continues.

every officer in default shall be punishable with fine upto Rs. 500 per day [sub-section (6)].

Offence compoundable : The above offence punishable under sub-section (6) is compoundable under section 621A.

1. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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

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.

¹[117A. DEBENTURE TRUST DEED

(1) A trust deed for securing any issue of debentures shall be in such form and shall be executed within such period as may be prescribed.

(2) A copy of the trust deed shall be open to inspection to any member or debenture holder of the company and he shall also be entitled to obtain copies of such trust deed on payment of such sum as may be prescribed.

(3) If a copy of the trust deed is not made available for inspection or is not given to any member or debenture holder, the company and every officer of the company who is in a default, shall be punishable, for each offence, with fine which may extend to five hundred rupees for every day during which the offence continues.]

1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

¹[117B. APPOINTMENT OF DEBENTURE TRUSTEES AND DUTIES OF DEBENTURE TRUSTEES

(1) No company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless the company has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed :

Provided that no person shall be appointed as a debenture trustee, if he -

(a) beneficially holds shares in the company ;

(b) is beneficially entitled to moneys which are to be paid by the company to the debenture trustee ;

(c) has entered into any guarantee in respect of principal debts secured by the debentures or interest thereon.

(2) Subject to the provisions of this Act, the functions of the debenture trustees shall generally be to protect the interest of holders of debentures (including the creation of securities within the stipulated time) and to redress the grievances of holders of debentures effectively.

(3) In particular, and without prejudice to the generality of the foregoing functions, a debenture trustee may take such other steps as he may deem fit -

(a) to ensure that the assets of the company issuing debentures and each of the guarantors are sufficient to discharge the principal amount at all times ;

(b) to satisfy himself that the prospectus or the letter of offer does not contain any matter which is inconsistent with the terms of the debentures or with the trust deed ;

(c) to ensure that the company does not commit any breach of covenants and provisions of the trust deed ;

(d) to take such reasonable steps to remedy any breach of the covenants of the trust deed or the terms of issue of debentures ;

(e) to take steps to call a meeting of holders of debentures as and when such meeting is required to be held.

(4) Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the ²[Central Government] and the ²[Central Government] may, after hearing the company and any other person interested in the matter, by an order, impose such restrictions on the incurring of any further liabilities as the ²[Central Government] thinks necessary in the interests of holders of the debentures.

³[Provided that in the case of revival and rehabilitation of a sick industrial company under Part VIA, the provisions of this section shall have effect as if for the words "Central Government", the word "Tribunal" had been substituted.]

1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

3. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

¹[117C. LIABILITY OF COMPANY TO CREATE SECURITY AND DEBENTURE REDEMPTION RESERVE

(1) Where a company issues debentures after the commencement of this Act, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed.

(2) The amounts credited to the debenture redemption reserve shall not be utilised by the company except for the purpose aforesaid.

(3) The company referred to in sub-section (1) shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.

(4) Where a company fails to redeem the debentures on the date of maturity, the ²[Tribunal] may, on the application of any or all the holders of debentures shall, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith by the payment of principal and interest due thereon.

(5) If default is made in complying with the order of the ²[Tribunal] under sub-section (4), every officer of the company who is in default, shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of not less than five hundred rupees for every day during which such default continues.]

1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

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

(b) in the case of a trust deed which has not been printed, of ²[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 ³[five hundred] rupees and with a further fine which may extend to ⁴[two hundred] rupees for every day during which the offence continues.

(3) The ⁵[Central Government] may also, by order, direct that the copy required shall forthwith be sent to the person requiring it.

(4) The trust deed referred to in sub-section (1) shall also be open to inspection by any member or debenture holder of the company in the same manner, to the same extent, and on payment of the same fees, as if it were the register of members of the company.

1. Substituted for "the sum of one rupee" by the Companies (Amendment) Act, 1988 w.e.f. 15-7-1988.

2. Substituted for "six annas" by the Companies (Amendment) Act, 1988 w.e.f. 15-7-1988.

3. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

4. Substituted for "twenty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

5. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

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 insofar

as it would have the effect of exempting a trustee thereof from, or indemnifying him against, liability for breach of trust, where he fails to show the degree of care and diligence required of him as trustee, having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

(2) Sub-section (1) shall not invalidate -

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release ; or

(b) any provision enabling such a release to be given -

(i) on the agreement thereto of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy, at a meeting summoned for the purpose ; and

(ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

(3) Sub-section (1) shall not operate -

(a) to invalidate any provision in force at the commencement of this Act so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under sub- section (4) remains a trustee of the deed in question ; or

(b) to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.

(4) While any trustee of a trust deed remains entitled to the benefit of a provision saved by sub-section (3), the benefit of that provision may be given either -

(a) to all trustees of the deed, present and future ; or

(b) to any named trustees or proposed trustees thereof ;

by a resolution passed by a majority of not less than three-fourths in value of the debenture holders present in person or, where proxies are permitted, by proxy, at a meeting called for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for calling meetings, at a meeting called for the purpose in any manner approved by the Court.

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

(1) Where either before or after the commencement of this Act, a company has redeemed any debentures previously issued, then, -

(a) unless any provision to the contrary, whether express or implied, is contained in the articles, or in the conditions of issue, or in any contract entered into by the company ; or

(b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled ;

the company shall have, and shall be deemed always to have had, the right to keep the debentures alive for the purposes of re-issue ; and in exercising such a right, the company shall have, and shall be deemed always to have had, power to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place.

(2) Upon such re-issue, the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had never been redeemed.

(3) Where with the object of keeping debentures alive for the purpose of re-issue, they have, either before or after the commencement of this Act, been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(4) Where a company has, either before or after the commencement of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(5) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the re-issue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued :

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have

discovered, that the debenture was not duly stamped ; but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(6) Nothing in this section shall prejudice -

(a) the operation of any decree or order of a Court of competent jurisdiction pronounced or made before the twenty-fifth day of February, 1910, as between the parties to the proceedings in which the decree or order was made ;

(b) where an appeal has been preferred against any such decree or order, the operation of any decree or order passed on such appeal, as between the parties to such appeal ; or

(c) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

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

(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 sub-section (2) shall not apply.

(5) Any payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

PART V REGISTRATION OF CHARGES

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

(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 thirty days after the date of its creation :

¹[**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 sub-section (1) shall prejudice any contract or obligation for the repayment of the money secured by the charge.

(3) When a charge becomes void under this section, the money secured thereby shall immediately become payable.

(4) This section applies to the following charges :

(a) a charge for the purpose of securing any issue of debentures ;

(b) a charge on uncalled share capital of the company ;

(c) a charge on any immovable property, wherever situate, or any interest therein ;

(d) a charge on any book debts of the company ;

(e) a charge, not being a pledge, on any movable property of the company ;

(f) a floating charge on the undertaking or any property of the company including stock-in-trade ;

(g) a charge on calls made but not paid ;

(h) a charge on a ship or any share in a ship ;

(i) a charge on goodwill, on a patent or a licence under a patent, on a trade mark, or on a copyright or a licence under a copyright.

(5) In the case of a charge created out of India and comprising solely property situate outside India, 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 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.

1. Substituted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

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

(1) Where a company acquires any property which is subject to a charge of any such kind as would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part, the company shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Registrar for registration in the manner required by this Act within 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, 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 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 ⁴[five thousand] rupees.

1. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f 13-12-2000.

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 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

Where any commission, allowance or discount has been paid or made either directly or indirectly by a company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be filed for registration under sections 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

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 register kept in pursuance of this section shall be open to inspection by any person on payment of ²[such fee as may be prescribed] for each inspection.

1. Substituted for sub-sections (1) and (2) by the Companies (Amendment) Act, 1988 w.e.f. 17-4-1989.

2. Substituted for "a fee of one rupee" by the Companies (Amendment) Act, 1988 w.e.f. 17-4-1989.

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.

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

(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 ¹[ten] thousand rupees.

1. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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

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

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.

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 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 cease 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 ¹[five hundred] rupees for every day during which the default continues.

1. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

138. COMPANY TO REPORT SATISFACTION AND PROCEDURE THEREAFTER

(1) The company shall give intimation to the Registrar of the payment or satisfaction, in full, of any charge relating to the company and requiring registration under this Part, within 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 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.

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

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.

¹[141. RECTIFICATION BY CENTRAL GOVERNMENT OF REGISTER OF CHARGES

(1) *The Central Government, 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 section 139, was accidental or due to inadvertence or some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders of the company ; or*

(b) *that on other grounds, it is just and equitable to grant relief, may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government 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 Central Government may make such order as to the costs of an application under sub-section (1) as it thinks fit.*

(3) *Where the Central Government 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.]*

1. Substituted by Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to substitution section 141 read as under :

141. *Rectification by Company Law Board of register of charges.* - (1) The 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 mis-statement 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

(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 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 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 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

(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 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 ¹[five thousand] 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 ²[ten] thousand rupees.

1. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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 of bearer, the names of the persons entitled to the charge.

(2) If any officer of the company knowingly omits, or wilfully authorises or permits the omission of, any entry required to be made in pursuance of sub-section (1), he shall be punishable with fine which may extend to ¹[five thousand] rupees.

1. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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 ²[five hundred] rupees and with a further fine which may extend to ³[two hundred] rupees for every day during which the refusal continues.

(4) The ⁴[Central Government] may also by order compel an immediate inspection of the said copies or register.

1. Substituted for "one rupee" by the Companies (Amendment) Act, 1988 w.e.f. 15-7-1988.

2. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
3. Substituted for "twenty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
4. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

145. APPLICATION OF PART TO CHARGES REQUIRING REGISTRATION UNDER IT BUT NOT UNDER PREVIOUS LAW

In respect of 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.

PART VI: MANAGEMENT AND ADMINISTRATION

CHAPTER I: GENERAL PROVISIONS

Registered office and name

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 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 therein, shall be given within 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 ¹[five hundred] rupees for every day during which the default continues.

1. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

147. PUBLICATION OF NAME BY COMPANY

(1) Every company -

(a) shall paint or affix its name 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 legible ; and if the characters employed therefor are not those of the language, or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages ;

(b) shall have its name engraven in legible characters on its seal ; and

(c) shall have its name 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 and other official publications ; 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 credits of the company.

(2) If a company does not paint or affix its name 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 ¹[five hundred] rupees for not so painting or affixing its name and the address of its registered office, and for every day during which its name 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 ²[five thousand] 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 or other official publication of the company wherein its name and the address of its registered office are not mentioned in the manner aforesaid ;
(c) signs, or authorises to be signed, on behalf of the company, any bill of exchange, hundi, promissory note, endorsement, cheque or order for money or goods wherein its name is not mentioned in the manner aforesaid ; or
(d) issues, or authorises the issue of, any bill of parcels, invoice, receipt or letter of credit of the company, wherein its name is not mentioned in the manner aforesaid ;
such officer or person shall be punishable with fine which may extend to ³[five thousand] 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.

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1. Substituted for 'fifty' by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 2. Substituted for 'five hundred' by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 3. Substituted for 'five hundred' by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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 sub- section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ⁴[ten] thousand rupees.

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1. Substituted for 'one' by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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 recognised stock exchange ; and

(d) there has been filed with the Registrar a duly verified declaration by one of the directors or the secretary ¹[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 declarations by one of the directors or the secretary ¹[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.

(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 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, 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 one of the directors or the secretary ¹[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 ²[five thousand] 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 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 ³[five thousand] rupees for every day during which the contravention continues.

(7) Nothing in this section shall apply to -

(a) a private company ; or

(b) a company registered before the first day of April, 1914 which has not issued a prospectus inviting the public to subscribe for its shares.

(8) [Omitted by the Companies (Amendment) Act, 1960.]

1. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

2. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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, ¹[***] ²[distinguishing each share by its number except where such shares are held with a depository], 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 ³[five hundred] rupees for every day during which the default continues.

1. The words "distinguishing each share by its number" omitted by the Depositories Act, 1996 w.r.e.f. 20-9-1995.

2. Inserted by the Depositories Related Laws (Amendment) Act, 1997 w.e.f. 15-1-1997.

3. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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 ¹[five hundred] rupees.

1. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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[****] ²[distinguishing each debenture by its number except where such debentures are held with a depository], 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), on the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ³[five hundred] rupees.

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

1. The words "distinguishing each debenture by its number" omitted by the Depositories Act, 1996 w.r.e.f. 20-9-1995.

2. Inserted by the Depositories Related Laws (Amendment) Act, 1997 w.e.f. 15-1-1997.

3. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

¹[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 (22 of 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.]

1. Inserted by the Depositories Act, 1996 w.r.e.f. 20-9-1995.

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.

153A. APPOINTMENT OF PUBLIC TRUSTEE

¹[(1)] 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.

¹[(2)] The provisions of this section shall not apply on and after the commencement of the Companies (Amendment) Act, 2000.]

1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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 (herein after 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, 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 lakh of rupees or twenty-five per cent of the paid-up share capital of the company, whichever is less, ¹[or]

¹[(c) where the trust is created to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by the Securities and Exchange Board of India established under sub-section (1) of section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).]

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.

²[(5) The provisions of this section shall not apply on and after the commencement of the Companies (Amendment) Act, 2000.]

1. Inserted by the Companies (Amendment) Act, 1996 w.e.f. 1-3-1997.

2. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

154. POWER TO CLOSE REGISTER OF MEMBERS OR DEBENTURE HOLDERS

(1) A company may, after giving not less than seven days' previous notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members or the register of debenture holders for any period or periods not exceeding in the 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 ¹[five thousand] rupees for every day during which the register is so closed.

1. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

155. POWER OF COURT TO RECTIFY REGISTER OF MEMBERS

[Omitted by the Companies (Amendment) Act, 1988, with effect from 31-5-1991.]

156. NOTICE TO REGISTRAR OF RECTIFICATION OF REGISTER

[Omitted by the Companies (Amendment) Act, 1988, with effect from 31-5-1991.]

Foreign registers of members or debenture holders

157. POWER FOR COMPANY TO KEEP FOREIGN REGISTER OF MEMBERS OR 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 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 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 ¹[five hundred] rupees for every day during which the default continues.

1. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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.

(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 ¹[five hundred] rupees.

1. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

Annual returns

159. ANNUAL RETURN TO BE MADE BY COMPANY HAVING A SHARE CAPITAL

(1) Every company having a share capital shall, within 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,
- (f) its members and debenture holders, past and present, and
- (g) its directors, managing directors ¹[***], managers and secretaries, past and present :

Provided that if any of the ²[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 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 accordance with the provisions of this Act, the company shall file with the return a statement specifying the reasons for not holding the annual general meeting :

Provided that where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the list referred to in paragraph 5 of Part I of Schedule V shall state the amount of stock held by each of the members concerned instead of the shares so converted previously held by him.

1. Words ", managing agent, secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "two" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

160. ANNUAL RETURN TO BE MADE BY COMPANY NOT HAVING A SHARE CAPITAL

(1) Every company not having a share capital shall, within 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 stating the following particulars as they stood on that day : -

- (a) the address of the registered office of the company ;
- (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 ¹[***], 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.

1. Words ", its managing agent, its secretaries and treasures" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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 ¹[***] manager or secretary of the company, or where there is no ¹[***] manager or secretary, by two directors of the company, one of whom shall be the managing director where there is one :
²[**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 ³[***] 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 ;
- (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
- (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.

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1. The words "managing agent, secretaries and treasures," omitted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.
2. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.
3. The word "both" omitted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

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 ¹[five hundred] 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.

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1. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

General provisions regarding 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 :
- 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, and
- (ii) [Omitted by the Companies (Amendment) Act, 1965, with effect from 15-10-1965],
- (iii) the Registrar has been given in advance a copy of the proposed special resolution.
- (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, 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] for each inspection.
- (3) any such member, debenture holder or other person may -
- (a) make extracts from any register, index, or copy referred to in sub-section (1) without fee or additional fee, as the case may be ; or
- (b) require a copy of any such register, index or copy or of any part thereof, on payment of ²[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 ³[five hundred] rupees for every day during which the refusal or default continues.

(6) The ⁴[Central Government] 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.

1. Substituted for "a fee of one rupee" by the Companies (Amendment) Act, 1988 w.e.f. 15-7-1988.
2. Substituted for "six annas", by the Companies (Amendment) Act, 1988 w.e.f. 15-7-1988.
3. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
4. Substituted for "Company Law Board " by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

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 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

(1) Every company limited by shares, and every company limited by guarantee and having a share capital, shall, within a period of not less than one month nor more than six months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called "the statutory meeting".

(2) The Board of directors shall, at least twenty-one days before the day on which the meeting is held, forward a report (in this Act referred to as "the statutory report") to every member of the company :

Provided that if the statutory report is forwarded later than is required above, it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed to by all the members entitled to attend and vote at the meeting.

(3) The statutory report shall set out -

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid-up otherwise than in cash, and stating in the case of shares partly paid-up, the extent to which they are so paid-up, and in either case, the consideration for which they have been allotted ;

(b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid ;

(c) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company, showing separately any commission or discount paid or to be paid on the issue or sale of shares or debentures ;

(d) the names, addresses and occupations of the directors of the company and of its auditors ; and also, if there be any, of its ¹[***] manager and secretary ; and the changes, if any, which 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 underwriting contract, if any, has not been carried out, and the reasons therefor ;

²[(g) the arrears, if any, due on calls from every director 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 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, insofar 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, certify it as correct.

(5) The Board shall cause a copy of the statutory report certified as is required by this section to be delivered to the Registrar for registration forthwith, after copies thereof have been sent to the members of the company.

(6) The Board shall cause a list showing the names, addresses and occupations of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the statutory meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not ; but no resolution may be passed of which notice has not been given in accordance with the provisions of this Act.

(8) The meeting may adjourn from time to time, and at any adjourned meeting, any resolution of which notice has been given in accordance with the provisions of this Act, whether before or after the former meeting, may be passed ; and the adjourned meeting shall have the same powers as an original meeting.

- (9) If default is made in complying with the provisions of this section, every director or other officer of the company who is in default shall be punishable with fine which may extend to ³[five thousand] rupees.
- (10) This section shall not apply to a private company.

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1. Words "managing agent, secretaries and treasurers," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 2. Substituted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 3. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

166. ANNUAL GENERAL MEETING

(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 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 :

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 as the place for its annual general meeting.

¹[167. POWER OF CENTRAL GOVERNMENT TO CALL ANNUAL GENERAL MEETING

(1) *If default is made in holding an annual general meeting in accordance with section 166, the Central Government may, notwithstanding anything contained in this Act or in the articles of the company, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the Central Government thinks expedient in relation to the calling, holding and conducting of the meeting.*

Explanation. - *The directions that may be given under this sub-section may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.*

(2) *A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the Central Government, be deemed to be an annual general meeting of the company :*

Provided *that in the case of revival and rehabilitation of sick industrial companies under Chapter VIA, the provisions of this section, shall have effect as if for the words "Central Government", the word "Tribunal" had been substituted.]*

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1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to substitution section 167 read as under :

¹167. 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 Company Law Board may, notwithstanding anything in this Act or in the articles of the company, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the 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 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

If default is made in holding a meeting of the company in accordance with section 166, or in complying with any directions of the ¹[Tribunal or the Central Government, as the case may be] 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 ²[fifty] thousand rupees and in the case of a continuing default, with a further fine which may extend to ³[two thousand five hundred] rupees for every day after the first during which such default continues.

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1. Substituted for "Central Government" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).
 2. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 3. Substituted for "two hundred and fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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 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. SECTIONS 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

(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

(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

(1) Every notice of a meeting of a company shall specify the place and the day and hour of the meeting, and shall contain a statement of the business to be transacted thereat.

(2) Notice of every meeting of the company shall be given -

(i) to every member of the company, in any manner authorised by sub-sections (1) to (4) of section 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 :

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

(1) For the purposes of this section -

(a) in the case of an annual general meeting, all business to be transacted at the meeting shall be deemed special, with the exception of business relating to (i) the consideration of the accounts, balance sheet and the reports of the Board of directors and auditors, (ii) the declaration of a dividend, (iii) the appointment of directors in the place of those retiring, and (iv) the appointment of and the fixing of the remuneration of, the auditors ; and

(b) in the case of any other meeting, all business shall be deemed special.

(2) Where any items of business to be transacted at the meeting are deemed to be special as aforesaid, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning each such item of business, including in particular the nature of the concern or interest, if any, therein, of every director, ¹[***] and the manager, if any :

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, ¹[***] 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.

1. Words "the managing agent, if any, the secretaries and treasurers, if any," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

174. QUORUM FOR MEETING

(1) Unless the articles of the company provide for a larger number, five members personally present in the case of 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.

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

(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 ¹[five thousand] rupees.

(3) Any provision contained in the articles of a public company or of a private company which is a subsidiary of a public company, 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 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 ²[ten] thousand rupees :

Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(5) The instrument appointing a proxy shall -

(a) be in writing ; and

(b) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

(6) An instrument appointing a proxy, if in any of the forms set out in Schedule IX, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles.

(7) Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

1. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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.

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

(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 member or 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.

1. Substituted for clauses (a) to (d) by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

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-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

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

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 OF MEMBER TO USE HIS VOTES DIFFERENTLY

On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

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

(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.

¹[186. POWER OF TRIBUNAL 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 Tribunal 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 Tribunal thinks fit ; and*

(b) *give such ancillary or consequential directions as the Tribunal 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 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) *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.]*

1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution section 186 read as under :

`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 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 Company Law Board thinks fit ; and

(b) give such ancillary or consequential directions as the 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 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) 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

(1) A body corporate (whether a company within the meaning of this Act or not) may -

(a) if it is a member of a company within the meaning of this Act, by resolution of its Board of directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company ;

(b) if it is a creditor (including a holder of debentures) of a company within the meaning of this Act, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised by resolution as aforesaid shall be entitled to exercise the same rights and powers (including the right to vote by proxy) on behalf of the body corporate which he represents as that body could exercise if it were 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

(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

(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 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.

¹[(7) The provisions of this section shall not apply on and after the commencement of the Companies (Amendment) Act, 2000.]

1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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, or within thirty days after 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.

¹[(8) The provisions of this section shall not apply to the trustee referred to in section 187B and after the commencement of Companies (Amendment) Act, 2000.]

1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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 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' RESOLUTIONS.

(1) Subject to the provisions of this section, a company shall, on the requisition in writing of such number of members as is hereinafter specified and (unless the company otherwise resolves) at the expense of the requisitionists, -

(a) give to members of the company entitled to receive notice of the next annual general meeting, notice of any resolution which may properly be moved and is intended to be moved at that meeting ;

(b) circulate to members entitled to have notice of any general meeting sent to them, any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution, or any business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under sub- section (1) shall be -

(a) such number of members as represent not less than one-twentieth of the total voting power of all the members having at the date of the requisition a right to vote on the resolution or business to which the requisition relates ; or

(b) not less than one hundred members having the right aforesaid and holding shares in the company on which there has been paid-up an aggregate sum of not less than one lakh of rupees in all.

(3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them, by serving a copy of the resolution or statement on each member in any manner permitted for service of notice of the meeting ; and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company :

Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting, and where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless -

(a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company-

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting ;

(ii) in the case of any other requisition, not less than two weeks before the meeting ; and

(b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto :

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy, although not deposited within the time required by this sub-section, shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the ¹[Central Government] is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter ; and the ¹[Central Government] may order the company's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(6) 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 ²[fifty] thousand rupees.

1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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

(1) Where, by any provision contained in this Act or in the articles, special notice is required of any resolution, notice of the intention to move the resolution shall be given to the company not less than 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) 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

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

(1) A copy of every resolution (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 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, 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.

(3) Where articles have not been registered, a printed copy of every 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) ¹[***]
- (e) resolutions or agreements which have been agreed to by all the members of any class of shareholders but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner ; and all resolutions or agreements which effectively bind all the members of any class of shareholders though not agreed to by all those members ;
- (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 ;
- (ii) approving the appointment of sole selling agents under section 294 or section 294AA ;
- (f) resolutions requiring a company to be wound up voluntarily passed in pursuance of sub-section (1) of section 484 ; and
- (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.
- (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 ²[two hundred] 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 ³[one hundred] 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.

1. Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "twenty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted for "ten" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

PART VI - MANAGEMENT AND ADMINISTRATION

¹[192A. PASSING OF RESOLUTIONS BY POSTAL BALLOT

- (1) Notwithstanding anything contained in the foregoing provisions of this Act, a listed public company may, and in the case of resolutions relating to such business as the Central Government may, by notification, declare to be conducted only by postal ballot, shall, get any resolution passed by means of a postal ballot, instead of transacting the business in general meeting of the company.
- (2) Where a company decides to pass any resolution by resorting to postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefor, and requesting them to send their assent or dissent in writing on a postal ballot within a period of thirty days from the date of posting of the letter.
- (3) The notice shall be sent by registered post acknowledgement due, or by any other method as may be prescribed by the Central Government in this behalf, and shall include with the notice, a postage pre-paid envelope for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period.
- (4) If a resolution is assented to by a requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.
- (5) If a shareholder sends under sub-section (2) his assent or dissent in writing on a postal ballot and thereafter any person fraudulently defaces or destroys the ballot paper or declaration of identify of the shareholder, such person shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.
- (6) If a default is made in complying with sub-sections (1) to (4), the company and every officer of the company, who is in default shall be punishable with fine which may extend to fifty thousand rupees in respect of each such default.
- Explanation.* - For the purposes of this section, "postal ballot" includes voting by electronic mode.]

1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

193. MINUTES OF PROCEEDINGS OF GENERAL MEETINGS AND OF BOARD AND OTHER MEETINGS

- (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 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 '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

(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 ¹[five hundred] rupees.

1. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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

Where minutes of the proceedings of any general meeting of the company or of any meeting of its Board of directors or of a committee of the Board have been 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

(1) The books containing the minutes of the proceedings of any general meeting of a company held on or after the 15th day of January, 1937, shall -

(a) be kept at the registered office of the company, and

(b) be open, during business hours, to the inspection of any member without charge, subject to such reasonable restrictions as the company may, by its articles or in general meeting impose, so however that not less than two hours in each day are allowed for inspection.

(2) Any member shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of any minutes referred to in sub-section (1), on payment of 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 ²[five thousand] rupees in respect of each offence.

(4) In the case of any such refusal or default, the ³[Central Government] 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.

1. Substituted for "six annas" by the Companies (Amendment) Act, 1988 w.e.f. 15-7-1988.

2. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

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 ¹[five thousand] rupees.

1. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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

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, 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) & (c) ¹[****]
- (d) manager.

1. Clauses (b) and (c) omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000. Prior to their omission, clauses (b) and (c) read as under :

- "(b) managing agent,
- (c) secretaries and treasurers,"

Managerial remuneration, etc.

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 ¹[****] 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, ²[and 350], except that the remuneration of the directors shall not be deducted from the gross profits :

³[****]

(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.

⁴[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.]

Explanation. - For the purposes of this section and sections 309, 310, 311, ⁵[****] 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.

1. Words "managing agent, secretaries and treasurers or" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for ", 350 and 351, by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Proviso omitted, by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000. Prior to omission proviso read as under :

"**Provided** that nothing in this section shall affect the operation of sections 352 to 354 and 356 to 360."

4. Substituted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

5. Figures "348, 352," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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 ¹[****], 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, ²[and 350].

(2) Any provision in force at the commencement of this Act for the payment of any commission or other remuneration in any manner based on the net profits of a company, shall continue to be in force for a period of one year from such commencement ; and thereafter shall become subject to the provisions of sub-section (1).

1. Words "the managing agent, secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for ", 350 and 351" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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 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 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)[*Omitted by the Companies (Amendment) Act, 2000 with effect from 13-12-2000.*]

Prevention of management by undesirable persons

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 ¹[***] 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 ²[fifty] 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.

1. Words "managing agent, secretaries and treasurers, or" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

203. POWER TO RESTRAIN FRAUDULENT PERSONS FROM MANAGING COMPANIES

(1) Where -

(a) a person is convicted of any offence in connection with the promotion, formation or management of a company ; or

(b) in the course of winding up a company it appears that a person -

(i) has been guilty of any offence for which he is punishable (whether he has been convicted or not) under section 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 ¹[*or the Tribunal, as the case may be*] may make an order that that person shall not, without the leave of the Court ¹[*or the Tribunal, as the case may be*], be a director of, or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company, for such period not exceeding five years as may be specified in the order.

(2) In sub-section (1), the expression "the Court", -

(a) in relation to the making of an order against any person by virtue of clause (a) thereof, includes the court ¹[*or the Tribunal*] by which he is convicted as well as any Court ¹[*or Tribunal*] having jurisdiction to wind up the company as respects which the offence was committed ; and

(b) in relation to the granting of leave, means any Court ¹[*or Tribunal*] 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 ¹[*or the Tribunal*] having jurisdiction to wind up a company shall give not less than ten days' notice of his intention to the person against whom

the order is sought, and at the hearing of the application, the last-mentioned person may appear and himself give evidence or call witnesses.

(4) An application for the making of an order under this section by the Court ¹[*or the Tribunal*] 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 ¹[*or the Tribunal, as the case may be,*] 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.

(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 ²[*fifty*] 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.

1. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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

(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 ¹[*****] 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, with the approval of the Central Government, be made for a term not exceeding ten years.

(2) [*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]

(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 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.

(6) This section shall not apply to a private company, unless it is a subsidiary of a public company.

1. Words "managing agent, secretaries and treasurers or" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

204A. RESTRICTIONS ON THE APPOINTMENT OF FORMER MANAGING AGENTS OR SECRETARIES AND TREASURERS TO ANY OFFICE

[*Omitted by the Companies (Amendment) Act, 2000 with effect from 13-12-2000.*]

Dividends and manner and time of payment thereof

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 :

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, 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, 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 sub-section (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.

¹[(1A) The Board of directors may declare interim dividend and the amount of dividend including interim dividend shall be deposited in a separate bank account within five days from the date of declaration of such dividend.

(1B) The amount of dividend including interim dividend so deposited under sub-section (1A) shall be used for payment of interim dividend.

(1C) The provisions contained in sections 205, 205A, 205C, 206, 206A and 207 shall, as far as may be, also apply to any interim dividend.]

(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

(c) on any other basis approved by the Central Government which has the effect of writing off by the 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.

(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 sub-section (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.

²[(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 capitalisation 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.

(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.

1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "the Indian Income-tax Act, 1922 (11 of 1922) or the" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

3. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

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, ¹[or claimed], within ²[thirty] 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 ²[thirty] days, transfer the total amount of dividend which remains unpaid ³[or unclaimed] within the said period of ²[thirty] 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".

⁴[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 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.

²[(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 seven years from the date of such transfer shall be transferred by the company to the Fund established under sub-section (1) of section 205C.]

(6) The company shall, when making any transfer under sub-section (5) to the ⁶[Fund established under section 205C] any unpaid or unclaimed dividend, furnish ⁷[to such authority or committee 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 persons entitled to receive the sum, the amount to which each person is entitled and the nature of his claim thereto and such other particulars as may be prescribed.

⁸[(7) The company shall be entitled to a receipt from the authority or committee under sub-section (4) of section 205C for any money transferred by it to the Fund and such a 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 ⁹[five thousand] rupees for every day during which the failure continues.

1. Substituted for "or the warrant in respect thereof has been posted" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

2. Substituted for "forty-two" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted for "or in relation to which no dividend warrant has been posted" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

4. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

5. Substituted by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998. Prior to substitution, sub-section (5) read as under :

"(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. Substituted for "general revenue account of the Central Government" by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998.

7. Substituted for "to such officer as the Central Government may appoint" by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998.

8. Substituted by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998. Prior to substitution, sub-section (7) read as under :

"(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."

9. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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.

¹[**Provided** that nothing contained in this section shall apply to any person claiming to be entitled to any money transferred to the Fund referred to in section 205C on and after the commencement of the Companies (Amendment) Act, 1999.]

1. Inserted by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998.

¹[205C. ESTABLISHMENT OF INVESTOR EDUCATION AND PROTECTION FUND

(1) The Central Government shall establish a fund to be called the Investor Education and Protection Fund (hereafter in this section referred to as the "Fund").

(2) There shall be credited to the Fund the following amounts, namely : -

- (a) amounts in the unpaid dividend accounts of companies ;
- (b) the application moneys received by companies for allotment of any securities and due for refund ;
- (c) matured deposits with companies ;
- (d) matured debentures with companies ;
- (e) the interest accrued on the amounts referred to in clauses (a) to (d);
- (f) grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund ; and
- (g) the interest or other income received out of the investments made from the Fund :

Provided that no such amounts referred to in clauses (a) to (d) shall form part of the Fund unless such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment.

Explanation. - For the removal of doubts, it is hereby declared that no claims shall lie against the Fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the dates that they first became due for payment and no payment shall be made in respect of any such claims.

(3) The Fund shall be utilised for promotion of investors' awareness and protection of the interests of investors in accordance with such rules as may be prescribed.

(4) The Central Government shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Central Government may appoint, to administer the Fund, and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(5) It shall be competent for the authority or committee appointed under sub-section (4) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established.]

1. Inserted by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998.

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.

¹[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.]

1. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

¹[207. PENALTY FOR FAILURE TO DISTRIBUTE DIVIDENDS WITHIN THIRTY 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 thirty days from the date of the declaration, to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with simple imprisonment for a term which may extend to three years and shall also be liable to a fine of one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues :

Provided that no offence shall be deemed to have been committed within the meaning of the foregoing provisions in the following cases, namely : -

- (a) where the dividend could not be paid by reason of the operation of any law ;
- (b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with ;
- (c) where there is a dispute regarding the right to receive 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.]

1. Substituted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000. Prior to its substitution, section 207 read as under :

"207. *Penalty for failure to distribute dividends within forty-two day.* - 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 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 ;

(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

(1) Where any shares in a company are issued for the purpose of raising money to defray the expenses of the construction of any work or building, or the provision of any plant, which cannot be made profitable for a lengthy period, the company may -

(a) pay interest on so much of that share capital as is for the time being paid-up, for the period and subject to the conditions and restrictions mentioned in sub-sections (2) to (7) ; and

(b) charge the sum so paid by way of interest, to capital as part of the cost of construction of the work or building, or the provision of the plant.

(2) No such payment shall be made unless it is authorised by the articles or by a special resolution.

(3) No such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of the Central Government.

The grant of such sanction shall be conclusive evidence, for the purposes of this section, that the shares of the company, in respect of which such sanction is given, have been issued for a purpose specified in this section.

(4) Before sanctioning any such payment, the Central Government may, at the expense of the company, appoint a person to inquire into, and report to the Central Government on, the circumstances of the case ; and may, before making the appointment, require the company to give security for the payment of the costs of the inquiry.

(5) The payment of interest shall be made only for such period as may be determined by the Central Government ; and that period shall in no case extend beyond the close of the half-year next after the half-year during which the work or building has been actually completed or the plant provided.

(6) The rate of interest shall, in no case, exceed four per cent per annum or such other rate as the Central Government may, by notification in the Official Gazette, direct.

(7) The payment of the interest shall not operate as a reduction of the amount paid-up on the shares in respect of which it is paid.

(8) Nothing in this section shall affect any company to which the Indian Railway Companies Act, 1895 (10 of 1895), or the Indian Tramways Act, 1902 (4 of 1902) applies.

Accounts

209. BOOKS OF ACCOUNT TO BE KEPT BY COMPANY

(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 ;

(c) the assets and liabilities of the company ; and

(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 transactions effected at the branch office are kept at that office and proper summarised returns, made up to dates at intervals of not more than three months, are sent by the branch office to the company at its registered office or the other place referred to in sub-section (1).

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.]

(4) The books of account and other books and papers shall be open to inspection by any director during business hours.

(4A) The books of account of every company relating to a period of not less than eight years immediately preceding the current year 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 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 imprisonment for a term which may extend to six months, or with fine which may extend to ²[ten] 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 this section, it shall be a defence to prove 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 :

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 : -

³[(a) where the company has a managing director or manager, such managing director or manager and all officers and other employees of company ; and]

(b) &(c) ⁴[***]

³[(d) where the company has neither a managing director nor manager, every director of the company.]

(e) ⁵[***]

(7) If any person, not being a person referred to in sub-section (6), having been charged by the ⁶[***] managing director, manager or Board of directors, as the case may be, with the duty of seeing that the requirements of this section are complied with, makes a 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 ¹[ten] thousand rupees, or with both.

1. Substituted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

2. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

4. Clauses (b) and (c) omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

5. Clause (e) omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

6. Words "managing agent secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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

¹[(ii) by such officer of the Government as may be authorised by the Central Government in this behalf,

(iii) by such officers of the Securities and Exchange Board of India as may be authorised by it :

Provided that such inspection may be made without giving any previous notice to the company or any officer thereof :

Provided further that the inspection by the Securities and Exchange Board of India shall be made in respect of matters covered under sections referred to in section 55A.]

(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, 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 ; and

(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. ²[or the Securities and Exchange Board of India in respect of inspection made by its officers].

(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 ³[fifty] 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.

1. Substituted for the following clause (i) and the proviso by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

"(i) 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. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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 at its annual general meeting instead of a profit and loss account, and all references to "profit and loss account", "profit" and "loss" in this section and elsewhere in this Act, shall be construed, in relation to such a company, as references respectively to the "income and expenditure account", "the excess of income over expenditure", and "the excess of expenditure over income".

(3) The profit and loss account shall relate -

(a) in the case of the first annual general meeting of the company, to the period beginning with the incorporation of the company and ending with a day which shall not precede the day of the meeting by more than nine months ; and

(b) in the case of any subsequent annual general meeting of the company, to the period beginning with the day immediately after the period for which the account was last submitted and ending with a day which shall not precede the day of the meeting by more than six months, or in cases where an extension of time has been granted for holding the meeting under the second proviso to sub-section (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 ¹[ten] 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 ¹[ten] thousand rupees, or with both :

Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

1. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

¹[210A. CONSTITUTION OF NATIONAL ADVISORY COMMITTEE ON ACCOUNTING STANDARDS

(1) The Central Government may, by notification in the Official Gazette, constitute an Advisory Committee to be called the National Advisory Committee on Accounting Standards (hereafter in this section referred to as the "Advisory Committee") to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under this Act.

(2) The Advisory Committee shall consist of the following members, namely:-

(a) a Chairperson who shall be a person of eminence and well versed in accountancy, finance, business administration, business law, economics or similar discipline ;

(b) one member each nominated by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949), the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959 (23 of 1959), and the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 (56 of 1980);

(c) one representative of the Central Government to be nominated by it ;

(d) one representative of the Reserve Bank of India to be nominated by it ;

(e) one representative of the Comptroller and Auditor-General of India to be nominated by him ;

(f) a person who holds or has held the office of professor in accountancy, finance or business management in any university or deemed university ;

(g) the Chairman of the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) or his nominee ;

(h) two members to represent the Chambers of Commerce and Industry to be nominated by the Central Government ; and

(i) one representative of the Securities and Exchange Board of India to be nominated by it.

(3) The Advisory Committee shall give its recommendations to the Central Government on such matters of accounting policies and standards and auditing as may be referred to it for advice from time to time.

(4) The members of the Advisory Committee shall hold office for such terms as may be determined by the Central Government at the time of their appointment and any vacancy in the membership in the Committee shall be filled by the Central Government in the same manner as the member whose vacancy occurred was filled.

(5) The non-official members of the Advisory Committee shall be entitled to such fees, travelling, conveyance and other allowances as are admissible to the officers of the Central Government of the highest rank.]

1. Inserted by the Companies (Amendment) Act, 1999 w.r.e.f 31-10-1998.

211. FORM AND CONTENTS OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT

(1) Every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit 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 sub-section shall apply to any insurance or a 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 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 public interest.

Any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

¹[(3A) Every profit and loss account and balance sheet of the company shall comply with the accounting standards.

(3B) Where the profit and loss account and the balance sheet of the company do not comply with the accounting standards, such companies shall disclose in its profit and loss account and balance sheet, the following, namely:-

(a) the deviation from the accounting standards ;

(b) the reasons for such deviation ; and

(c) the financial effect, if any, arising due to such deviation.

(3C) For the purposes of this section, the expression "accounting standards" means the standards of accounting recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act,

1949 (38 of 1949), as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards established under sub-section (1) of section 210A :

Provided that the standards of accounting specified by the Institute of Chartered Accountants of India shall be deemed to be the Accounting Standards until the accounting standards are prescribed by the Central Government under this sub-section.]

(4) The Central Government may, on the application, or with the consent of the Board of directors of the company, by order, modify in relation to that company any of the requirements of this Act as to the matters to be stated in the company's balance sheet or profit and loss account for the purpose of adapting them to the circumstances of the company.

(5) The balance sheet and the profit and loss account of a company shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose -

(i) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938 (4 of 1938) ;

(ii) in the case of a banking company, any matters which are not required to be disclosed by the Banking Companies Act, 1949 (10 of 1949) ;

(iii) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by 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 sub-section (4).

(6) For the purposes of this section, except where the context otherwise requires, any reference to a balance sheet or profit and loss account shall include any notes thereon or documents annexed thereto, giving information required by this Act, and allowed by this Act to be given in the form of such notes or documents.

(7) If any such person as is referred to in sub-section (6) of section 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 extend to six months, or with fine which may extend to ²[ten] 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 and the other requirements 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) ³[****] 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 of six months or with fine which may extend to ²[ten] thousand rupees, or with both:

Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

1. Inserted by the Companies (Amendment) Act, 1999 w.r.e.f 31-10-1998.

2. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Words "managing agent, secretaries and treasurers," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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) ;

(f) the statement referred to in sub-section (5), if any ; and

(g) the report referred to in sub-section (6) ; if any.

(2) (a) The balance sheet referred to in clause (a) of sub-section (1) shall be made out in accordance with the requirements of this Act, -

(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 ;

(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 sub-section (1), shall be made out, in accordance with the requirements of this Act, for the financial year of the subsidiary referred to in clause (a).

(c) 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

(ii) for the previous financial years of the subsidiary since it became the holding company's subsidiary ;

so far as those profits are dealt with, or provision is made for those losses, in the company's accounts.

(4) Clauses (b) and (c) of sub-section (3) shall apply only to profits and losses of the subsidiary which may properly be treated in the holding company's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the holding company or any other of its subsidiaries shall not (for that or any other purpose) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the company or any of its subsidiaries, except that they may in a proper case be so treated where -

(a) the company is itself the subsidiary of another body corporate ; 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 ;

(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 ⁴[ten] 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 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 imprisonment for a term which may extend to six months, or with fine which may extend to ⁴[ten] thousand rupees, or with both :

Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

1. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
2. Words "managing agent, secretaries and treasurers," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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

(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.

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 sub-section (2) of section 29 of the Banking Companies Act, 1949 (10 of 1949) ;

(ii) in the case of any other company, by its ¹[***] manager or secretary if any, and by not less than two directors of the company one of whom shall be a managing director where there is one.

(2) In the case of a company not being a banking company, when only one of its directors is for the time being in India, the balance sheet and the profit and loss account shall be signed by such director ; but in such a case there shall be attached to the balance sheet and the profit and loss account a statement signed by him explaining the reason for non-compliance with the provisions of sub-section (1).

(3) The balance sheet and the profit and loss account shall be approved by the Board of directors before they are signed on behalf of the Board in accordance with the provisions of this section and before they are submitted to the auditors for their report thereon.

1. Words "managing agent, secretaries and treasurers", omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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 (including the auditors' separate, special or supplementary report, if any) shall be attached thereto.

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 in such balance sheet ;

(c) the amount, if any, which it recommends should be paid by way of dividend ;

(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 ;

¹[(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.

(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 ²[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 ³[such sum per month as may be prescribed] ; or]

⁴[(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.

⁵[(2AA) The Board's report shall also include a Directors' Responsibility Statement, indicating therein, -

(i) that in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures ;

(ii) that the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit or loss of the company for that period ;

(iii) that the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities ;

(iv) that the directors had prepared the annual accounts on a going concern basis."]

⁶[(2B) The Board's report shall also specify the reasons for the failure, if any, to complete the buy-back within the time specified in sub-section (4) of section 77A.].

(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 sub-sections (1) to (3), or being the chairman, signs the Board's report otherwise than in conformity with the provisions of sub-section (4), he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ⁷[twenty] thousand rupees, or with both :

Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully :

Provided further that in any proceedings against a person in respect of an offence under sub-section (1), it shall be a defence to prove that 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 ²[twenty] thousand rupees, or with both :

Provided that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

1. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 1-4-1989.

2. Substituted for "thirty-six thousand rupees" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

3. Substituted for "three thousand rupees per month" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

4. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

5. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

6. Inserted by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998.

7. Substituted for "two" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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 ¹[five thousand] rupees.

1. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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, ¹[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]:

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 ; ²[***]

(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 ; ³[***]

⁴[(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.

¹[(2) Any member or holder of debentures of a company and any person from whom the company has accepted a sum of money by way of deposit shall, on demand, be entitled to be furnished free of cost, with a copy of the last balance sheet of the company and of every document required by law to be annexed or attached thereto, including the profit and loss account and the auditors' report.]

(3) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ⁴[five thousand] rupees.

(4) If, when any person makes a demand for a copy of any document with which he is entitled to be furnished by virtue of sub-section (2), default is made in complying with the demand within seven days after the making thereof, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ⁵[five thousand] rupees, unless it is proved that that person had already made a demand for and been furnished with a copy of the document.

The ⁶[Central Government] may also, by order, direct that the copy demanded shall forthwith be furnished to the person concerned.

(5) Sub-sections (1) to (4) shall not apply in relation to a balance sheet of a private company laid before it before the commencement of this Act ; and in such a case the right of any person to have sent to him or to be furnished with a copy of the balance sheet, and the liability of the company in respect of a failure to satisfy that right, shall be the same as they would have been if this Act had not been passed.

1. Substituted by the Companies (Amendment) Act, 1988 w.e.f. 17-4-1989.

2. The word "or" omitted by the Companies (Amendment) Act, 1988 w.e.f. 17-4-1989.

3. The word "and" omitted by the Companies (Amendment) Act, 1988 w.e.f. 17-4-1989.

4. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 17-4-1989.

5. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

6. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

220. THREE COPIES OF BALANCE SHEET, ETC., TO BE FILED WITH REGISTRAR

(1) After the balance sheet and the profit and loss account have been laid before a company at an annual general meeting as aforesaid, there shall be filed with the Registrar within thirty days from the date on which the balance sheet and the profit and loss account were so laid, or where the annual general meeting of a company for any year has not been held, there shall be filed with the Registrar within thirty days from the latest day on or before which that meeting should have been held in accordance with the provisions of this Act, -

(a) ^{1a}[a copy] of the balance sheet and the profit and loss account, signed by the managing director, ^{1a}[***] manager or secretary of the company, or if there be none of these, by a director of the company, together with ^{1a}[a copy] of all documents which are required by this Act to be annexed or attached to such balance sheet or profit and loss account : *Provided* that in the case of a private company, [copy] of the balance sheet and [copy] of the profit and loss account shall be filed with the Registrar separately :

(b) [Omitted by the Companies (Amendment) Act, 1960.]

Provided further that, -

(i) in the case of a private company which is not a subsidiary of a public company, or

(ii) in the case of a private company of which the entire paid-up share capital is held by one or more bodies corporate incorporated outside India, or

(iii) in the case of a company which becomes a public company by virtue of section 43A, if the Central Government directs that it is not in the public interest that any person other than a member of the company shall be entitled to inspect, or obtain copies of, the profit and loss account of the company,

no person other than a member of the company concerned shall be entitled to inspect, or obtain copies of, the profit and loss account of that company under section 610.

(2) If the annual general meeting of a company before which a balance sheet is laid as aforesaid does not adopt the balance sheet, ^{2a}[or is adjourned without adopting the balance sheet], or, if the annual general meeting of a company for any year has not been held, a statement of that fact and of the reasons therefor shall be annexed to the balance sheet ^{2a}[***] required to be filed with the Registrar.

(3) If default is made in complying with the requirements of sub-sections (1) and (2), the company, and every officer of the company who is in default, shall be liable to the like punishment as is provided by section 162 for a default in complying with the provisions of section 159, 160 or 161.

1. Words "managing agent, secretaries and treasurers," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

221. DUTY OF OFFICER TO MAKE DISCLOSURE OF PAYMENTS, ETC

(1) Where any particulars or information is required to be given in the balance sheet or profit and loss account of a company or in any document required to be annexed or attached thereto, it shall be the duty of the concerned officer of the company to furnish without delay to the company, and also to the company's auditor whenever he so requires, those particulars or that information in as full a manner as possible.

(2) ¹[***]

(3) The particulars or information referred to in sub-section (1) may relate to payments made to any director ²[***] or other person by any other company, body corporate, firm or person.

(4) If any person knowingly makes default in performing the duty cast on him by the foregoing provisions of this section, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to ³[fifty] thousand rupees, or with both.

1. Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Words "managing agent, secretaries and treasurers," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted for 'five' by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

222. CONSTRUCTION OF REFERENCES TO DOCUMENTS ANNEXED TO ACCOUNTS

References in this Act to documents annexed or required to be annexed to a company's accounts or any of them shall not include the Board's report, the auditors' report or any document attached or required to be attached to those accounts :

Provided that any information which is required by this Act to be given in the accounts, and is allowed by it to be given in a statement annexed to the accounts, may be given in the Board's report instead of in the accounts ; and if any such information is so given, the report shall be annexed to the accounts and this Act shall apply in relation thereto accordingly, except that the auditors shall report thereon only insofar as it gives the said information.

223. CERTAIN COMPANIES TO PUBLISH STATEMENT IN THE FORM IN TABLE F IN SCHEDULE I

(1) Every company which is a limited banking company, an insurance company, or a deposit, provident, or benefit society, shall, before it commences business and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the Form in Table F in Schedule I, or in a Form as near thereto as circumstances admit.

(2) A copy of the statement, together with a copy of the last audited balance sheet laid before the members of the company, shall be displayed and until the display of the next following statement, shall be kept displayed, in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member, and every creditor, of the company shall be entitled, on payment of a sum of eight annas, to be furnished with a copy of the statement, within seven days of such payment.

(4) If default is made in complying with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ¹[five hundred] rupees for every day during which the default continues.

(5) This section shall not apply to a life assurance company or provident insurance society to which the provisions of the Insurance Act, 1938 (4 of 1938), as to the annual statements to be made by such company or society, apply, with or without modifications, if the company or society complies with those provisions.

1. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

Audit

224. APPOINTMENT AND REMUNERATION OF AUDITORS

(1) Every company shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting and shall, within seven days of the appointment, give intimation thereof to every auditor so appointed :

Provided that before any appointment or re-appointment of auditor or auditors is made by any company at any annual general meeting, a written certificate shall be obtained by the company from the auditor or auditors proposed to be so appointed to the effect that the appointment or re-appointment, if made, will be in accordance with the limits specified in sub-section (1B).

(1A) Every auditor appointed under sub-section (1) shall within thirty days of the receipt from the company of the intimation of his appointment, inform the Registrar in writing that he has accepted, or refused to accept, the appointment.

(1B) On and from the financial year next following the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), no company or its Board of directors shall appoint or re-appoint any person ¹[who is in full-time employment elsewhere] or firm as its auditor if such person or firm is, at the date of such appointment or re-appointment, holding appointment as auditor of the specified number of companies or more than the specified number of companies :

²**Provided** that in the case of a firm of auditors, "specified number of companies" shall be construed as the number of companies specified for every partner of the firm who is not in full-time employment elsewhere :]

Provided further that where any partner of the firm is also a partner of any other firm or firms of auditors, the number of companies which may be taken into account, by all the firms together, in relation to such partner shall not exceed the specified number in the aggregate.

Provided also that where any partner of a firm of auditors is also holding office, in his individual capacity, as the auditor of one or more companies, the number of companies which may be taken into account in his case shall not exceed the specified number, in the aggregate.

³**Provided also** that the provisions of this sub-section shall not apply, on and after the commencement of the Companies (Amendment) Act, 2000, to a private company.]

(1C) For the purposes of enabling a company to comply with the provisions of sub-section (1B), a person or firm holding, immediately before the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), appointment as the auditor of a number of companies exceeding the specified number, shall, within sixty days from such commencement, intimate his or its unwillingness to be re-appointed as the auditor from the financial year next following such commencement, to the company or companies of which he or it is not willing to be re-appointed as the auditor ; and shall simultaneously intimate to the Registrar the names of the companies of which he or it is willing to be re-appointed as the auditor and forward a copy of the intimation to each of the companies referred to therein.

Explanation I. - For the purposes of sub-sections (1B) and (1C), "specified number" means, -

(a) in the case of a person or firm holding appointment as auditor of a number of companies each of which has a paid-up share capital of less than rupees twenty-five lakh, twenty such companies ;

(b) in any other case, twenty companies, out of which not more than ten shall be companies each of which has a paid-up share capital of rupees twenty-five lakh or more.

Explanation II. - In computing the specified number, the number of companies in respect of which or any part of which any person or firm has been appointed as an auditor, whether singly or in combination with any other person or firm, shall be taken into account.

(2) Subject to the provisions of sub-section (1B) and section 224A, at any annual general meeting, a retiring auditor, by whatsoever authority appointed, shall be re-appointed, unless -

(a) he is not qualified for re-appointment ;

(b) he has given the company notice in writing of his unwillingness to be re-appointed ;

(c) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be re-appointed ; or

(d) where notice has been given of an intended resolution to appoint some person or persons in the place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons, as the case may be, the resolution cannot be proceeded with.

(3) Where at an annual general meeting no auditors are appointed or re-appointed, the Central Government may appoint a person to fill the vacancy.

(4) The company shall, within seven days of the Central Government's power under sub-section (3), becoming exercisable, give notice of that fact to that Government ; and, if a company fails to give such notice, the company, and every officer of the company who is in default, shall be punishable, with fine which may extend to ⁴[five thousand] rupees.

(5) The first auditor or auditors of a company shall be appointed by the Board of directors within one month of the date of registration of the company ; and the auditor or auditors so appointed shall hold office until the conclusion of the first annual general meeting :

Provided that -

(a) the company may, at a general meeting, remove any such auditor or all or any of such auditors and appoint in his or their places any other person or persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting ; and

(b) if the Board fails to exercise its powers under this sub-section, the company in general meeting may appoint the first auditor or auditors.

(6) (a) The Board may fill any casual vacancy in the office of an auditor ; but while any such vacancy continues, the remaining auditor or auditors, if any, may act :

Provided that where such vacancy is caused by the resignation of an auditor, the vacancy shall only be filled by the company in general meeting.

(b) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

(7) Except as provided in the proviso to sub-section (5), any auditor appointed under this section may be removed from office before the expiry of his term only by the company in general meeting, after obtaining the previous approval of the Central Government in that behalf.

(8) The remuneration of the auditors of a company -

(a) in the case of an auditor appointed by the Board or the Central Government, may be fixed by the Board or the Central Government, as the case may be ;

³[(aa) in the case of an auditor appointed under section 619 by the Comptroller and Auditor-General of India, shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine ;] and

(b) subject to clause (a), shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

For the purposes of this sub-section, any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

1. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

2. Substituted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

3. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

4. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

224A. AUDITOR NOT TO BE APPOINTED EXCEPT WITH THE APPROVAL OF THE COMPANY BY SPECIAL RESOLUTION IN CERTAIN CASES

(1) In the case of a company in which not less than twenty-five per cent of the subscribed share capital is held, whether singly or in any combination, by -

(a) a public financial institution or a Government company or Central Government or any State Government, or

(b) any financial or other institution established by any Pro- vincial or State Act in which a State Government holds not less than fifty-one per cent of the subscribed share capital, or

(c) a nationalised bank or an insurance company carrying on general insurance business,

the appointment or re-appointment at each annual general meeting of an auditor or auditors shall be made by a special resolution.

(2) Where any company referred to in sub-section (1) omits or fails to pass at its annual general meeting any special resolution appointing an auditor or auditors, it shall be deemed that no auditor or auditors had been appointed by the company at its annual general meeting, and thereupon the provisions of sub-section (3) of section 224 shall become applicable in relation to such company.

Explanation. - For the purposes of this section, -

(a) "general insurance business" has the meaning assigned to it in the General Insurance (Emergency Provisions) Act, 1971 (17 of 1971);

(b) "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) ¹[or in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980)].

1. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

1a. Substituted for the words "three copies" and "copies" by SO 70(E) dated 3rd February 2009 w.e.f. 03-02-2009.

2a. 2 The words "and to the copies thereof" omitted by SO 70(E) dated 3rd February 2009 w.e.f. 03-02-2009.

PART VI- MANAGEMENT AND ADMINISTRATION

225. PROVISIONS AS TO RESOLUTIONS FOR APPOINTING OR REMOVING AUDITORS.

(1) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed.

(2) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.

(3) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so, -

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made ; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representations by the company ;

and if a copy of the representations is not sent as aforesaid because they were received too late or because of the company's default the auditor may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting :

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the ¹[Central Government] is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter ; and the ¹[Central Government] may order the company's costs on such an application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(4) Sub-sections (2) and (3) shall apply to a resolution to remove the first auditors or any of them under sub-section (5) of section 224 or to the removal of any auditor or auditors under sub-section (7) of that section, as they apply in relation to a resolution that a retiring auditor shall not be re-appointed.

1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

226. QUALIFICATIONS AND DISQUALIFICATIONS OF AUDITORS.

(1) A person shall not be qualified for appointment as auditor of a company unless he is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949) :

Provided that a firm whereof all the partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company, in which case any partner so practising may act in the name of the firm.

(2) (a) Notwithstanding anything contained in sub-section (1), but subject to the provisions of any rules made under clause (b), the holder of a certificate granted under a law in force in the whole or any portion of a Part B State immediately before the commencement of the Part B States (Laws) Act, 1951 (3 of 1951) or of the Jammu and Kashmir (Extension of Laws) Act, 1956 (62 of 1956), as the case may be, entitling him to act as an auditor of companies in the territories which, immediately before the 1st November, 1956, were comprised in that State or any portion thereof, shall be entitled to be appointed to act as an auditor of companies registered anywhere in India.

(b) The Central Government may, by notification in the Official Gazette, make rules providing for the grant, renewal, suspension or cancellation of auditors' certificates to persons in the territories which, immediately before the 1st November, 1956, were comprised in Part B States for the purpose of clause (a), and prescribing conditions and restrictions for such grant, renewal, suspension or cancellation.

(3) None of the following persons shall be qualified for appointment as auditor of a company -

(a) a body corporate ;

(b) an officer or employee of the company ;

(c) a person who is a partner, or who is in the employment, of an officer or employee of the company ;

(d) a person who is indebted to the company for an amount exceeding one thousand rupees, or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the company for an amount exceeding one thousand rupees ;

¹[(e) a person holding any security of that company after a period of one year from the date of commencement of the Companies (Amendment) Act, 2000.

Explanation. - For the purposes of this section, "security" means an instrument which carries voting rights.]

Explanation. - References in this sub-section to an officer or employee shall be construed as not including references to an auditor.

(4) A person shall also not be qualified for appointment as auditor of a company if he is, by virtue of sub-section (3), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(5) If an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) and (4), he shall be deemed to have vacated his office as such.

1. Clause (e) substituted for the following clauses (e), (f) and the proviso thereto by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000 :

"(e) a person who is a director or member of a private company, or a partner of a firm, which is the managing agent or the secretaries and treasurers of the company ;

(f) a person who is a director, or the holder of shares exceeding five per cent in nominal value of the subscribed capital, of any body corporate which is the managing agent or the secretaries and treasurers, of the company ;

Provided that any shares held by such person as nominee or trustee for any third person and in which the holder has no beneficial interest shall be excluded in computing the percentage of shares held by him for the purpose of this clause."

227. POWERS AND DUTIES OF AUDITORS.

(1) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, whether kept at the head office of the company or elsewhere, and shall be entitled to require from the officers of the company such information and explanations as the auditor may think necessary for the performance of his duties as auditor.

(1A) Without prejudice to the provisions of sub-section (1), the auditor shall inquire -

(a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the company or its members ;

(b) whether transactions of the company which are represented merely by book entries are not prejudicial to the interests of the company ;

(c) where the company is not an investment company within the meaning of section 372 or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company ;

(d) whether loans and advances made by the company have been shown as deposits ;

(e) whether personal expenses have been charged to revenue account ;

(f) where it is stated in the books and papers of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.

(2) The auditor shall make a report to the members of the company on the accounts examined by him, and on every balance sheet and profit and loss account and on every other document declared by this Act to be part of or annexed to the balance sheet or profit and loss account, which are laid before the company in general meeting during his tenure of office, and the report shall state whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view -

(i) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year ; and

(ii) in the case of the profit and loss account, of the profit or loss for its financial year.

(3) The auditors' report shall also state -

(a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit ;

(b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books, and proper returns adequate for the purposes of his audit have been received from branches not visited by him ;

(bb) whether the report on the accounts of any branch office audited under section 228 by a person other than the company's auditor has been forwarded to him as required by clause (c) of sub-section (3) of that section and how he has dealt with the same in preparing the auditor's report ;

(c) whether the company's balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns.

¹[(d) whether, in his opinion, the profit and loss account and balance sheet comply with the accounting standards referred to in sub-section (3C) of section 211.]

²[(e) in thick type or in italics the observations or comments of the auditors which have any adverse effect on the functioning of the company;

(f) whether any director is disqualified from being appointed as director under clause (g) of sub-section (1) of section 274.]

(4) Where any of the matters referred to in clauses (i) and (ii) of sub-section (2) or in clauses (a), (b), (bb), ³[(c) and (d)] of sub-section (3) is answered in the negative or with a qualification, the auditor's report shall state the reason for the answer.

(4A) The Central Government may, by general or special order, direct that, in the case of such class or description of companies as may be specified in the order, the auditor's report shall also include a statement on such matters as may be specified therein :

Provided that before making any such order the Central Government may consult the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949), in regard to the class or description of companies and other ancillary matters proposed to be specified therein unless the Government decides that such consultation is not necessary or expedient in the circumstances of the case.

(5) The accounts of a company shall not be deemed as not having been, and the auditor's report shall not state that those accounts have not been, properly drawn up on the ground merely that the company has not disclosed certain matters if -

(a) those matters are such as the company is not required to disclose by virtue of any provisions contained in this or any other Act, and

(b) those provisions are specified in the balance sheet and profit and loss account of the company.

1. Inserted by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998.

2. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted for "and (c)" by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998.

228. AUDIT OF ACCOUNTS OF BRANCH OFFICE OF COMPANY.

(1) Where a company has a branch office, the accounts of that office shall be audited by the company's auditor appointed under section 224 or by a person qualified for appointment as auditor of the company under section 226, or where the branch office is situate in a country outside India, either by the company's auditor or a person qualified as aforesaid or by an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.

(2) Where the accounts of any branch office are audited by a person other than the company's auditor, the company's auditor -

(a) shall be entitled to visit the branch office, if he deems it necessary to do so for the performance of his duties as auditor, and

(b) shall have a right of access at all times to the books and accounts and vouchers of the company maintained at the branch office :

Provided that in the case of a banking company having a branch office outside India, it shall be sufficient if the auditor is allowed access to such copies of, and extracts from, the books and accounts of the branch as have been transmitted to the principal office of the company in India.

(3) (a) Where a company in general meeting decides to have the accounts of a branch office audited otherwise than by the company's auditor, the company in that meeting shall for the audit of those accounts appoint a person qualified for appointment as auditor of the company under section 226, or where the branch office is situate in a country outside India, a person who is either qualified as aforesaid or an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country, or authorise the Board of directors to appoint such a person in consultation with the company's auditor;

(b) the person so appointed (hereafter in this section referred to as the branch auditor) shall have the same powers and duties in respect of audit of the accounts of the branch office as the company's auditor has in respect of the same;

(c) the branch auditor shall prepare a report on the accounts of the branch office examined by him and forward the same to the company's auditor who shall in preparing the auditor's report, deal with the same in such manner as he considers necessary ;

(d) the branch auditor shall receive such remuneration and shall hold his appointment subject to such terms and conditions as may be fixed either by the company in general meeting or by the Board of directors if so authorised by the company in general meeting.

(4) Notwithstanding anything contained in the foregoing provisions of this section, the Central Government may make rules providing for the exemption of any branch office from the provisions of this section to the extent specified in the rules and in making such rules the Central Government shall have regard to all or any of the following matters, namely :

(a) the arrangement made by the company for the audit of accounts of the branch office by a person otherwise qualified for appointment as branch auditor even though such person may be an officer or employee of the company ;

(b) the nature and quantum of activity carried on at the branch office during a period of three years immediately preceding the date on which the branch office is exempted from the provisions of this section ;

(c) the availability at a reasonable cost of a branch auditor for the audit of accounts of the branch office ;

(d) any other matter which in the opinion of the Central Government justifies the grant of exemption to the branch office from the provisions of this section.

229. SIGNATURE OF AUDIT REPORT, ETC.

Only the person appointed as auditor of the company, or where a firm is so appointed in pursuance of the proviso to sub-section (1) of section 226, only a partner in the firm practising in India, may sign the auditor's report, or sign or authenticate any other document of the company required by law to be signed or authenticated by the auditor.

230. READING AND INSPECTION OF AUDITOR'S REPORT.

The auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

231. RIGHT OF AUDITOR TO ATTEND GENERAL MEETING.

All notices of, and other communications relating to, any general meeting of a company which any member of the company is entitled to have sent to him shall also be forwarded to the auditor of the company ; and the auditor shall be entitled to attend any general meeting and to be heard at any general meeting which he attends on any part of the business which concerns him as auditor.

232. PENALTY FOR NON-COMPLIANCE WITH SECTIONS 225 TO 231.

If default is made by a company in complying with any of the provisions contained in sections 225 to 231, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ¹[five thousand] rupees.

1. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

233. PENALTY FOR NON-COMPLIANCE BY AUDITOR WITH SECTIONS 227 AND 229.

If any auditor's report is made, or any document of the company is signed or authenticated, otherwise than in conformity with the requirements of sections 227 and 229, the auditor concerned, and the person, if any, other than

the auditor who signs the report or signs or authenticates the document, shall, if the default is wilful, be punishable with fine which may extend to ¹[ten] thousand rupees.

1. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

233A. POWER OF CENTRAL GOVERNMENT TO DIRECT SPECIAL AUDIT IN CERTAIN CASES.

(1) Where the Central Government is of the opinion -

(a) that the affairs of any company are not being managed in accordance with sound business principles or prudent commercial practices ; or

(b) that any company is being managed in a manner likely to cause serious injury or damage to the interests of the trade, industry or business to which it pertains ; or

(c) that the financial position of any company is such as to endanger its solvency ;

the Central Government may at any time by order direct that a special audit of the company's accounts for such period or periods as may be specified in the order, shall be conducted and may by the same or a different order appoint either a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) (whether or not such chartered accountant is a chartered accountant in practice within the meaning of that Act) or the company's auditor himself to conduct such special audit.

(2) The chartered accountant or the company's auditor appointed under sub-section (1) to conduct a special audit as aforesaid is hereafter in this section referred to as the special auditor.

(3) The special auditor shall have the same powers and duties in relation to the special audit as an auditor of a company has under section 227 :

Provided that the special auditor shall, instead of making his report to the members of the company, make the same to the Central Government.

(4) The report of the special auditor shall, as far as may be, include all the matters required to be included in an auditor's report under section 227 and, if the Central Government so directs, shall also include a statement on any other matter which may be referred to him by that Government.

(5) The Central Government may by order direct any person specified in the order to furnish to the special auditor within such time as may be specified therein such information or additional information as may be required by the special auditor in connection with the special audit ; and on failure to comply with such order such person shall be punishable with fine which may extend to ⁴[five thousand] rupees.

(6) On receipt of the report of the special auditor, the Central Government may take such action on the report as it considers necessary in accordance with the provisions of this Act or any other law for the time being in force :

Provided that if the Central Government does not take any action on the report within four months from the date of its receipt, that Government shall send to the company either a copy of, or relevant extract from, the report with its comments thereon and require the company either to circulate that copy or those extracts to the members or to have such copy or extracts read before the company at its next general meeting.

(7) The expenses of, and incidental to, any special audit under this section (including the remuneration of the special auditor) shall be determined by the Central Government (which determination shall be final) and paid by the company and in default of such payment shall be recoverable from the company as an arrear of land revenue.

1. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

233B. AUDIT OF COST ACCOUNTS IN CERTAIN CASES.

(1) Where in the opinion of the Central Government it is necessary so to do in relation to any company required under clause (d) of sub-section (1) of section 209 to include in its books of account the particulars referred to therein, the Central Government may, by order, direct that an audit of cost accounts of the company shall be conducted in such manner as may be specified in the order by an auditor who shall be a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959) :

Provided that if the Central Government is of opinion that sufficient number of cost accountants within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959), are not available for conducting the audit of the cost accounts of companies generally, that Government may, by notification in the Official Gazette, direct that, for such period as may be specified in the said notification, such chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949), as possesses the prescribed qualifications, may also conduct the audit of the cost accounts of companies, and thereupon a chartered accountant possessing the prescribed qualifications may be appointed to audit the cost accounts of the company.

(2) The auditor under this section shall be appointed by the Board of directors of the company in accordance with the provisions of sub- section (1B) of section 224 and with the previous approval of the Central Government :

¹[**Provided** that before the appointment of any auditor is made by the Board, a written certificate shall be obtained by the Board from the auditor proposed to be so appointed to the effect that the appointment, if made, will be in accordance with the provisions of sub-section (1B) of section 224.]

(3) An audit conducted by an auditor under this section shall be in addition to an audit conducted by an auditor appointed under section 224.

(4) An auditor shall have the same powers and duties in relation to an audit conducted by him under this section as an auditor of a company has under sub-section (1) of section 227 and such auditor shall make his report to the Central Government in such form and within such time as may be prescribed and shall also at the same time forward a copy of the report to the company.

- (5) (a) A person referred to in sub-section (3) or sub-section (4) of section 226 shall not be appointed or re-appointed for conducting the audit of the cost accounts of a company.
- (b) A person appointed, under section 224, as an auditor of a company, shall not be appointed or re-appointed for conducting the audit of the cost accounts of that company.
- (c) If a person, appointed for conducting the audit of cost accounts of a company, becomes subject, after his appointment, to any of the disqualifications specified in clause (a) or clause (b) of this sub-section, he shall, on and from the date on which he becomes so subject, cease to conduct the audit of the cost accounts of the company.
- (6) Upon receipt of an order under sub-section (1), it shall be the duty of the company to give all facilities and assistance to the person appointed for conducting the audit of the cost accounts of the company.
- (7) The company shall, within thirty days from the date of receipt of a copy of the report referred to in sub-section (4), furnish the Central Government with full information and explanations on every reservation or qualification contained in such report.
- (8) If, after considering the report referred to in sub-section (4) and the information and explanations furnished by the company under sub-section (7), the Central Government is of opinion that any further information or explanation is necessary, that Government may call for such further information and explanation and thereupon the company shall furnish the same within such time as may be specified by that Government.
- (9) On receipt of the report referred to in sub-section (4) and the information and explanations furnished by the company under sub-section (7) and sub-section (8), the Central Government may take such action on the report, in accordance with the provisions of this Act or any other law for the time being in force, as it may consider necessary.
- (10) The Central Government may direct the company whose cost accounts have been audited under this section to circulate to its members, along with the notice of the annual general meeting to be held for the first time after the submission of such report, the whole or such portion of the said report as it may specify in this behalf.
- (11) If default is made in complying with the provisions of this section, the company shall be liable to be punished with fine which may extend to five thousand rupees, and every officer of the company who is in default, shall be liable to be punished with imprisonment for a term which may extend to three years, or with fine which may extend to ²[fifty] thousand rupees, or with both.

1. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

2. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

Power of Registrar to call for information, etc.

234. POWER OF REGISTRAR TO CALL FOR INFORMATION OR EXPLANATION.

- (1) Where, on perusing any document which a company is required to submit to him under this Act, the Registrar is of opinion that any information or explanation is necessary with respect to any matter to which such document purports to relate, he may, by a written order, call on the company submitting the document to furnish in writing such information or explanation, within such time as he may specify in the order.
- (2) On receipt by the company of an order under sub-section (1), it shall be the duty of the company, and of all persons who are officers of the company, to furnish such information or explanation to the best of their power.
- (3) On receipt of a copy of an order under sub-section (1), it shall also be the duty of every person who has been an officer of the company to furnish such information or explanation to the best of his power.
- (3A) If no information or explanation is furnished within the time specified or if the information or explanation furnished is, in the opinion of the Registrar, inadequate, the Registrar may by another written order call on the company to produce before him for his inspection such books and papers as he considers necessary within such time as he may specify in the order ; and it shall be the duty of the company, and of all persons who are officers of the company, to produce such books and papers.
- (4) If the company or any such person as is referred to in sub-section (2) or (3), refuses or neglects to furnish any such information or explanation or if the company or any such person as is referred to in sub-section (3A) refuses or neglects to produce any such books and papers, -
- (a) the company and each such person shall be punishable with fine which may extend to ⁴[five thousand] rupees and in the case of a continuing offence, with an additional fine which may extend to ²[five hundred] rupees for every day after the first during which the offence continues ; and
- (b) the Court trying the offence may, on the application of the Registrar and after notice to the company, make an order on the company for production before the Registrar of such books and papers as in the opinion of the Court, may reasonably be required by the Registrar for the purpose referred to in sub-section (1).
- (5) On receipt of any writing containing the information or explanation referred to in sub-section (1), or of any book or paper produced whether in pursuance of an order of the Registrar under sub-section (3A) or of an order of the Court under sub-section (4), the Registrar may annex that writing, book or paper, or where that book or paper is required by the company, any copy or extract thereof, to the document referred to in sub-section (1) ; and any writing or any book or paper or copy or extract thereof so annexed shall be subject to the like provisions as to inspection, the taking of extracts and the furnishing of copies, as that document is subject.
- (6) If such information or explanation is not furnished within the specified time or if after perusal of such information or explanation or of the books and papers produced whether in pursuance of an order of the Registrar under sub-section (3A) or of an order of the Court under sub-section (4), the Registrar is of opinion that the document referred to in sub-section (1), together with such information or explanation or such books and papers discloses an unsatisfactory state

of affairs or does not disclose a full and fair statement of any matter to which the document purports to relate, the Registrar shall report in writing the circumstances of the case to the Central Government.

(7) If it is represented to the Registrar on materials placed before him by any contributory or creditor or any other person interested that the business of a company is being carried on in fraud of its creditors or of persons dealing with the company or otherwise for a fraudulent or unlawful purpose, he may, after giving the company an opportunity of being heard, by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order, within such time as he may specify therein ; and the provisions of sub-sections (2), (3), (3A), (4) and (6) of this section shall apply to such order.

If upon inquiry the Registrar is satisfied that any representation on which he took action under this sub-section was frivolous or vexatious, he shall disclose the identity of his informant to the company.

(8) The provisions of this section shall apply *mutatis mutandis* to documents which a liquidator, or a foreign company within the meaning of section 591, is required to file under this Act.

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1. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 2. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

234A. SEIZURE OF DOCUMENTS BY REGISTRAR.

(1) Where, upon information in his possession or otherwise, the Registrar has reasonable ground to believe that books and papers of, or relating to, any company or other body corporate or ¹[***] managing director or manager of such company or other body corporate, ²[***] may be destroyed, mutilated, altered, falsified or secreted, the Registrar may make an application to the Magistrate of the First Class or, as the case may be, the Presidency Magistrate having jurisdiction for an order for the seizure of such books and papers.

(2) After considering the application and hearing the Registrar, if necessary, the Magistrate may, by order, authorise the Registrar -

(a) to enter, with such assistance as may be required, the place or places where such books and papers are kept ;

(b) to search that place or those places in the manner specified in the order ; and

(c) to seize such books and papers as he considers necessary.

(3) The Registrar shall return the books and papers seized under this section as soon as may be, and in any case not later than the thirtieth day, after such seizure, to the company or the other body corporate or, as the case may be, to ³[***] the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate of such return :

Provided that the Registrar may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such other manner as he considers necessary.

(4) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches or seizures made under that Code.

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1. Words "any managing agent or secretaries and treasurers or" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 2. Words "or any associate of such managing agent or secretaries and treasurers" omitted, by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 3. Words "the managing agent or the secretaries and treasurers or the associate of such managing agent or secretaries and treasurers or" omitted, by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

Investigation

¹[235. INVESTIGATION OF THE AFFAIRS OF A COMPANY.

(1) The Central Government may, where a report has been made by the Registrar under sub-section (6) of section 234, or under sub-section (7) of that section, read with sub-section (6) thereof, appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct.

(2) Where -

(a) in the case of a company having a share capital, an application has been received from not less than two hundred members or from members holding not less than one-tenth of the total voting power therein, and

(b) in case of a company having no share capital, an application has been received from not less than one-fifth of the persons on the company's register of members,

the ²[Tribunal] may, after giving the parties an opportunity of being heard, by order, declare that the affairs of the company ought to be investigated by an inspector or inspectors, and on such a declaration being made, the Central Government shall appoint one or more competent persons as inspectors to investigate the affairs of the company and to report thereon in such manner as the Central Government may direct.]

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1. Substituted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.
 2. Substituted for 'Company Law Board' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

236. APPLICATION BY MEMBERS TO BE SUPPORTED BY EVIDENCE AND POWER TO CALL FOR SECURITY.

An application by members of a company under ¹[sub-section (2)] of section 235 shall be supported by such evidence as the ²[Tribunal] may require for the purpose of showing that the applicants have good reason for requiring the investigation ; and the Central Government may, before appointing an inspector, require the applicants to give security, for such amount not exceeding one thousand rupees as it may think fit, for payment of the costs of the investigation.

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1. Substituted for "clause (a) or (b)" by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.
 2. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

237. INVESTIGATION OF COMPANY'S AFFAIRS IN OTHER CASES.

Without prejudice to its powers under section 235, the Central Government -

(a) shall appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct, if -

(i) the company, by special resolution ; or

(ii) the Court, by order,

declares that the affairs of the company ought to be investigated by an inspector appointed by the Central Government ; and

(b) may do so if, ¹[in its opinion or in the opinion of the Tribunal], there are circumstances suggesting -

(i) that the business of the company is being conducted with intent to defraud its creditors, members or any other persons, or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any of its members, or that the company was formed for any fraudulent or unlawful purpose;

(ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members ; or

(iii) that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, ²[***] or the manager, of the company.

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1. Substituted for "in the opinion of the Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).
 2. Words "the managing agent, the secretaries and treasurers" omitted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

238. FIRM, BODY CORPORATE OR ASSOCIATION NOT TO BE APPOINTED AS INSPECTOR.

No firm, body corporate or other association shall be appointed as an inspector under section 235 or 237.

239. POWER OF INSPECTORS TO CARRY INVESTIGATION INTO AFFAIRS OF RELATED COMPANIES *{OR OF MANAGING AGENT OR ASSOCIATE}, ETC.

(1) If an inspector appointed under section 235 or 237 to investigate the affairs of the company thinks it necessary for the purposes of his investigation to investigate also the affairs of -

(a) any other body corporate which is, or has at any relevant time been, the company's subsidiary or holding company, or a sub-sidiary of its holding company, or a holding company of its subsidiary ; or

¹[(b) any other body corporate which is, or has at any relevant time been, managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company ; or]

(c) any other body corporate, which is, or has at any relevant time been, managed by the company or whose Board of directors comprises of nominees of the company or is accustomed to act in accordance with the directions or instructions of -

(i) the company, or

(ii) any of the directors of the company, or

(iii) any company, any of whose directorships is held by the employees or nominees of those having the control and management of the first-mentioned company ; or

¹[(d) any person who is or has at any relevant time been the company's managing director or manager,].

¹[the inspector shall, subject to the provisions of sub-section (2), have power so to do and shall report on the affairs of the other body corporate or of the managing director or manager, so far as he thinks that the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.]

(2) In the case of any body corporate or person referred to in clause (b)(i), (b)(iii), (c) or (d) of sub-section (1), the inspector shall not exercise his power of investigating into, and reporting on, its or his affairs without first having obtained the prior approval of the Central Government thereto:

Provided that before according approval under this sub-section, the Central Government shall give the body corporate or person a reasonable opportunity to show cause why such approval should not be accorded.

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1. Substituted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000

240. PRODUCTION OF DOCUMENTS AND EVIDENCE.

¹[(1) It shall be the duty of all officers and other employees and agents of the company, and where the affairs of any other body corporate are investigated by virtue of section 239, of all officers and other employees and agents of such body corporate -

(a) to preserve and to produce to an inspector or any person authorised by him in this behalf with the previous approval of the Central Government, all books and papers of, or relating to, the company or, as the case may be, of or relating to the other body corporate, which are in their custody or power ; and

(b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.]

(1A) The inspector may, with the previous approval of the Central Government, require any body corporate other than a body corporate referred to in sub-section (1) to furnish such information to, or produce such books and papers before, him or any person authorised by him in this behalf with the previous approval of that Government as he may consider necessary if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

(1B) The inspector may keep in his custody any books and papers produced under sub-section (1) or sub-section (1A) for six months and thereafter shall return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers are produced :

Provided that the inspector may call for the books and papers if they are needed again :

Provided further that if certified copies of the books and papers produced under sub-section (1A) are furnished to the inspector, he shall return those books and papers to the body corporate concerned.

(2) An inspector may examine on oath -

(a) any of the persons referred to in sub-section (1) ; and

(b) with the previous approval of the Central Government, any other person, in relation to the affairs of the company, ²[or other body corporate], as the case may be ; and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(3) If any person fails without reasonable cause or refuses -

(a) to produce to an inspector or any person authorised by him in this behalf with the previous approval of the Central Government any book or paper which it is his duty under sub-section (1) or sub-section (1A) to produce ; or

(b) to furnish any information which it is his duty under sub-section (1A) to furnish ; or

(c) to appear before the inspector personally when required to do so under sub-section (2) or to answer any question which is put to him by the inspector in pursuance of that sub-section ; or

(d) to sign the notes of any examination referred to in sub-section (5),

he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ³[twenty] thousand rupees, or with both, and also with a further fine which may extend to ⁴[two thousand] rupees for every day after the first during which the failure or refusal continues.

(4) [Omitted by the Companies (Amendment) Act, 1965, with effect from 15-10-1965.]

(5) Notes of any examination under sub-section (2) shall be taken down in writing and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him.

(6) In this section -

(a) the expression "officers", in relation to any company or body corporate, includes any trustee for the debenture holders of such company or body corporate ;

(b) the expression "agent", in relation to any company, body corporate or person, means, any one acting or purporting to act for or on behalf of such company body corporate or person, and includes the bankers and legal advisers of, and persons employed as auditors by, such company, body corporate or person ; and

(c) any reference to officers and other employees, agents or partners shall be construed as a reference to past as well as present officers and other employees, agents or partners, as the case may be.

1. Substituted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "other body corporate, managing agent, secretaries and treasurers or associates" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted for "two" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

4. Substituted for "two hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

240A. SEIZURE OF DOCUMENTS BY INSPECTOR.

(1) Where in the course of investigation under section 235 or section 237 or section 239 or section 247, the inspector has reasonable ground to believe that the books and papers of, or relating to, any company or other body corporate or ¹[***] managing director or manager of such company or other body corporate ²[***] may be destroyed, mutilated, altered, falsified or secreted, the inspector may make an application to the Magistrate of the First Class or, as the case may be, the Presidency Magistrate, having jurisdiction for an order for the seizure of such books and papers.

(2) After considering the application and hearing the inspector, if necessary, the Magistrate may by order authorise the inspector -

(a) to enter, with such assistance, as may be required, the place or places where such books and papers are kept ;

(b) to search that place or those places in the manner specified in the order ; and

(c) to seize books and papers he considers necessary for the purposes of his investigation.

(3) The inspector shall keep in his custody the books and papers seized under this section for such period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the

company, or the other body corporate, or, as the case may be, to ³[***] the managing director or the manager or any other person from whose custody or power they were seized and inform the Magistrate of such return :

Provided that the inspector may, before returning such books and papers as aforesaid, place identification marks on them or any part thereof.

(4) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches or seizures made under that Code.

1. Words "any managing agent or secretaries and treasurers or" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Words "or any associate of such managing agent or secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Words "the managing agent, or the secretaries and treasurers or the associate of such managing agent or secretaries and treasurers or" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

241. INSPECTOR'S REPORT.

(1) The inspectors may, and if so directed by the Central Government shall, make interim reports to that Government, and on the conclusion of the investigation, shall make a final report to the Central Government.

Any such report shall be written or printed, as the Central Government may direct.

(2) The Central Government -

(a) shall forward a copy of any report (other than an interim report) made by the inspectors to the company at its registered office, and also to any body corporate ¹[***] dealt with in the report by virtue of section 239 ;

(b) may, if it thinks fit, furnish a copy thereof, on request and on payment of the prescribed fee, to any person -

²[(i) who is a member of the company or other body corporate dealt with in the report by virtue of section 239 ;].

(ii) ³[***].

(iii) whose interests as a creditor of the company, other body corporate ¹[***] aforesaid appear to the Central Government to be affected ;

(c) shall, where the inspectors are appointed ⁴[in pursuance of the provisions of sub-section (2)] of section 235, furnish, at the request of the applicants for the investigation, a copy of the report to them ;

(d) shall, where the inspectors are appointed under section 237 in pursuance of an order of the Court, furnish a copy of the report to the Court ; ⁵[***].

⁶[(dd) shall, where the inspectors are appointed in pursuance of the provisions of sub-section (2) of section 235, furnish a copy of the report to the ⁷[Tribunal] ; and].

(e) may also cause the report to be published.

1. Words ", managing agent, secretaries and treasurers or associate" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

4. Substituted for "under clause (a) or (b)" by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

5. The word ``and" omitted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991

6. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

7. Substituted for 'Company Law Board' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

242. PROSECUTION.

(1) If, from any report made under section 241, it appears to the Central Government that any person has, in relation to the company or in relation to any other body corporate ¹[***] whose affairs have been investigated by virtue of section 239, been guilty of any offence for which he is criminally liable, the Central Government may, after taking such legal advice as it thinks fit, prosecute such person for the offence ; and it shall be the duty of all officers and other employees and ²[agents of the company, or body corporate] as the case may be (other than the accused in the proceedings), to give the Central Government all assistance in connection with the prosecution which they are reasonably able to give.

(2) Sub-section (6) of section 240 shall apply for the purposes of this section, as it applies for the purposes of that section.

1. Words "managing agent, secretaries and treasurers, or associate of a managing agent or secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "agents of the company, body corporate, managing agent, secretaries and treasurers, or associate" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

243. APPLICATION FOR WINDING UP OF COMPANY OR AN ORDER UNDER SECTION 397 OR 398.

If any such company or other body corporate ¹[***] is liable to be wound up under this Act and it appears to the Central Government from any such report as aforesaid that it is expedient so to do by reason of any such circumstances as are referred to in sub-clause (i) or (ii) of clause (b) of section 237, the Central Government may, unless ²[the company,

or body corporate] is already being wound up by the ³[Tribunal], cause to be presented to the ³[Tribunal] by any person authorised by the Central Government in this behalf -

(a) a petition for the winding up of ²[the company, or body corporate] on the ground that it is just and equitable that it should be wound up ;

(b) an application for an order under section 397 or 398, or

(c) both a petition and an application as aforesaid.

1. Words ", or any such managing agent, secretaries and treasurers, or associate being a body corporate," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "the company, body corporate, managing agent, secretaries and treasurers or associate" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted for 'Court' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

244. PROCEEDINGS FOR RECOVERY OF DAMAGES OR PROPERTY.

(1) If from any such report as aforesaid, it appears to the Central Government that proceedings ought, in the public interest, to be brought by the company or any body corporate whose affairs have been investigated in pursuance of clause (a), (b) or (c) of section 239, -

(a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate ; or

(b) for the recovery of any property of such company, or body corporate, which has been misapplied or wrongfully retained ;

the Central Government may itself bring proceedings for that purpose in the name of such company or body.

(2) The Central Government shall indemnify such company or body corporate against any costs or expenses incurred by it in, or in connection with any proceedings brought by virtue of sub-section (1).

245. EXPENSES OF INVESTIGATION.

(1) The expenses of and incidental to an investigation by an inspector appointed by the Central Government under section 235 or 237 shall be defrayed in the first instance by the Central Government ; but the following persons shall, to the extent mentioned below, be liable to reimburse the Central Government in respect of such expenses :

(a) any person who is convicted on a prosecution instituted in pursuance of section 242, or who is ordered to pay damages or restore any property in proceedings brought by virtue of section 244, may, in the same proceedings, be ordered to pay the said expenses to such extent as may be specified by the Court convicting such person, or ordering him to pay such damages or restore such property, as the case may be ;

(b) any company or body corporate in whose name proceedings are brought as aforesaid shall be liable, to the extent of the amount or value of any sums or property recovered by it as a result of the proceedings ; and

(c) unless, as a result of the investigation, a prosecution is instituted in pursuance of section 242, -

(i) any company, body corporate ¹[***], managing director or manager dealt with by the report of the inspector shall be liable to reimburse the Central Government in respect of the whole of the expenses, unless and except insofar as, the Central Government otherwise directs ; and

(ii) the applicants for the investigation, where the inspector was appointed ²[in pursuance of the provisions of sub-section (2)] of section 235, shall be liable to such extent, if any, as the Central Government may direct.

(2) Any amount for which a company or body corporate is liable by virtue of clause (b) of sub-section (1) shall be a first charge on the sums or property mentioned in that clause.

(3) The amount of expenses in respect of which any company, body corporate ³[***], managing director or manager is liable under sub-clause (i) of clause (c) of sub-section (1) to reimburse the Central Government shall be recoverable from that company, body corporate ³[***], managing director or manager, as an arrear of land revenue.

(4) For the purposes of this section, any costs or expenses incurred by the Central Government in or in connection with proceedings brought by virtue of section 244 (including expenses incurred by virtue of sub-section (2) thereof) shall be treated as expenses of the investigation giving rise to the proceedings.

(5) (a) Any liability to reimburse the Central Government imposed by clauses (a) and (b) of sub-section (1) shall, subject to satisfaction of the right of the Central Government to reimbursement, be a liability also to indemnify all persons against liability under clause (c) of that sub-section.

(b) Any such liability imposed by the said clause (a) shall, subject as aforesaid, be a liability also to indemnify all persons against liability under the said clause (b).

(c) Any person liable under the said clause (a) or (b) or sub-clause (i) or (ii) of the said clause (c) shall be entitled to contribution from any other person liable under the same clause or sub-clause, as the case may be, according to the amount of their respective liabilities thereunder.

(6) Insofar as the expenses to be defrayed by the Central Government under this section are not recovered thereunder, they shall be paid out of moneys provided by Parliament.

1. Words "managing agent, secretaries and treasurers, associate," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "under clause (a) or (b)" by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

3. Words "managing agent, secretaries and treasurers, associate," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

246. INSPECTORS' REPORT TO BE EVIDENCE.

A copy of any report of any inspector or inspectors appointed under section 235 or 237 authenticated in such manner, if any, as may be prescribed, shall be admissible in any legal proceeding as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report.

247. INVESTIGATION OF OWNERSHIP OF COMPANY.

(1) Where it appears to the Central Government that there is good reason so to do, it may appoint one or more inspectors to investigate and report on the membership of any company and other matters relating to the company, for the purpose of determining the true persons -

(a) who are or have been financially interested in the success or failure, whether real or apparent, of the company ; or
(b) who are or have been able to control or materially to influence the policy of the company.

¹[(1A) Without prejudice to its powers under this section, the Central Government shall appoint one or more inspectors under sub-section (1), if the ²[Tribunal], in the course of any proceedings before it, declares by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for the purpose of determining the true persons -

(a) who are or have been financially interested in the success or failure, whether real or apparent, of the company ; or
(b) who are or have been able to control or materially to influence the policy of the company.]

(2) When appointing an inspector under sub-section (1), the Central Government may define the scope of his investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular, may limit the investigation to matters connected with particular shares or debentures.

(3) Subject to the terms of an inspector's appointment, his powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant to the purposes of his investigation.

(4) [Omitted by the Companies (Amendment) Act, 2000, with effect from 13-12-2000.]

(5) For the purposes of any investigation under this section, sections 239, 240 and 241 shall apply with the necessary modifications of references to the affairs of the company or to those of any other body corporate ³[***] :

Provided that the said sections shall apply in relation to all persons (including persons concerned only on behalf of others) who are or have been, or whom the inspector has reasonable cause to believe to be or to have been, -

(i) financially interested in the success or failure, or the apparent success or failure, of the company, or of any other body corporate ⁴[***] whose membership or constitution is investigated with that of the company ; or

(ii) able to control or materially to influence the policy of such company, body corporate ²[***] ;

as they apply in relation to officers and other employees and agents of the company, of the other body corporate ⁵[***], as the case may be :

Provided further that the Central Government shall not be bound to furnish the company or any other person with a copy of any report by an inspector appointed under this section or with a complete copy thereof, if it is of opinion that there is good reason for not divulging the contents of the report or of parts thereof ; but in such a case, the Central Government shall cause to be kept by the Registrar a copy of any such report or, as the case may be, of the parts thereof, as respects which it is not of that opinion.

(6) The expenses of any investigation under this section shall be defrayed by the Central Government out of moneys provided by Parliament, unless the Central Government directs that the expenses or any part thereof should be paid by the persons on whose application the investigation was ordered.

1. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

2. Substituted for 'Company Law Board' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

3. Words "or of any managing agent, secretaries and treasurers, or associate" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

4. Words ", managing agent, secretaries and treasurers, or associate" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

5. Words ", or of the managing agent, secretaries and treasurers or associate" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

248. INFORMATION REGARDING PERSONS HAVING AN INTEREST IN COMPANY OR IN BODY CORPORATE OR FIRM ACTING AS MANAGING AGENT THEREOF

[Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.]

249. INVESTIGATION OF ASSOCIATESHIP WITH MANAGING AGENTS, ETC.

[Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.]

250. IMPOSITION OF RESTRICTIONS UPON SHARES AND DEBENTURES AND PROHIBITION OF TRANSFER OF SHARES OR DEBENTURES IN CERTAIN CASES.

(1) Where it appears to the ¹[²Tribunal], whether on a reference made to it by the Central Government in connection with any investigation under section 247, ³[***] or on a complaint made by any person in this behalf], that there is good

reason to find out therelevant facts about any shares (whether issued or to be issued) and the ²[Tribunal] is of the opinion that such facts cannot be found out unless the restrictions specified in sub-section (2) are imposed, the ²[Tribunal] may, by order, direct that the shares shall be subject to the restrictions imposed by sub-section (2) for such period not exceeding three years as may be specified in the order.

(2) So long as any shares are directed to be subject to the restrictions imposed by this sub-section -

(a) any transfer of those shares shall be void ;

(b) where those shares are to be issued, they shall not be issued ; and any issue thereof or any transfer of the right to be issued therewith, shall be void ;

(c) no voting right shall be exercisable in respect of those shares ;

(d) no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof ; and any issue of such shares or any transfer of the right to be issued therewith, shall be void ; and

(e) except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of dividend, capital or otherwise.

⁴[(3) Where a transfer of shares in a company has taken place and as a result thereof a change in the composition of the Board of directors of the company is likely to take place and the ²[Tribunal] is of the opinion that any such change would be prejudicial to the public interest, it may, by order, direct that -

(a) the voting rights in respect of those shares shall not be exercisable for such period not exceeding three years as may be specified in the order ;

(b) no resolution passed or action taken to effect a change in the composition of the Board of directors before the date of the order shall have effect unless confirmed by the ²[Tribunal].]

⁴[(4) Where the ²[Tribunal] has reasonable ground to believe that a transfer of shares in a company is likely to take place whereby a change in the composition of the Board of directors of the company is likely to take place and the ²[Tribunal] is of the opinion that any such change would be prejudicial to the public interest, the ²[Tribunal] may, by order, direct that any transfer of shares in the company during such period not exceeding three years as may be specified in the order, shall be void.]

(5) The ²[Tribunal] may, by order at any time, vary or rescind any order made by it under sub-section (1) or sub-section (3) or sub-section (4).

(6) & (7) [Omitted by the Companies (Amendment) Act, 1988, w.e.f. 31-5-1991.]

(8) Any order made by the ²[Tribunal] under sub-section (5) shall be served on the company within fourteen days of the making of the order.

(9) Any person who -

(a) exercises or purports to exercise any right to dispose of any shares or of any right to be issued with any such shares when to his knowledge he is not entitled to do so by reason of any of the said restrictions applicable to the case under sub-section (2) ; or

(b) votes in respect of any shares whether as holder or proxy, or appoints a proxy to vote in respect thereof, when to his knowledge he is not entitled to do so by reason of any of the said restrictions applicable to the case under sub-section (2) or by reason of any order made under sub-section (3) ; or

(c) transfers any shares in contravention of any order made under sub-section (4) ; or

(d) being the holder of any shares in respect of which an order under sub-section (2) or sub-section (3) has been made, fails to give notice of the fact of their being subject to any such order to any person whom he does not know to be aware of that fact but whom he knows to be otherwise entitled to vote in respect of those shares, whether as holder or as a proxy,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ⁵[fifty] thousand rupees, or with both.

(10) Where shares in any company are issued in contravention of such of the restrictions as may be applicable to the case under sub-section (2), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ⁵[fifty] thousand rupees.

(11) A prosecution shall not be instituted under this section except by, or with the consent of, the Central Government.

(12) This section shall apply in relation to debentures as it applies in relation to shares.

1. Substituted for "Central Government, whether in connection with any investigation under section 247, 248 or 249 or otherwise" by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

2. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

3. Figures "248 or 249" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

4. Substituted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

5. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

250A. VOLUNTARY WINDING UP OF COMPANY, ETC., NOT TO STOP INVESTIGATION PROCEEDINGS.

An investigation may be initiated under section 235, 237, 239, ¹[or 247,] notwithstanding that -

(a) an application has been made for an order under section 397 or section 398 ; or

(b) the company has passed a special resolution for voluntary winding up, and no investigation so initiated shall be stopped or suspended by reason only of the fact that an application referred to in clause (a) has been made or a special resolution referred to in clause (b) has been passed.

1. Substituted for "247, 248 or 249" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

251. SAVING FOR LEGAL ADVISERS AND BANKERS.

Nothing in sections 234 to ¹[247 and] 250 shall require the disclosure to the ²³[Tribunal] or to the Central Government or to the Registrar or to an inspector appointed by Central Government] -

(a) by a legal adviser, of any privileged communication made to him in that capacity, except as respects the name and address of his client ; or

(b) by the bankers of any company, body corporate ⁴[***] or other person, referred to in the sections aforesaid, as such bankers, of any information as to the affairs of any of their customers other than such company, body corporate, ⁴[***] or person.

1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "Registrar or to the Central Government or to an inspector appointed by that Government" by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

3. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

4. Words "managing agents, secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

CHAPTER II DIRECTORS

Constitution of Board of directors

252. MINIMUM NUMBER OF DIRECTORS.

(1) Every public company (other than a public company which has become such by virtue of section 43A) shall have at least three directors :

¹[**Provided** that a public company having, -

(a) a paid-up capital of five crore rupees or more ;

(b) one thousand or more small shareholders,

may have a director elected by such small shareholders in the manner as may be prescribed.

Explanation. - For the purposes of this sub-section "small shareholders" means a shareholder holding shares of nominal value of twenty thousand rupees or less in a public company to which this section applies.]

(2) Every other company shall have at least two directors.

(3) The directors of a company collectively are referred to in this Act as the "Board of directors" or "Board".

1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

253. ONLY INDIVIDUALS TO BE DIRECTORS.

No body corporate, association or firm shall be appointed director of a company, and only an individual shall be so appointed.

¹[Provided that no company shall appoint or re-appoint any individual as director of the company unless he has been allotted a Director Identification Number under section 266B.]

254. SUBSCRIBERS OF MEMORANDUM DEEMED TO BE DIRECTORS.

In default of and subject to any regulations in the articles of a company, subscribers of the memorandum who are individuals, shall be deemed to be the directors of the company, until the directors are duly appointed in accordance with section 255.

255. APPOINTMENT OF DIRECTORS AND PROPORTION OF THOSE WHO ARE TO RETIRE BY ROTATION.

(1) Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company, or of a private company which is a subsidiary of a public company, shall -

(a) be persons whose period of office is liable to determination by retirement of directors by rotation ; and

(b) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.

(2) The remaining directors in the case of any such company, and the directors generally in the case of a private company which is not a subsidiary of a public company, shall, in default of and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.

256. ASCERTAINMENT OF DIRECTORS RETIRING BY ROTATION AND FILLING OF VACANCIES.

(1) At the first annual general meeting of a public company, or a private company which is a subsidiary of a public company, held next after the date of the general meeting at which the first directors are appointed in accordance with section 255 and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is not three or a multiple of three, then, the number nearest to one-third, shall retire from office.

(2) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

(3) At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

(4) (a) If the place of the retiring director is not so filled up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place.

(b) If at the adjourned meeting also, the place of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless -

(i) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost ;

(ii) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed ;

(iii) he is not qualified or is disqualified for appointment ;

(iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment in virtue of any provisions of this Act ; or

(v) the proviso to sub-section (2) of section 263 is applicable to the case.

(5) [Omitted by the Companies (Amendment) Act, 1965 with effect from 15-10-1965.]

Explanation. - In this section and in section 257, the expression "retiring director" means a director retiring by rotation.

257. RIGHT OF PERSONS OTHER THAN RETIRING DIRECTORS TO STAND FOR DIRECTORSHIP.

(1) A person who is not a retiring director shall, subject to the provisions of this Act, be eligible for appointment to the office of director at any general meeting, if he or some member intending to propose him has, not less than fourteen days before the meeting, left at the office of the company a notice in writing under his hand signifying his candidature for the office of director or the intention of such member to propose him as a candidate for that office, as the case may be ^{1a} along with a deposit of five hundred rupees which shall be refunded to such person or, as the case may be, to such member, if the person succeeds in getting elected as a director.]

(1A) The company shall inform its members of the candidature of a person for the office of director or the intention of a member to propose such person as a candidate for that office, by serving individual notices on the members not less than seven days before the meeting :

Provided that it shall not be necessary for the company to serve individual notices upon the members as aforesaid if the company advertises such candidature or intention not less than seven days before the meeting in at least two newspapers circulating in the place where the registered office of the company is located, of which one is published in the English language and the other in the regional language of that place.

(2) Sub-section (1) shall not apply to a private company, unless it is a subsidiary of a public company.

1. Inserted by the Companies (Amendment) Act, 2006, w.e.f. 1-11-2006.

1a. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-.1988.

258. RIGHT OF COMPANY TO INCREASE OR REDUCE THE NUMBER OF DIRECTORS.

Subject to the provisions of sections 252, 255 and 259, a company in general meeting may, by ordinary resolution, increase or reduce the number of its directors within the limits fixed in that behalf by its articles.

259. INCREASE IN NUMBER OF DIRECTORS TO REQUIRE GOVERNMENT SANCTION.

In the case of a public company or a private company which is a subsidiary of a public company, any increase in the number of its directors, except -

(a) in the case of a company which was in existence on the 21st day of July, 1951, an increase which was within the permissible maximum under its articles as in force on that date, and

(b) in the case of a company which came or may come into existence after that date, an increase which is within the permissible maximum under its articles as first registered, shall not have any effect unless approved by the Central Government ; and shall become void if, and insofar as, it is disapproved by that Government :

Provided that where such permissible maximum is twelve or less than twelve, no approval of the Central Government shall be required if the increase in the number of its directors does not make the total number of its directors more than twelve.

260. ADDITIONAL DIRECTORS.

Nothing in section 255, 258 or 259 shall affect any power conferred on the Board of directors by the articles to appoint additional directors :

Provided that such additional directors shall hold office only up to the date of the next annual general meeting of the company :

Provided further that the number of the directors and additional directors together shall not exceed the maximum strength fixed for the Board by the articles.

261. CERTAIN PERSONS NOT TO BE APPOINTED DIRECTORS, EXCEPT BY SPECIAL RESOLUTION.

[Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.]

262. FILLING OF CASUAL VACANCIES AMONG DIRECTORS.

(1) In the case of a public company or a private company which is a subsidiary of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office will expire in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of directors at a meeting of the Board.

(2) Any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated as aforesaid.

263. APPOINTMENT OF DIRECTORS TO BE VOTED ON INDIVIDUALLY.

(1) At a general meeting of a public company or of a private company which is a subsidiary of a public company, a motion shall not be made for the appointment of two or more persons as directors of the company by a single resolution, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution moved in contravention of sub-section (1) shall be void, whether or not objection was taken at the time to its being so moved:

Provided that where a resolution so moved is passed, no provision for the automatic re-appointment of the director retiring by rotation in default of another appointment shall apply.

(3) For the purposes of this section, a motion for approving a person's appointment, or for nominating a person for appointment, shall be treated as a motion for his appointment.

263A. SECTIONS 177, 255, 256 AND 263 NOT TO APPLY IN RELATION TO COMPANIES NOT CARRYING BUSINESS FOR PROFIT, ETC.

Nothing contained in sections 177, 255, 256 and 263 shall affect any provision in the articles of a company for the election by ballot of all its directors at each annual general meeting if such company does not carry on business for profit or prohibits the payment of a dividend to its members.

264. CONSENT OF CANDIDATE FOR DIRECTORSHIP TO BE FILED WITH THE COMPANY AND CONSENT TO ACT AS DIRECTOR TO BE FILED WITH THE REGISTRAR.

(1) Every person other than a director retiring by rotation or otherwise or a person (who has left at the office of the company a notice under section 257 signifying his candidature for the office of a director) proposed as a candidate for the office of a director shall sign, and file with the company, his consent in writing to act as a director, if appointed.

(2) A person other than -

(a) a director re-appointed after retirement by rotation or immediately on the expiry of his term of office, or

(b) an additional or alternate director, or a person filling a casual vacancy in the office of a director under section 262, appointed as a director or re-appointed as an additional or alternate director, immediately on the expiry of his term of office, or

(c) a person named as a director of the company under its articles as first registered, shall not act as a director of the company unless he has within thirty days of his appointment sign and filed with the Registrar his consent in writing to act as such director.

(3) This section shall not apply to a private company unless it is a subsidiary of a public company.

265. OPTION TO COMPANY TO ADOPT PROPORTIONAL REPRESENTATION FOR THE APPOINTMENT OF DIRECTORS.

Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a public company or of a private company which is a subsidiary of a public company, according to the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise, the appointments being made once in every three years and interim casual vacancies being filled in accordance with the provisions, *mutatis mutandis*, of section 262.

266. RESTRICTIONS ON APPOINTMENT OR ADVERTISEMENT OF DIRECTOR.

(1) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company, or as proposed director of an intended company in a prospectus issued in relation to that intended company, or in a statement *in lieu* of prospectus filed with the Registrar by or on behalf of a company, unless, before the registration of the articles, the publication of the prospectus, or the filing of the statement *in lieu* of prospectus, as the case may be, he has, by himself or by his agent authorised in writing, -

(a) signed and filed with the Registrar a consent in writing to act as such director ; and

(b) either -

(i) signed the memorandum for shares not being less in number or value than that of his qualification shares, if any ; or

(ii) taken his qualification shares, if any, from the company and paid or agreed to pay for them ; or

(iii) signed and filed with the Registrar an undertaking in writing to take from the company his qualification shares, if any, and pay for them ; or

(iv) made and filed with the Registrar an affidavit to the effect that shares, not being less in number or value than that of his qualification shares, if any, are registered in his name.

(2) Where a person has signed and filed as aforesaid an undertaking to take and pay for his qualification shares, he shall, as regards those shares, be in the same position as if he had signed the memorandum for shares of that number or value.

(3) References in this section to the share qualification of a director or proposed director shall be construed as including only a share qualification required within a period determined by reference to the time of appointment, and references therein to qualification shares shall be construed accordingly.

(4) [Omitted by the Companies (Amendment) Act, 1965, with effect from 15-10-1965.]

(5) This section shall not apply to -

(a) a company not having a share capital ;

(b) a private company ;

(c) a company which was a private company before becoming a public company ; or

(d) a prospectus issued by or on behalf of a company after the expiry of one year from the date on which the company was entitled to commence business.

¹[Director Identification Number

266A. Application for allotment of Director Identification Number.

Every-

(a) individual, intending to be appointed as director of a company; or

(b) director of a company appointed before the commencement of the Companies (Amendment) Act, 2006, shall make an application for allotment of Director Identification Number to the Central Government in such form, and manner (including electronic form) alongwith such fee, as may be prescribed:

Provided that every director, appointed before the commencement of the Companies (Amendment) Act, 2006, shall make, within sixty days of the commencement of the said Act, such application to the Central Government:

Provided further that every applicant, who has made an application under this section for allotment of Director Identification Number, may be appointed as a director in a company, or, hold office as director in a company till such time such applicant has been allotted Director Identification Number.

266B. Allotment of Director Identification Number.

The Central Government shall, within one month from the receipt of the application under section 266A, allot a Director Identification Number to an applicant, in such manner as may be prescribed.

266C. Prohibition to obtain more than one Director Identification Number.

No individual, who had already been allotted a Director Identification Number under section 266B, shall apply, obtain or possess another Director Identification Number.

266D. Obligation of director to intimate Director Identification Number to concerned company or companies.

Every existing director shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director.

266E. Obligation of company to inform Director Identification Number to Registrar.

(1) Every company shall, within one week of the receipt of intimation under section 266D, furnish the Director Identification Number of all its directors to the Registrar or any other officer or authority as may be specified by the Central Government.

(2) Every intimation under sub-section (1) shall be furnished in such form and manner as may be prescribed.

266F. Obligation to indicate Director Identification Number.

Every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall quote the Director Identification Number in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of the director.

266G. Penalty for contravention of provisions of section 266A or section 266C or section 266D or section 266E.

If any individual or director, referred to in section 266A or section 266C or section 266D or a company referred to in section 266E, contravenes any of the provisions of those sections, every such individual or director or the company, as the case may be, who or which, is in default, shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.

Explanation. For the purposes of sections 266A, 266B, 266C, 266D, 266E and 266F, the Director Identification Number means an identification number which the Central Government may allot to any individual, intending to be appointed as director or to any existing directors of a company, for the purpose of his identification as such.]

Managing directors, etc.

267. CERTAIN PERSONS NOT TO BE APPOINTED MANAGING DIRECTORS.

No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of, any person as its managing or whole-time director who -

- (a) is an undischarged insolvent, or has at any time been adjudged an insolvent ;
- (b) suspends, or has at any time suspended, payment to his creditors, or makes, or has at any time made, a composition with them ; or
- (c) is, or has at any time been, convicted by a Court of an offence involving moral turpitude.

268. AMENDMENT OF PROVISION RELATING TO MANAGING, WHOLE-TIME OR NON-ROTATIONAL DIRECTORS TO REQUIRE GOVERNMENT APPROVAL.

In the case of a public company or a private company which is a subsidiary of a public company, an amendment of any provision relating to the appointment or re-appointment of a managing or whole-time director or of a director not liable to retire by rotation, whether that provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or by its Board of directors, shall not have any effect unless approved by the Central Government ; and the amendment shall become void if, and insofar as, it is disapproved by that Government.

[269. APPOINTMENT OF MANAGING OR WHOLE-TIME DIRECTOR OR MANAGER TO REQUIRE GOVERNMENT APPROVAL ONLY IN CERTAIN CASES.

(1) On and from the commencement of the Companies (Amendment) Act, 1988, every public company, or a private company which is a subsidiary of a public company, having a paid-up share capital of such sum as may be prescribed, shall have a managing or whole-time director or a manager.

(2) On and from the commencement of the Companies (Amendment) Act, 1988, no appointment of a person as a managing or whole-time director or a manager in a public company or a private company which is a subsidiary of a public company shall be made except with the approval of the Central Government unless such appointment is made in accordance with the conditions specified in Parts I and II of Schedule XIII (the said Parts being subject to the provisions of Part III of that Schedule) and a return in the prescribed form is filed within ninety days from the date of such appointment.

(3) Every application seeking approval to the appointment of a managing or whole-time director or a manager shall be made to the Central Government within a period of ninety days from the date of such appointment.

(4) The Central Government shall not accord its approval to an application made under sub-section (3), if it is satisfied that -

(a) the managing or whole-time director or the manager appointed is, in its opinion, not a fit and proper person to be appointed as such or such appointment is not in the public interest ; or

(b) the terms and conditions of the appointment of managing or whole- time director or the manager are not fair and reasonable.

(5) It shall be competent for the Central Government while according approval to an appointment under sub-section (3) to accord approval for a period lesser than the period for which the appointment is proposed to be made.

(6) If the appointment of a person as a managing or whole-time director or a manager is not approved by the Central Government under sub-section (4), the person so appointed shall vacate his office as such managing or whole-time director or manager on the date on which the decision of the Central Government is communicated to the company, and if he omits or fails to do so, he shall be punishable with fine which may extend to ²[five thousand] rupees for every day during which he omits or fails to vacate such office.

(7) Where the Central Government *suo motu* or on any information received by it is, *prima facie*, of the opinion that any appointment made under sub-section (2) without the approval of the Central Government has been made in contravention of the requirements of Schedule XIII, it shall be competent for the Central Government to refer the matter to the ³[Tribunal] for decision.

(8) The ³[Tribunal] shall, on receipt of a reference under sub-section (7), issue a notice to the company, the managing or whole-time director or the manager, as the case may be, and the director or other officer responsible for complying with the requirements of Schedule XIII, to show cause as to why such appointment shall not be terminated and the penalties provided under sub-section (10) shall not be imposed.

(9) The ³[Tribunal] shall, if, after giving a reasonable opportunity to the company, the managing or whole-time director or the manager, or the officer who is in default, as the case may be, comes to the conclusion that the appointment has been made in contravention of the requirements of Schedule XIII, make an order declaring that a contravention of the requirements of Schedule XIII has taken place.

(10) On the making of an order by the ³[Tribunal] under sub-section (9), -

(a) the company shall be liable to a fine which may extend to ⁴[fifty] thousand rupees ;

(b) every officer of the company who is in default shall be liable to a fine of ⁵[one lakh] rupees ; and

(c) the appointment of the managing or whole-time director or manager, as the case may be, shall be deemed to have come to an end and the person so appointed shall, in addition to being liable to pay a fine of ⁵[one lakh] rupees, refund to the company the entire amount of salaries, commissions and perquisites received or enjoyed by him between the date of his appointment and the passing of such order.

(11) If a company contravenes the provisions of sub-section (10) or any direction given by the ³[Tribunal] under that sub-section, every officer of the company who is in default and the managing or whole-time director or the manager, as the case may be, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine which may extend to ⁶[five hundred] rupees for every day of default.

(12) All acts done by a managing or whole-time director or a manager, as the case may be, purporting to act in such capacity and whose appointment has been found to be in contravention of Schedule XIII shall, if the acts so done are valid otherwise, be valid notwithstanding any order made by the ³[Tribunal] under sub-section (9).

Explanation. - In this section "appointment" includes reappointment and "whole-time director" includes a director in the whole-time employment of the company.]

1. Inserted by the Companies (Amendment) Act, 2006, w.e.f. 1-11-2006.

1a. Substituted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

2. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

4. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

5. Substituted for "ten thousand" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

6. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

Share qualifications

270. TIME WITHIN WHICH SHARE QUALIFICATION IS TO BE OBTAINED AND MAXIMUM AMOUNT THEREOF.

(1) Without prejudice to the restrictions imposed by section 266, it shall be the duty of every director who is required by the articles of the company to hold a specified share qualification and who is not already qualified in that respect, to obtain his qualification within two months after his appointment as director.

(2) Any provision in the articles of the company (whether made before or after the commencement of this Act) shall be void insofar as it requires a person to hold the qualification shares before his appointment as a director or to obtain them within a shorter time than two months after his appointment as such.

(3) The nominal value of the qualification shares shall not exceed five thousand rupees, or the nominal value of one share where it exceeds five thousand rupees.

(4) For the purpose of any provision in the articles requiring a director to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

271. FILING OF DECLARATION OF SHARE QUALIFICATION BY DIRECTOR.

[Omitted by the Companies (Amendment) Act, 1965 with effect from 15-10-1965.]

272. PENALTY.

If, after the expiry of the said period of two months, any person acts as a director of the company when he does not hold the qualification shares referred to in section 270, he shall be punishable with fine which may extend to ¹[five hundred] rupees for every day between such expiry and the last day on which he acted as a director.

1. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

273. SAVING.

Sections 270 and 272 shall not apply to a private company, unless it is a subsidiary of a public company.

Disqualifications of directors

274. DISQUALIFICATIONS OF DIRECTORS.

(1) A person shall not be capable of being appointed director of a company, if -

(a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force ;

(b) he is an undischarged insolvent ;

(c) he has applied to be adjudicated as an insolvent and his application is pending ;

(d) he has been convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months, and a period of five years has not elapsed from the date of expiry of the sentence ;

(e) he has not paid any call in respect of shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(f) an order disqualifying him for appointment as director has been passed by a Court in pursuance of section 203 and is in force, unless the leave of the Court has been obtained for his appointment in pursuance of that section ; or

¹[(g) such person is already a director of a public company which, -

(A) has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of April, 1999 ; or

(B) has failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more :

Provided that such person shall not be eligible to be appointed as a director of any other public company for a period of five years from the date on which such public company, in which he is a director, failed to file annual accounts and

annual returns under sub-clause (A) or has failed to repay its deposit or interest or redeem its debentures on due date or pay dividend referred to in clause (B).]

(2) The Central Government may, by notification in the Official Gazette, remove -

(a) the disqualification incurred by any person in virtue of clause (d) of sub-section (1), either generally or in relation to any company or companies specified in the notification ; or

(b) the disqualification incurred by any person in virtue of clause (e) of sub-section (1).

(3) A private company which is not a subsidiary of a public company may, by its articles, provide that a person shall be disqualified for appointment as a director on any grounds in addition to those specified in sub-section (1).

1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

Restrictions on number of directorships

275. NO PERSON TO BE A DIRECTOR OF MORE THAN ¹[FIFTEEN] COMPANIES.

After the commencement of this Act, no person shall, save as otherwise provided in section 276, hold office at the same time as director in more than ¹[fifteen] companies.

1. Substituted for "twenty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

276. CHOICE TO BE MADE BY DIRECTOR OF MORE THAN ¹[FIFTEEN] COMPANIES AT COMMENCEMENT OF ACT.

(1) Any person holding office as director in more than ¹[fifteen] companies immediately before the commencement of ²[the Companies (Amendment) Act, 2000] shall, within two months from such commencement, -

(a) choose not more than ¹[fifteen] of those companies, as companies in which he wishes to continue to hold the office of director ;

(b) resign his office as director in the other companies ; and

(c) intimate the choice made by him under clause (a) to each of the companies in which he was holding the office of director before such commencement, to the Registrar having jurisdiction in respect of each such company, and also to the Central Government.

(2) Any resignation made in pursuance of clause (b) of sub-section (1) shall become effective immediately on the despatch thereof to the company concerned.

(3) No such person shall act as director -

(a) in more than ¹[fifteen] companies, after the expiry of two months from the commencement of ²[the Companies (Amendment) Act, 2000] ; or

(b) of any company after despatching the resignation of his office as director thereof, in pursuance of clause (b) of sub-section (1).

1. Substituted for "twenty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "this Act" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

277. CHOICE BY PERSON BECOMING DIRECTOR OF MORE THAN ¹[FIFTEEN] COMPANIES AFTER COMMENCEMENT OF ACT.

(1) Where a person already holding the office of director in ¹[fifteen] companies is appointed, after the commencement of ²[the Companies (Amendment) Act, 2000], as a director of any other company, the appointment -

(a) shall not take effect unless such person has, within fifteen days thereof, effectively vacated his office as director in any of the companies in which he was already a director ; and

(b) shall become void immediately on the expiry of the fifteen days if he has not, before such expiry, effectively vacated his office as director in any of the other companies aforesaid.

(2) Where a person already holding the office of director in ³[fourteen] companies or less is appointed, after the commencement of ²[the Companies (Amendment) Act, 2000], as a director of other companies, making the total number of his directorships more than ¹[fifteen], he shall choose the directorships which he wishes to continue to hold or to accept, so however that the total number of the directorships, old and new, held by him shall not exceed ¹[fifteen].

None of the new appointments of director shall take effect until such choice is made ; and all the new appointments shall become void if the choice is not made within fifteen days of the day on which the last of them was made.

1. Substituted for "twenty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "this Act" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted for "nineteen" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

278. EXCLUSION OF CERTAIN DIRECTORSHIPS FOR THE PURPOSES OF SECTIONS 275, 276 AND 277.

(1) In calculating, for the purposes of sections 275, 276 and 277, the number of companies of which a person may be a director, the following companies shall be excluded, namely : -

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

(b) an unlimited company ;

(c) an association not carrying on business for profit or which prohibits the payment of a dividend ;

(d) a company in which such person is only an alternate director, that is to say, a director who is only qualified to act as such during the absence or incapacity of some other director.

(2) In making the calculation aforesaid, any company referred to in clauses (a), (b) and (c) of sub-section (1) shall be excluded for a period of three months from the date on which the company ceases to fall within the purview of those clauses.

279. PENALTY.

Any person who holds office, or acts, as a director of more than ¹[fifteen] companies in contravention of the foregoing provisions shall be punishable with fine which may extend to ²[fifty] thousand rupees in respect of each of those companies after the first ¹[fifteen].

1. Substituted for "twenty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

Retiring age of directors

280. AGE LIMIT.

[Omitted by the Companies (Amendment) Act, 1965 w.e.f. 15-10-1965.]

281. AGE LIMIT NOT TO APPLY IF COMPANY SO RESOLVES.

[Omitted by the Companies (Amendment) Act, 1965 w.e.f. 15-10-1965.]

282. DUTY OF DIRECTOR TO DISCLOSE AGE.

[Omitted by the Companies (Amendment) Act, 1965 w.e.f. 15-10-1965.]

Vacation of office by directors

283. VACATION OF OFFICE BY DIRECTORS.

(1) The office of a director shall become vacant if -

(a) he fails to obtain within the time specified in sub-section (1) of section 270, or at any time thereafter ceases to hold, the share qualification, if any, required of him by the articles of the company ;

(b) he is found to be of unsound mind by a Court of competent jurisdiction ;

(c) he applies to be adjudicated an insolvent ;

(d) he is adjudged an insolvent ;

(e) he is convicted by a Court of any offence involving moral turpitude and sentence in respect thereof to imprisonment for not less than six months ;

(f) he fails to pay any call in respect of shares of the company held by him, whether alone or jointly with others, within six months from the last date fixed for the payment of the call unless the Central Government has, by notification in the Official Gazette, removed the disqualification incurred by such failure ;

(g) he absents himself from three consecutive meetings of the Board of directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board ;

(h) he (whether by himself or by any person for his benefit or on his account), or any firm in which he is a partner or any private company of which he is a director, accepts a loan, or any guarantee or security for a loan, from the company in contravention of section 295 ;

(i) he acts in contravention of section 299 ;

(j) he becomes disqualified by an order of Court under section 203 ;

(k) he is removed in pursuance of section 284 ; or

(l) having been appointed a director by virtue of his holding any office or other employment in the company, ¹[****] he ceases to hold such office or other employment in the company ²[***].

(2) Notwithstanding anything in clauses (d), (e) and (j) of sub-section (1), the disqualification referred to in those clauses shall not take effect -

(a) for thirty days from the date of the adjudication, sentence or order ;

(b) where any appeal or petition is preferred within the thirty days aforesaid against the adjudication, sentence or conviction resulting in the sentence, or order until the expiry of seven days from the date on which such appeal or petition is disposed of ; or

(c) where within the seven days aforesaid, any further appeal or petition is preferred in respect of the adjudication, sentence, conviction, or order, and the appeal or petition, if allowed, would result in the removal of the disqualification, until such further appeal or petition is disposed of.

(2A) Subject to the provisions of sub-sections (1) and (2), if a person functions as a director when he knows that the office of director held by him has become vacant on account of any of the disqualifications, specified in the several clauses of sub-section (1), he shall be punishable with fine which may extend to ³[five thousand] rupees for each day on which he so functions as a director.

(3) A private company which is not a subsidiary of a public company may, by its articles, provide that the office of director shall be vacated on any grounds in addition to those specified in sub-section (1).

1. Words "or as a nominee of the managing agent of the company" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
2. Words "or, as the case may be, the managing agency comes to an end" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
3. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

284. REMOVAL OF DIRECTORS.

(1) A company may, by ordinary resolution, remove a director (not being a director appointed by the Central Government in pursuance of section 408) before the expiry of his period of office :

Provided that this sub-section shall not, in the case of a private company, authorise the removal of a director holding office for life on the 1st day of April, 1952, whether or not he is subject to retirement under an age limit by virtue of the articles or otherwise :

Provided further that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 265 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation.

(2) Special notice shall be required of any resolution to remove a director under this section, or to appoint somebody instead of a director so removed at the meeting at which he is removed.

(3) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(4) Where notice is given of a resolution to remove a director under this section and the director concerned makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so, -

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made ; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company) ;

and if a copy of the representations is not sent as aforesaid because they were received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting :

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the ¹[Central Government] is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter ; and the ¹[Central Government] may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

(5) A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board in pursuance of section 262, be filled by the appointment of another director in his stead by the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

A director so appointed shall hold office until the date up to which his predecessor would have held office if he had not been removed as aforesaid.

(6) If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions, so far as they may be applicable, of section 262, and all the provisions of that section shall apply accordingly :

Provided that the director who was removed from office shall not be reappointed as a director by the Board of directors.

(7) Nothing in this section shall be taken -

(a) as depriving a person removed thereunder of any compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director ; or

(b) as derogating from any power to remove a director which may exist apart from this section.

1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

Meetings of Board

285. BOARD TO MEET AT LEAST ONCE IN EVERY THREE CALENDAR MONTHS

In the case of every company, a meeting of its Board of directors shall be held at least once in every three months and at least four such meetings shall be held in every year :

Provided that the Central Government may, by notification in the Official Gazette, direct that the provisions of this section shall not apply in relation to any class of companies or shall apply in relation thereto subject to such exceptions, modifications or conditions as may be specified in the notification.

286. NOTICE OF MEETINGS

- (1) Notice of every meeting of the Board of directors of a company shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.
- (2) Every officer of the company whose duty it is to give notice as aforesaid and who fails to do so shall be punishable with fine which may extend to ⁴[one thousand] rupees.

1. Substituted for "one hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

287. QUORUM FOR MEETINGS

(1) In this section -

(a) "total strength" means the total strength of the Board of directors of a company as determined in pursuance of this Act, after deducting therefrom the number of the directors, if any, whose places may be vacant at the time ; and

(b) "interested director" means any director whose presence cannot, by reason of section 300, count for the purpose of forming a quorum at a meeting of the Board, at the time of the discussion or vote on any matter.

(2) The quorum for a meeting of the Board of directors of a company shall be one-third of its total strength (any fraction contained in that one-third being rounded off as one), or two directors, whichever is higher :

Provided that where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength, the number of the remaining directors, that is to say, the number of the directors who are not interested present at the meeting being not less than two, shall be the quorum during such time.

288. PROCEDURE WHERE MEETING ADJOURNED FOR WANT OF QUORUM

(1) If a meeting of the Board could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned till the same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place.

(2) The provisions of section 285 shall not be deemed to have been contravened merely by reason of the fact that a meeting of the Board which had been called in compliance with the terms of that section could not be held for want of a quorum.

289. PASSING OF RESOLUTIONS BY CIRCULATION

No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or to all the members of the committee, then in India (not being less in number than the quorum fixed for a meeting of the Board or committee, as the case may be), and to all other directors or members at their usual address in India, and has been approved by such of the directors as are then in India, or by a majority of such of them, as are entitled to vote on the resolution.

290. VALIDITY OF ACTS OF DIRECTORS

Acts done by a person as a director shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles :

Provided that nothing in this section shall be deemed to give validity to acts done by a director after his appointment has been shown to the company to be invalid or to have terminated.

Board's powers and restrictions thereon

291. GENERAL POWERS OF BOARD

(1) Subject to the provisions of this Act, the Board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do :

Provided that the Board shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting :

Provided further that in exercising any such power or doing any such act or thing, the Board shall be subject to the provisions contained in that behalf in this or any other Act, or in the memorandum or articles of the company, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting.

(2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

292. CERTAIN POWERS TO BE EXERCISED BY BOARD ONLY AT MEETING

(1) The Board of directors of a company shall exercise the following powers on behalf of the company, and it shall do so only by means of resolutions passed at meetings of the Board : -

(a) the power to make calls on shareholders in respect of money unpaid on their shares ;

⁴[(aa) the power to authorise the buy-back referred to in the first proviso to clause (b) of sub-section (2) of section 77A ;]

(b) the power to issue debentures ;

(c) the power to borrow moneys otherwise than on debentures ;

(d) the power to invest the funds of the company ; and

(e) the power to make loans :

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, ²[***] the manager or any other principal officer of the company or in the case of a branch office of the company, a principal officer of the branch office, the powers specified in clauses (c), (d) and (e) to the extent specified in sub-sections (2), (3) and (4) respectively, on such conditions as the Board may prescribe :

Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of moneys on deposit by a banking company, with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of moneys or, as the case may be, a making of loans by a banking company within the meaning of this section.

Explanation I. - Nothing in clause (c) of sub-section (1) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act.

Explanation II. - In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (c) of sub-section (1) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.

(2) Every resolution delegating the power referred to in clause (c) of sub-section (1) shall specify the total amount outstanding at any one time up to which moneys may be borrowed by the delegate.

(3) Every resolution delegating the power referred to in clause (d) of sub-section (1) shall specify the total amount up to which the funds may be invested, and the nature of the investments which may be made, by the delegate.

(4) Every resolution delegating the power referred to in clause (e) of sub-section (1) shall specify the total amount up to which loans may be made by the delegate, the purposes for which the loans may be made, and the maximum amount of loans which may be made for each such purpose in individual cases.

(5) Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the Board of any of the powers specified in sub-section (1).

1. Inserted by the Companies (Amendment) Act, 2001 w.r.e.f. 23-10-2001.

2. Words "the managing agent, secretaries and treasurers," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

¹[292A. AUDIT COMMITTEE

(1) Every public company having paid-up capital of not less than five crores of rupees shall constitute a committee of the Board known as "Audit Committee" which shall consist of not less than three directors and such number of other directors as the Board may determine of which two-thirds of the total number of members shall be directors, other than managing or whole-time directors.

(2) Every Audit Committee constituted under sub-section (1) shall act in accordance with terms of reference to be specified in writing by the Board.

(3) The members of the Audit Committee shall elect a chairman from amongst themselves.

(4) The annual report of the company shall disclose the composition of the Audit Committee.

(5) The auditors, the internal auditor, if any, and the director-in-charge of finance shall attend and participate at meetings of the Audit Committee but shall not have the right to vote.

(6) The Audit Committee should have discussions with the auditors periodically about internal control systems, the scope of audit including the observations of the auditors and review the half-yearly and annual financial statements before submission to the Board and also ensure compliance of internal control systems.

(7) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in this section or referred to it by the Board and for this purpose, shall have full access to information contained in the records of the company and external professional advice, if necessary.

(8) The recommendations of the Audit Committee on any matter relating to financial management, including the audit report, shall be binding on the Board.

(9) If the Board does not accept the recommendations of the Audit Committee, it shall record the reasons therefor and communicate such reasons to the shareholders.

(10) The chairman of the Audit Committee shall attend the annual general meetings of the company to provide any clarification on matters relating to audit.

(11) If a default is made in complying with the provisions of this section, the company, and every officer who is in default, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both.]

1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

293. RESTRICTIONS ON POWERS OF BOARD

(1) The Board of directors of a public company, or of a private company which is a subsidiary of a public company, shall not, except with the consent of such public company or subsidiary in general meeting, -

(a) sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking of the company, or where the company owns more than one undertaking, of the whole, or substantially the whole, of any such undertaking ;

(b) remit, or give time for the repayment of, any debt due by a director except in the case of renewal or continuance of an advance made by a banking company to its director in the ordinary course of business ;

(c) invest, otherwise than in trust securities, the amount of compensation received by the company in respect of the compulsory acquisition, after the commencement of this Act, of any such undertaking as is referred to in clause (a), or of any premises or properties used for any such undertaking and without which it cannot be carried on or can be carried on only with difficulty or only after a considerable time ;

(d) borrow moneys after the commencement of this Act, where the moneys to be borrowed, together with the moneys already borrowed by the company (apart from temporary loans obtained from the company's bankers in the ordinary course of business), will exceed the aggregate of the paid-up capital of the company and its free reserves, that is to say, reserves not set apart for any specific purpose ; or

(e) contribute, after the commencement of this Act, to charitable and other funds not directly relating to the business of the company or the welfare of its employees, any amounts the aggregate of which will, in any financial year, exceed fifty thousand rupees, or five per cent, of its average net profits as determined in accordance with the provisions of sections 349 and 350 during the three financial years immediately preceding, whichever is greater.

Explanation I. - Every resolution passed by the company in general meeting in relation to the exercise of the power referred to in clause (d) or in clause (e) shall specify the total amount up to which moneys may be borrowed by the Board of directors under clause (d) or, as the case may be, the total amount which may be contributed to charitable and other funds in any financial year under clause (e).

Explanation II. - The expression "temporary loans" in clause (d) means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financing expenditure of a capital nature.

Explanation III. - Where a portion of a financial year of the company falls before the commencement of this Act, and a portion falls after such commencement, the later portion shall be deemed to be a financial year within the meaning, and for the purposes, of clause (e).

(2) Nothing contained in clause (a) of sub-section (1) shall affect -

(a) the title of a buyer or other person who buys or takes a lease of any such undertaking as is referred to in that clause, in good faith and after exercising due care and caution ; or

(b) the selling or leasing of any property of the company, where the ordinary business of the company consists of, or comprises, such selling or leasing.

(3) Any resolution passed by the company permitting any transaction such as is referred to in clause (a) of sub-section (1) may attach such conditions to the permission as may be specified in the resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transaction :

Provided that this sub-section shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in that behalf in this Act.

(4) The acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of moneys by the banking company within the meaning of clause (d) of sub-section (1).

(5) No debt incurred by the company in excess of the limit imposed by clause (d) of sub-section (1) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

Political contributions

293A. PROHIBITIONS AND RESTRICTIONS REGARDING POLITICAL CONTRIBUTIONS

(1) Notwithstanding anything contained in any other provision of this Act, -

(a) no Government company ; and

(b) no other company which has been in existence for less than three financial years, shall contribute any amount or amounts, directly or indirectly, -

(i) to any political party ; or

(ii) for any political purpose to any person.

(2) A company, not being a company referred to in clause (a) or clause (b) of sub-section (1), may contribute any amount or amounts, directly or indirectly, -

(a) to any political party ; or

(b) for any political purpose to any person :

Provided that the amount or, as the case may be, the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed five per cent of its average net profits determined in accordance with the provisions of sections 349 and 350 during the three immediately preceding financial years.

Explanation. - Where a portion of a financial year of the company falls before the commencement of the Companies (Amendment) Act, 1985, and a portion falls after such commencement, the latter portion shall be deemed to be a financial year within the meaning and for the purposes, of this sub-section :

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

(3) Without prejudice to the generality of the provisions of sub-sections (1) and (2), -

(a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to effect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose ;

(b) the amount of expenditure incurred, directly or indirectly, by a company on advertisement in any publication (being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like) by or on behalf of a political party or for its advantage shall also be deemed, -

(i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(ii) where such publication is not by or on behalf of but for the advantage of a political party, to be a contribution for a political purpose to the person publishing it.

(4) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party or for any political purpose to any person during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party or person to which or to whom such amount has been contributed.

(5) If a company makes any contribution in contravention of the provisions of this section, -

(a) the company shall be punishable with fine which may extend to three times the amount so contributed ; 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.

293B. POWER OF BOARD AND OTHER PERSONS TO MAKE CONTRIBUTIONS TO THE NATIONAL DEFENCE FUND, ETC

(1) The Board of directors of any company or any person or authority exercising the powers of the Board of directors of a company, or of the company in general meeting, may, notwithstanding anything contained in sections 293 and 293A or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company, contribute such amount as it thinks fit to the National Defence Fund or any other fund approved by the Central Government for the purpose of national defence.

(2) Every company shall disclose in its profits and loss account the total amount or amounts contributed by it to the Fund referred to in sub-section (1) during the financial year to which the amount relates.

Appointment of sole selling agents

294. APPOINTMENT OF SOLE SELLING AGENTS TO REQUIRE APPROVAL OF COMPANY IN GENERAL MEETING

(1) No company shall, after the commencement of the Companies (Amendment) Act, 1960, appoint a sole selling agent for any area for a term exceeding five years at a time :

Provided that nothing in this sub-section shall be deemed to prohibit the re-appointment, or the extension of the term of office, of any sole selling agent by further periods not exceeding five years on each occasion.

(2) After the commencement of the Companies (Amendment) Act, 1960, the Board of directors of a company shall not appoint a sole selling agent for any area except subject to the condition that the appointment shall cease to be valid if it is not approved by the company in the first general meeting held after the date on which the appointment is made.

(2A) If the company in general meeting as aforesaid disapproves the appointment, it shall cease to be valid with effect from the date of that general meeting.

(3) Where before the commencement of this Act, a company has appointed a sole selling agent for any area for a period of not less than five years, the appointment shall be placed before the company in general meeting within a period of six months from such commencement ; and the company in general meeting may, by resolution, -

(a) if the appointment was made on or after the 15th day of February, 1955, terminate the appointment forthwith or with effect from such later date as may be specified in the resolution ; and

(b) if the appointment was made before the date specified in clause (a), terminate the appointment with effect from such date as may be specified in the resolution, not being earlier than five years from the date on which the appointment was made, or the expiry of one year from the commencement of this Act, whichever is later.

(4) *[Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.]*

(5) (a) Where a company has a sole selling agent (by whatever name called) for an area and it appears to the Central Government that there is good reason so to do, the Central Government may require the company to furnish to it such information regarding the terms and conditions of the appointment of the sole selling agent as it considers necessary for the purpose of determining whether or not such terms and conditions are prejudicial to the interests of the company ;

(b) if the company refuses or neglects to furnish any such information, the Central Government may appoint a suitable person to investigate and report on the terms and conditions of appointment of the sole selling agent ;

(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 the opinion that the terms and conditions of appointment of the sole selling agent are prejudicial to the interests of the company, the Central Government may, by order, make such variations in those terms and conditions as would in its opinion make them no longer 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 of the sole selling agent shall be regulated by the terms and conditions as varied by the Central Government.

(6) (a) Where a company has more selling agents than one (by whatever name called) in any area or areas and it appears to the Central Government that there is good reason so to do, the Central Government may require the company to furnish to it such information regarding the terms and conditions of appointment of all the selling agents as it considers necessary for the purpose of determining whether any of those selling agents should be declared to be the sole selling agent for such area or any of such areas ;

(b) if the company refuses or neglects to furnish any such information, the Central Government may appoint a suitable person to investigate and report on the terms and conditions of appointment of all the selling agents ;

(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 the opinion that having regard to the terms and conditions of appointment of any of the selling agents and to any other relevant factors, that selling agent is to all intents and purposes the sole selling agent for such area, although there may be one or more other selling agents of the company operating in that area, the Central Government may by order declare that selling agent to be the sole selling agent of the company for that area with effect from such date as may be specified in the order and may make suitable variations in such of the terms and conditions of appointment of that selling agent as are in the opinion of the Central Government prejudicial to the interests of the company ;

(d) as from the date specified in clause (c) the appointment of the selling agent declared to be the sole selling agent shall be regulated by the terms and conditions as varied by the Central Government.

(7) It shall be the duty of the company -

(a) to produce to the person appointed under clause (b) of sub-section (5) or clause (b) of sub-section (6), all books and papers of, or relating to, the company which are in its custody or power ; and

(b) otherwise to give to that person all assistance in connection with the investigation which the company is reasonably able to give.

(8) If a company refuses or neglects -

(a) to furnish the information required by the Central Government under clause (a) of sub-section (5) or clause (a) of sub-section (6), or

(b) to produce to the person appointed under clause (b) of sub-section (5) or clause (b) of sub-section (6) any books and papers which are in its custody or power or otherwise to give to that person any assistance which it is reasonably able to give,

the company and every officer of the company who is in default shall be punishable with fine which may extend to ¹[fifty] thousand rupees and with a further fine of not less than ²[five hundred] rupees for every day after the first during which such refusal or neglect continues.

1. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

294A. PROHIBITION OF PAYMENT OF COMPENSATION TO SOLE SELLING AGENTS FOR LOSS OF OFFICE IN CERTAIN CASES

(1) A company shall not pay or be liable to pay to its sole selling agent any compensation for the loss of his office in the following cases : -

(a) where the appointment of the sole selling agent ceases to be valid by virtue of sub-section (2A) of section 294 ;

(b) where the sole selling agent resigns his office in view of the reconstruction of the company or of its amalgamation with any other body corporate or bodies corporate and is appointed as the sole selling agent of the reconstructed company or of the body corporate resulting from the amalgamation ;

(c) where the sole selling agent resigns his office, otherwise than on the reconstruction of the company or its amalgamation as aforesaid ;

(d) where the sole selling agent has been guilty of fraud or breach of trust in relation to, or of gross negligence in, the conduct of his duty as the sole selling agent ;

(e) where the sole selling agent has instigated, or has taken part directly or indirectly in bringing about, the termination of the sole selling agency.

(2) The compensation which may be paid by a company to its sole selling agent for loss of office shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term, or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which his office ceased or was terminated, or where he held his office for a lesser period than three years, during such period.

294AA. POWER OF CENTRAL GOVERNMENT TO PROHIBIT THE APPOINTMENT OF SOLE SELLING AGENTS IN CERTAIN CASES

(1) Where the Central Government is of opinion that the demand for goods of any category, to be specified by that Government, is substantially in excess of the production or supply of such goods and that the services of sole selling agents will not be necessary to create a market for such goods, the Central Government may, by notification in the Official Gazette, declare that sole selling agents shall not be appointed by a company for the sale of such goods for such period as may be specified in the declaration.

(2) No company shall appoint any individual, firm or body corporate, who or which has a substantial interest in the company, as sole selling agent of that company unless such appointment has been previously approved by the Central Government.

(3) No company having a paid-up share capital of rupees fifty lakhs or more shall appoint a sole selling agent except with the consent of the company accorded by a special resolution and the approval of the Central Government.

(4) The provisions of sub-sections (5), (6) and (7) of section 294 shall, so far as may be, apply to the sole selling, or the sole purchasing or buying, agents of a company.

(5) A company seeking approval under this section shall furnish such particulars as may be prescribed.

(6) Where any appointment has been made of a sole selling agent by a company before the commencement of the Companies (Amendment) Act, 1974, and the appointment is such that it could not have been made except on the authority of a special resolution passed by the company and the approval of the Central Government, if sub-section (2), sub-section (3) and sub-section (8), were in force at the time of such appointment, the company shall obtain such authority and approval within six months from such commencement ; and if such authority and approval are not so obtained, the appointment of the sole selling agent shall stand terminated on the expiry of six months from such commencement.

(7) If the company in general meeting disapproves the appointment referred to in sub-section (3), such appointment shall, notwithstanding anything contained in sub-section (6), cease to have effect from the date of the general meeting.

(8) The provisions of this section except those of sub-section (1), shall apply so far as may be to the appointment by a company of a sole agent for the buying or purchasing of goods on behalf of the company.

(a) "appointment" includes "re-appointment",

(b) "substantial interest", -

(i) in relation to an individual, means the beneficial interest held by such individual or any of his relatives, whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakhs of rupees or five per cent of the paid-up share capital of the company, whichever is the lesser ;

(ii) in relation to a firm, means the beneficial interest held by one or more partners of the firm or any relative of such partner, whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakhs of rupees or five per cent of the paid-up share capital of the company, whichever is the lesser :

(iii) in relation to a body corporate, means the beneficial interest held by such body corporate or one or more of its directors or any relative of such director, whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakhs of rupees or five per cent of the paid-up share capital of the company, whichever is the lesser.

295. LOANS TO DIRECTORS, ETC

(1) Save as otherwise provided in sub-section (2), no company (herein-after in this section referred to as "the lending company") without obtaining the previous approval of the Central Government in that behalf shall, directly or indirectly, make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by, -

(a) any director of the lending company or of a company which is its holding company or any partner or relative of any such director ;

(b) any firm in which any such director or relative is a partner ;

(c) any private company of which any such director is a director or member ;

(d) any body corporate at a general meeting of which not less than twenty-five per cent of the total voting power may be exercised or controlled by any such director, or by two or more such directors together ; or

(e) any body corporate, the Board of directors, managing director, ¹[***] or manager whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

(2) Sub-section (1) shall not apply to -

(a) any loan made, guarantee given or security provided -

(i) by a private company unless it is a subsidiary of a public company, or

(ii) by a banking company ;

²[(b) any loan made by a holding company to its subsidiary company;

(c) any guarantee given or security provided by a holding company in respect of any loan made to its subsidiary company.]

(3) Where any loan made, guarantee given or security provided by a lending company and outstanding at the commencement of this Act could not have been made, given or provided, without the previous approval of the Central Government, if this section had then been in force, the lending company shall, within six months from the commencement of this Act or such further time not exceeding six months as the Central Government may grant for that purpose, either obtain the approval of the Central Government to the transaction or enforce the repayment of the loan made, or in connection with which the guarantee was given or the security was provided, notwithstanding any agreement to the contrary.

(4) Every person who is knowingly a party to any contravention of sub- section (1) or (3), including in particular any person to whom the loan is made or who has taken the loan in respect of which the guarantee is given or the security is provided, shall be punishable either with fine which may extend to ³[fifty] thousand rupees or with simple imprisonment for a term which may extend to six months :

Provided that where any such loan, or any loan in connection with which any such guarantee or security has been given or provided by the lending company, has been repaid in full, no punishment by way of imprisonment shall be

imposed under this sub-section ; and where the loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be proportionately reduced.

(5) All persons who are knowingly parties to any contravention of sub-section (1) or (3) shall be liable, jointly and severally, to the lending company for the repayment of the loan or for making good the sum which the lending company may have been called upon to pay in virtue of the guarantee given or the security provided by such company.

(6) No officer of the lending company or of the borrowing body corporate shall be punishable under sub-section (4) or shall incur the liability referred to in sub-section (5) in respect of any loan made, guarantee given or security provided after the 1st day of April, 1956 in contravention of clause (d) or (e) of sub-section (1), unless at the time when the loan was made, the guarantee was given or the security was provided by the lending company, he knew or had express notice that clause was being contravened thereby.

1. Words ``managing agent, secretaries and treasurers," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Clauses (b) and (c) substituted, by the Companies (Amendment) Act, 2002 w.e.f. 13-12-2000. Prior to its substitution, clauses (b) and (c) read as under :

"(b) any loan made -

(i) by a holding company to its subsidiary, or

(ii) by a company which is the managing agent or secretaries and treasurers of another company to that other company ;

(c) any guarantee given or security provided -

(i) by a holding company in respect of any loan made to its subsidiary, or

(ii) by a company which is the managing agent or secretaries and treasurers of another company in respect of any loan made to that other company."

3. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

296. APPLICATION OF SECTION 295 TO BOOK DEBTS IN CERTAIN CASES

Section 295 shall apply to any transaction represented by a book debt which was from its inception in the nature of a loan or an advance.

297. BOARD'S SANCTION TO BE REQUIRED FOR CERTAIN CONTRACTS IN WHICH PARTICULAR DIRECTORS ARE INTERESTED

(1) Except with the consent of the Board of directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company -

(a) for the sale, purchase or supply of any goods, materials or services ; or

(b) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the company :

Provided that in the case of a company having a paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government.

(2) Nothing contained in clause (a) of sub-section (1) shall affect -

(a) the purchase of goods and materials from the company, or the sale of goods and materials to the company, by any director, relative, firm, partner or private company as aforesaid for cash at prevailing market prices ; or

(b) any contract or contracts between the company on one side and any such director, relative, firm, partner or private company on the other for sale, purchase or supply of any goods, materials and services in which either the company or the director, relative, firm, partner or private company, as the case may be, regularly trades or does business :

Provided that such contract or contracts do not relate to goods and materials the value of which, or services the cost of which, exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract or contracts ; or

(c) in the case of a banking or insurance company any transaction in the ordinary course of business of such company with any director, relative, firm, partner or private company as aforesaid.

(3) Notwithstanding anything contained in sub-sections (1) and (2), a director, relative, firm, partner or private company as aforesaid may, in circumstances of urgent necessity, enter, without obtaining the consent of the Board, into any contract with the company for the sale, purchase or supply of any goods, materials or services even if the value of such goods or cost of such services exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract ; but in such a case, the consent of the Board shall be obtained at a meeting within three months of the date on which the contract was entered into.

(4) Every consent of the Board required under this section shall be accorded by a resolution passed at a meeting of the Board and not otherwise ; and the consent of the Board required under sub-section (1) shall not be deemed to have been given within the meaning of that sub-section unless the consent is accorded before the contract is entered into or within three months of the date on which it was entered into.

(5) If consent is not accorded to any contract under this section, anything done in pursuance of the contract shall be voidable at the option of the Board.

(6) Nothing in this section shall apply to any case where the consent has been accorded to the contract before the commencement of the Companies (Amendment) Act, 1960.

298. POWER OF DIRECTORS TO CARRY ON BUSINESS WHEN MANAGING AGENT OR SECRETARIES AND TREASURERS ARE DEEMED TO HAVE VACATED OFFICE, ETC

[Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.]

Procedure, etc., where director interested

299. DISCLOSURE OF INTERESTS BY DIRECTOR

(1) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into, by or on behalf of the company, shall disclose the nature of his concern or interest at a meeting of the Board of directors.

(2) (a) In the case of a proposed contract or arrangement, the disclosure required to be made by a director under sub-section (1) shall be made at the meeting of the Board at which the question of entering into the contract or arrangement is first taken into consideration, or if the director was not, at the date of that meeting, concerned or interested in the proposed contract or arrangement, at the first meeting of the Board held after he becomes so concerned or interested.

(b) In the case of any other contract or arrangement, the required disclosure shall be made at the first meeting of the Board held after the director becomes concerned or interested in the contract or arrangement.

(3) (a) For the purposes of sub-sections (1) and (2), a general notice given to the Board by a director, to the effect that he is a director or a member of a specified body corporate or is a member of a specified firm and is to be regarded as concerned or interested in any contract or arrangement which may, after the date of the notice, be entered into with that body corporate or firm, shall be deemed to be a sufficient disclosure of concern or interest in relation to any contract or arrangement so made.

(b) Any such general notice shall expire at the end of the financial year in which it is given, but may be renewed for further periods of one financial year at a time, by a fresh notice given in the last month of the financial year in which it would otherwise expire.

(c) No such general notice, and no renewal thereof, shall be of effect unless either it is given at a meeting of the Board, or the director concerned takes reasonable steps to secure that it is brought up and read at the first meeting of the Board after it is given.

(4) Every director who fails to comply with sub-section (1) or (2) shall be punishable with fine which may extend to ⁴[fifty] thousand rupees.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contracts or arrangements with the company.

(6) Nothing in this section shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together holds or hold not more than two per cent of the paid-up share capital in the other company.

1. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

300. INTERESTED DIRECTOR NOT TO PARTICIPATE OR VOTE IN BOARD'S PROCEEDINGS

(1) No director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement ; nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote ; and if he does vote, his vote shall be void.

(2) Sub-section (1) shall not apply to -

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

(b) a private company which is a subsidiary of a public company, in respect of any contract or arrangement entered into, or to be entered into, by the private company with the holding company thereof ;

(c) any contract of indemnity against any loss which the directors, or any one or more of them, may suffer by reason of becoming or being sureties or a surety for the company ;

(d) any contract or arrangement entered into or to be entered into with a public company, or a private company which is a subsidiary of a public company, in which the interest of the director aforesaid consists solely -

(i) in his being a director of such company and the holder of not more than shares of such number or value therein as is requisite to qualify him for appointment as a director thereof, he having been nominated as such director by the company referred to in sub-section (1), or

(ii) in his being a member holding not more than two per cent of its paid-up share capital ;

(e) a public company, or a private company which is a subsidiary of a public company, in respect of which a notification is issued under sub-section (3), to the extent specified in the notification.

(3) In the case of a public company or a private company which is a subsidiary of a public company, if the Central Government is of opinion that having regard to the desirability of establishing or promoting any industry, business or trade, it would not be in the public interest to apply all or any of the prohibitions contained in sub-section (1) to the company, the Central Government may, by notification in the Official Gazette, direct that sub-section shall not apply to such company, or shall apply thereto subject to such exceptions, modifications and conditions as may be specified in the notification.

(4) Every director who knowingly contravenes the provisions of this section shall be punishable with fine which may extend to ⁴[fifty] thousand rupees.

1. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

301. REGISTER OF CONTRACTS, COMPANIES AND FIRMS IN WHICH DIRECTORS ARE INTERESTED

(1) Every company shall keep one or more registers in which shall be entered separately particulars of all contracts or arrangements to which section 297 or section 299 applies, including the following particulars to the extent they are applicable in each case, namely : -

- (a) the date of the contract or arrangement ;
- (b) the names of the parties thereto ;
- (c) the principal terms and conditions thereof ;
- (d) in the case of a contract to which section 297 applies or in the case of a contract or arrangement to which sub-section (2) of section 299 applies, the date on which it was placed before the Board ;
- (e) the names of the directors voting for and against the contract or arrangement and the names of those remaining neutral.

(2) Particulars of every such contract or arrangement to which section 297 or, as the case may be, sub-section (2) of section 299 applies, shall be entered in the relevant register aforesaid -

(a) in the case of a contract or arrangement requiring the Board's approval, within seven days (exclusive of public holidays) of the meeting of the Board at which the contract or arrangement is approved,

(b) in the case of any other contract or arrangement, within seven days of the receipt at the registered office of the company of the particulars of such other contract or arrangement or within thirty days of the date of such other contract or arrangement whichever is later,

and the register shall be placed before the next meeting of the Board and shall then be signed by all the directors present at the meeting.

(3) The register aforesaid shall also specify, in relation to each director of the company, the names of the firms and bodies corporate of which notice has been given by him under sub-section (3) of section 299.

(3A) Nothing in sub-sections (1), (2) and (3) shall apply -

(a) to any contract or arrangement for the sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does not exceed one thousand rupees in the aggregate in any year ; or

(b) to any contract or arrangement (to which section 297 or, as the case may be, section 299 applies) by a banking company for the collection of bills in the ordinary course of its business or to any transaction referred to in clause (c) of sub-section (2) of section 297.

(4) If default is made in complying with the provisions of sub-section (1), (2) or (3), the company, and every officer of the company who is in default, shall, in respect of each default, be punishable with fine which may extend to ¹[five thousand] rupees.

(5) The register aforesaid shall be kept at the registered office of the company ; and it shall be open to inspection at such office, and extracts may be taken therefrom and copies thereof may be required, by any member of the company to the same extent, in the same manner, and on payment of the same fee, as in the case of the register of members of the company ; and the provisions of section 163 shall apply accordingly.

1. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

302. DISCLOSURE TO MEMBERS OF DIRECTOR'S INTEREST IN CONTRACT APPOINTING MANAGER, MANAGING DIRECTOR ¹[*]**

(1) Where a company -

(a) enters into a contract for the appointment of a manager of the company, in which contract any director of the company is in any way, whether directly or indirectly, concerned or interested ; or

(b) varies any such contract already in existence and in which a director is concerned or interested as aforesaid ; the company shall, within twenty-one days from the date of entering into the contract or of the varying of the contract, as the case may be, send to every member of the company an abstract of the terms of the contract or variation, together with a memorandum clearly specifying the nature of the concern or interest of the director in such contract or variation.

(2) Where a company enters into a contract for the appointment of a managing director of the company, or varies any such contract which is already in existence, the company shall send an abstract of the terms of the contract or variation to every member of the company within the time specified in sub-section (1) ; and if any other director of the company is concerned or interested in the contract or variation, a memorandum clearly specifying the nature of the concern or interest of such other director in the contract or variation shall also be sent to every member of the company with the abstract aforesaid.

(3) [Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.]

(4) Where a director becomes concerned or interested as aforesaid in any such contract as is referred to in sub-section (1), (2) or (3) after it is made, the abstract and the memorandum, if any, referred to in the said sub-section shall be sent to every member of the company within twenty-one days from the date on which the director becomes so concerned or interested.

(5) If default is made in complying with the foregoing provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ²[ten] thousand rupees.

(6) All contracts entered into by a company for the appointment of a manager, managing director ³[***] shall be kept at the registered office of the company ; and shall be open to the inspection of any member of the company at such

office ; and extracts may be taken therefrom and copies thereof may be required by any such member, to the same extent, in the same manner and on payment of the same fee, as in the case of the register of members of the company ; and the provisions of section 163 shall apply accordingly.

(7) The provisions of this section shall apply in relation to any resolution of the Board of directors of a company appointing a manager or a managing or whole-time director, or varying any previous contract or resolution of the company relating to the appointment of a manager or a managing or whole-time director, as they apply in relation to any contract for the like purpose.

1. Words ", managing agent or secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Words ", managing agent or secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

Register of directors, etc.

303. REGISTER OF DIRECTORS ¹[*], ETC**

(1) Every company shall keep at its registered office a register of its directors, managing director ¹[***], manager and secretary, containing with respect to each of them the following particulars, that is to say : -

(a) in the case of an individual, his present name and surname in full ; any former name or surname in full ; his father's name and surname in full or where the individual is a married woman, the husband's name and surname in full ; his usual residential address ; his nationality ; and, if that nationality is not the nationality of origin, his, nationality of origin, his business occupation, if any ; if he holds the office of director, ²[***] manager or secretary in any other body corporate, the particulars of each such office held by him ; and except in the case of a private company which is not a subsidiary of a public company, the date of his birth ;

(b) in the case of a body corporate, its corporate name and registered or principal office ; and the full name, address, nationality, and nationality of origin, if different from that nationality, the father's name or where a director is a married woman, the husband's name of each of its directors ; and if it holds the office of ¹[***] manager or secretary in any other body corporate, the particulars of each such office ;

(c) in the case of a firm, the name of the firm, the full name, address, nationality, and nationality of origin, if different from that nationality, the father's name or where a partner is a married woman, the husband's name of each partner ; and the date on which each became a partner ; and if the firm holds the office of ²[***] manager or secretary in any other body corporate, the particulars of each such office ;

(d) if any director or directors have been nominated by a body corporate, its corporate name ; all the particulars referred to in clause (a) in respect of each director so nominated, and also all the particulars referred to in clause (b) in respect of the body corporate ;

(e) if any director or directors have been nominated by a firm, the name of the firm, all the particulars referred to in clause (a) in respect of each director so nominated, and also all the particulars referred to in clause (c) in respect of the firm.

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

(1) any person in accordance with whose directions or instructions, the Board of directors of a company is accustomed to act shall be deemed to be a director of the company ;

(2) in the case of a person usually known by a title different from his surname, the expression "surname" means that title ; and

(3) references to a former name or surname do not include -

(i) in the case of a person usually known by an Indian title different from his surname, the name by which he was known previous to the adoption of, or succession to, the title ;

(ii) in the case of any person, a former name or surname, where that name or surname was changed or disused before the person bearing the name attained the age of eighteen years, or has been changed or disused for a period of not less than twenty years ; and

(iii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

(2) The company shall, within the periods respectively mentioned in this sub-section, send to the Registrar a return ³[***] in the prescribed form containing the particulars specified in the said register and a notification ³[***] in the prescribed form of any change among its directors, managing directors ¹[***], managers or secretaries, specifying the date of the change.

The period within which the said return is to be sent shall be a period of thirty days from the appointment of the first directors of the company and the period within which the said notification of a change is to be sent shall be thirty days from the happening thereof.

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

1. Words ", managing agent, secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
2. Words "managing agent" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
- 2a. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
3. The words "in duplicate" omitted by SO 70(E) dated 3rd February 2009 w.e.f. 03-02-2009.

304. INSPECTION OF THE REGISTER

(1) The register kept under section 303 shall be open to the inspection of any member of the company without charge and of any other person on payment of one rupee for each inspection during business hours subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day are allowed for inspection.

(2) If any inspection required under sub-section (1) is refused, -

(a) the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ¹[five hundred] rupees ; and

(b) the ²[Central Government or Tribunal, as the case may be,] may, by order, compel an immediate inspection of the register.

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1. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 2. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

305. DUTY OF DIRECTORS, ETC., TO MAKE DISCLOSURE

(1) Every director, managing director, ¹[***] manager or secretary of any company, who is appointed to, or relinquishes, the office of director, managing director, ²[***] manager or secretary of any other body corporate, shall, within twenty days of his appointment to, or as the case may be, relinquishment of, such office, disclose to the company aforesaid the particulars relating to the office in the other body corporate which are required to be specified under sub-section (1) of section 303 ; and if he fails to do so, he shall be punishable with fine which may extend to ⁴[five thousand] rupees.

(2) The provisions of sub-section (1) shall also apply to a person deemed to be a director of the company by virtue of the *Explanation* to sub- section (1) of section 303 when such person is appointed to, or relinquishes, any of the offices in the other body corporate referred to in sub- section (1).

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1. Words "managing agent, secretaries and treasurers," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
 2. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

306. REGISTER TO BE KEPT BY REGISTRAR AND INSPECTION THEREOF

(1) The Registrar shall keep a separate register or registers in which there shall be entered the particulars received by him under sub-section (2) of section 303 in respect of companies, so however, that all entries in respect of each such company shall be together.

(2) The register or registers aforesaid shall be open to inspection by any member of the public at any time during office hours, on payment of the prescribed fee.

Register of directors' shareholdings

307. REGISTER OF DIRECTORS' SHAREHOLDINGS, ETC

(1) Every company shall keep a register showing, as respects each director of the company, the number, description and amount of any shares in, or debentures of, the company or any other body corporate, being the company's subsidiary or holding company, or a subsidiary of the company's holding company, which are held by him or in trust for him, or of which he has any right to become the holder whether on payment or not.

(2) Where any shares or debentures have to be recorded in the said register or to be omitted therefrom, in relation to any director, by reason of a transaction entered into after the commencement of this Act and while he is a director, the register shall also show the date of, and the price or other consideration for, the transaction :

Provided that where there is an interval between the agreement for any such transaction and the completion thereof, the date so shown shall be that of the agreement.

(3) The nature and extent of any interest or right in or over any shares or debentures recorded in relation to a director in the said register shall, if he so requires, be indicated in the register.

(4) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of, or be put upon inquiry as to, the rights of any person in relation to any shares or debentures.

(5) The said register shall, subject to the provisions of this section, be kept at the registered office of the company, and shall be open to inspection during business hours (subject to such reasonable restrictions as the company may, by its articles or in general meeting, impose, so that not less than two hours in each day are allowed for inspection) as follows :

(a) during the period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company ; and

(b) during that or any other period, it shall be open to the inspection of any person acting on behalf of the Central Government or of the Registrar.

In computing the fourteen days and the three days mentioned in this sub-section, any day which is a Saturday, a Sunday or a public holiday shall be disregarded.

(6) Without prejudice to the rights conferred by sub-section (5), the Central Government or the Registrar may, at any time, require a copy of the said register, or any part thereof.

(7) The said register shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.

If default is made in complying with this sub-section the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ¹[five thousand] rupees.

(8) If default is made in complying with sub-section (1) or (2), or if any inspection required under this section is refused, or if any copy required thereunder is not sent within a reasonable time, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ²[fifty] thousand rupees and also with a further fine which may extend to ³[two hundred] rupees for every day during which the default continues.

(9) In the case of any such refusal, the ⁴[Central Government or Tribunal, as the case may be,] may also, by order, compel an immediate inspection of the register.

(10) For the purposes of this section -

(a) any person in accordance with whose directions or instructions the Board of directors of a company is accustomed to act, shall be deemed to be a director of the company ; and

(b) a director of a company, shall be deemed to hold, or to have an interest or a right in or over, any shares or debentures, if a body corporate other than the company holds them or has that interest or right in or over them, and either -

(i) that body corporate or its Board of directors is accustomed to act in accordance with his directions or instructions ; or

(ii) he is entitled to exercise or control the exercise of one-third or more of the total voting power exercisable at any general meeting of that body corporate.

(11) [Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.]

1. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted for "twenty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

4. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

308. DUTY OF DIRECTORS AND PERSONS DEEMED TO BE DIRECTORS TO MAKE DISCLOSURE OF SHAREHOLDINGS

(1) Every director of a company, and every person deemed to be a director of the company by virtue of sub-section (10) of section 307, shall give notice to the company of such matters relating to himself as may be necessary for the purpose of enabling the company to comply with the provisions of that section.

(2) Any such notice shall be given in writing, and if it is not given at a meeting of the Board, the person giving the notice shall take all reasonable steps to secure that it is brought up and read at the meeting of the Board next after it is given.

(3) Any person who fails to comply with sub-section (1) or (2) shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ¹[fifty] thousand rupees, or with both.

1. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

Remuneration of directors

309. REMUNERATION OF DIRECTORS

(1) The remuneration payable to the directors of a company, including any managing or whole-time director, shall be determined, in accordance with and subject to the provisions of section 198 and this section, either by the articles of the company, or by a resolution or, if the articles so required, by a special resolution, passed by the company in general meeting and the remuneration payable to any such director determined as aforesaid shall be inclusive of the remuneration payable to such director for services rendered by him in any other capacity :

Provided that any remuneration for services rendered by any such director in any other capacity shall not be so included if -

(a) the services rendered are of a professional nature, and

(b) in the opinion of the Central Government, the director possesses the requisite qualifications for the practice of the profession.

(2) A director may receive remuneration by way of a fee for each meeting of the Board, or a committee thereof, attended by him :

Provided that where immediately before the commencement of the Companies (Amendment) Act, 1960, fees for meetings of the Board and any committee thereof, attended by a director are paid on a monthly basis, such fees may

continue to be paid on that basis for a period of two years after such commencement or for the remainder of the term of office of such director, whichever is less, but no longer.

(3) A director who is either in the whole-time employment of the company or a managing director may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other :

Provided that except with the approval of the Central Government such remuneration shall not exceed five per cent of the net profits for one such director, and if there is more than one such director, ten per cent for all of them together.

(4) A director who is neither in the whole-time employment of the company nor a managing director may be paid remuneration -

either

(a) by way of a monthly, quarterly or annual payment with the approval of the Central Government ;

or

(b) by way of commission if the company by special resolution authorises such payment :

Provided that the remuneration paid to such director, or where there is more than one such director, to all of them together, shall not exceed -

(i) one per cent of the net profits of the company, if the company has a managing or whole-time director ¹[***] or a manager ;

(ii) three per cent of the net profits of the company, in any other case :

Provided further that the company in general meeting may, with the approval of the Central Government, authorise the payment of such remuneration at a rate exceeding one per cent or, as the case may be, three per cent of its net profits.

(5) The net profits referred to in sub-sections (3) and (4) shall be computed in the manner referred to in section 198, sub-section (1).

(5A) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.

(5B) The company shall not waive the recovery of any sum refundable to it under sub-section (5A) unless permitted by the Central Government.

(6) No director of a company who is in receipt of any commission from the company and who is either in the whole-time employment of the company or a managing director shall be entitled to receive any commission or other remuneration from any subsidiary of such company.

(7) The special resolution referred to in sub-section (4) shall not remain in force for a period of more than five years ; but may be renewed, from time to time, by special resolution for further periods of not more than five years at a time :

Provided that no renewal shall be effected earlier than one year from the date on which it is to come into force.

(8) The provisions of this section shall come into force immediately on the commencement of this Act or, where such commencement does not coincide with the end of a financial year of the company, with effect from the expiry of the financial year immediately succeeding such commencement.

(9) The provisions of this section shall not apply to a private company unless it is a subsidiary of a public company.

1. Words ", a managing agent or secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

310. PROVISION FOR INCREASE IN REMUNERATION TO REQUIRE GOVERNMENT SANCTION

In the case of a public company, or a private company which is a subsidiary of a public company, any provision relating to the remuneration of any director including a managing or whole-time director, or any amendment thereof, which purports to increase or has the effect of increasing, whether directly or indirectly, the amount thereof, whether that provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or by its Board of directors, ¹[shall not have any effect -

1. Substituted for "shall not have any effect unless approved by the Central Government" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

(a) in cases where Schedule XIII is applicable, unless such increase is in accordance with the conditions specified in that Schedule ; and

(b) in any other case, unless it is approved by the Central Government];

and the amendment shall become void if, and insofar as, it is disapproved by that Government :

Provided that the approval of the Central Government shall not be required where any such provision or any amendment thereof purports to increase, or has the effect of increasing, the amount of such remuneration only by way of a fee for each meeting of the Board or a Committee thereof attended by any such director and the amount of such fee after such increase does not exceed ²[such sum as may be prescribed] :

³[**Provided further** that where in the case of any private company which converts itself into a public company or becomes a public company under the provisions of section 43A, any provision relating to the remuneration of any director including a managing or whole-time director as contained in its memorandum or articles or in any agreement entered into by it or in any resolution passed by it in general meeting or by its Board of directors includes a provision for the payment of fee for each meeting of the Board or a Committee thereof attended by any such director which is in excess of the sum specified under the first proviso, such provision shall be deemed to be an increase in the

remuneration of such director and shall not, after it ceases to be a private company, or, as the case may be, becomes a public company, have any effect unless approved by the Central Government.]

2. Substituted for "two hundred and fifty rupees" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.
3. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

311. INCREASE IN REMUNERATION OF MANAGING DIRECTOR ON RE-APPOINTMENT OR APPOINTMENT AFTER ACT TO REQUIRE GOVERNMENT SANCTION

In the case of a public company, or a private company which is a subsidiary of a public company, if the terms of any re-appointment or appointment of a managing or whole-time director, made after the commencement of this Act, purport to increase or have the effect of increasing, whether directly or indirectly, the remuneration which the managing or whole-time director or the previous managing or whole-time director, as the case may be, was receiving immediately before such re-appointment or appointment, the re-appointment or appointment ¹[shall not have any effect -

(a) in cases where Schedule XIII is applicable, unless such increase is in accordance with the conditions specified in that Schedule ; and

(b) in any other case, unless it is approved by the Central Government] ;

and shall become void if, and insofar as, it is disapproved by that Government.

1. Substituted for "shall not have any effect unless approved by the Central Government" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

Miscellaneous provisions

312. PROHIBITION OF ASSIGNMENT OF OFFICE BY DIRECTOR

Any assignment of his office made after the commencement of this Act by any director of a company shall be void.

313. APPOINTMENT AND TERM OF OFFICE OF ALTERNATE DIRECTORS

(1) The Board of directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint an alternate director to act for a director (hereinafter in this section called "the original director") during his absence for a period of not less than three months from the State in which meetings of the Board are ordinarily held.

(2) An alternate director appointed under sub-section (1) shall not hold office as such for a period longer than that permissible to the original director in whose place he has been appointed and shall vacate office if and when the original director returns to the State in which meetings of the Board are ordinarily held.

(3) If the term of office of the original director is determined before he so returns to the State aforesaid, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

314. DIRECTOR, ETC., NOT TO HOLD OFFICE OR PLACE OF PROFIT

(1) Except with the consent of the company accorded by a special resolution, -

(a) no director of a company shall hold any office or place of profit, and

(b) no partner or relative of such director, no firm in which such director, or a relative of such director, is a partner, no private company of which such director is a director or member, and no director or manager of such a private company, shall hold any office or place of profit carrying a total monthly remuneration of ¹[such sum as may be prescribed],

except that of managing director or manager, banker or trustee for the holders of debentures of the company, -

(i) under the company ; or

(ii) under any subsidiary of the company, unless the remuneration received from such subsidiary in respect of such office or place of profit is paid over to the company or its holding company :

Provided that it shall be sufficient if the special resolution according the consent of the company is passed at the general meeting of the company held for the first time after the holding of such office or place of profit :

Provided further that where a relative of a director or a firm in which such relative is a partner ; is appointed to an office or place of profit under the company or a subsidiary thereof without the knowledge of the director, the consent of the company may be obtained either in the general meeting aforesaid or within three months from the date of the appointment, whichever is later.

Explanation. - For the purpose of this sub-section, a special resolution according consent shall be necessary for every appointment in the first instance to an office or place of profit and to every subsequent appointment to such office or place of profit on a higher remuneration not covered by the special resolution, except where an appointment on a time scale has already been approved by the special resolution.

(1A) Nothing in sub-section (1) shall apply where a relative of a director or a firm in which such relative is a partner holds any office or place of profit under the company or a subsidiary thereof having been appointed to such office or place before such director becomes a director of the company.

(1B) Notwithstanding anything contained in sub-section (1), -

(a) no partner or relative of a director or manager,

(b) no firm in which such director or manager, or relative of either, is a partner,

(c) no private company of which such a director or manager, or relative of either, is a director or member,

shall hold any office or place of profit in the company which carries a total monthly remuneration of not less than ²[such sum as may be prescribed], except with the prior consent of the company by a special resolution and the approval of the Central Government.

[*Proviso to sub-section (1B) omitted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.*]

(2) (a) If any office or place of profit is held in contravention of the provisions of sub-section (1), the director, partner, relative, firm, private company, ³[***] or the manager, concerned, shall be deemed to have vacated his or its office as such on and from the date next following the date of the general meeting of the company referred to in the first proviso or, as the case may be, the date of the expiry of the period of three months referred to in the second proviso to that sub-section, and shall also be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him or it for the period immediately preceding the date aforesaid in respect of such office or place of profit.

(b) The company shall not waive the recovery of any sum refundable to it under clause (a) unless permitted to do so by the Central Government.

(2A) Every individual, firm, private company or other body corporate proposed to be appointed to any office or place of profit to which this section applies shall, before or at the time of such appointment, declare in writing whether he or it is or is not connected with a director of the company in any of the ways referred to in sub-section (1).

(2B) If, after the commencement of the Companies (Amendment) Act, 1974, any office or place of profit is held, without the prior consent of the company by a special resolution and the approval of the Central Government, the partner, relative, firm or private company appointed to such office or place of profit shall be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him, on and from the date on which the office was so held by him.

(2C) If any office or place of profit is held in contravention of the provisions of the proviso to sub-section (1B), the director, partner, relative, firm, private company or manager concerned shall be deemed to have vacated his or its office as such on and from the expiry of six months from the commencement of the Companies (Amendment) Act, 1974, or

the date next following the date of the general meeting of the company referred to in the said proviso, whichever is earlier, and shall be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him or it for the period immediately preceding the date aforesaid in respect of such office or place of profit.

(2D) The company shall not waive the recovery of any sum refundable to it under sub-section (2B) ⁴[***] unless permitted to do so by the Central Government.

(3) Any office or place shall be deemed to be an office or place of profit under the company within the meaning of this section, -

(a) in case the office or place is held by a director, if the director holding it obtains from the company anything by way of remuneration over and above the remuneration to which he is entitled as such director, whether as salary, fees, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise ;

(b) in case the office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it 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.

(4) Nothing in this section shall apply to a person, who being the holder of any office of profit in the company, is appointed by the Central Government, under section 408, as a director of the company.

1. Substituted for "five hundred rupees or more" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

2. Substituted for "three thousand rupees" by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

3. Words " , managing agent, secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

4. The words, brackets and figures "or (2C), as the case may be," omitted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

Restrictions on appointment of managing directors

315. APPLICATION OF SECTIONS 316 AND 317

[*Omitted by the Companies (Amendment) Act, 1960.*]

316. NUMBER OF COMPANIES OF WHICH ONE PERSON MAY BE APPOINTED MANAGING DIRECTOR

(1) No public company and no private company which is a subsidiary of a public company shall, after the commencement of this Act, appoint or employ any person as managing director, if he is either the managing director or the manager of any other company (including a private company which is not a subsidiary of a public company), except as provided in sub-section (2).

(2) A public company or a private company which is a subsidiary of a public company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company (including a private company which is not a subsidiary of a public company) :

Provided that such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.