# 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 MRTP* (*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* ;]

9[(*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.

**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 is 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.]

**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 b 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) 5[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 196of 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 equivalentpost 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 casemay 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 ofwhom 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 eventof 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 suchconditions 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.*

**[1][*PART IC* 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 Presidentand 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 theTribunal 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 bya 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 otherauthority 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 Tribunalmay 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 Naidu for the reference to the State of Madras, and the Registrar of the State of Tamil Naidu 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 2[*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 regulationsas 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 Apri1, 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 Governmentand 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 ;

[7][(*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.

**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 prescribed [2][,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 terms [1][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, l975, 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.

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:

***Providedfurther*** 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.

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.]

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 upees.

(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.

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*].

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 theCompanies (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 mayextend 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 considera tion 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 DEMATERIALISED 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 [1][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 consti- tuting 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.** Substitutedfor "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 of or for any shares in the company or in its holding company : ***Provided***that nothing in this sub-section shall be taken to prohibit -

(*a*) the lending of money by a banking company in the ordinary course of its business ; or

(*b*) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for, fully paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried office or employment in the company ; or

(*c*) the making by a company of loans, within the limit laid down in sub-section (3), to persons (other than directors [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.]

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.]

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.]

**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.

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.

**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).]

**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 :

`86. *New issues of share capital to be only of two kinds*. - The share capital of a company limited by shares formed after the commencement of this Act, or issued after such commencement, shall be of two kinds only, namely : -

(*a*) equity share capital ; and

**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*)onthelastdayspecifiedforthepaymentofsuchdividendfor such period,inthearticlesorotherinstrument executedbythecompany inthatbehalf ;or

(*b*)incasenodayissospecified,onthedayimmediatelyfollowingsuch period ;

(*c*)Wheretheholderofanypreferencesharehasa righttovoteonany resolutionin accordancewiththeprovisionsof thissub-section,hisvoting rightona poll,astheholderofsuchshare,shall,subjecttotheprovisionsof section89 andsub-section(2)ofsection92,beinthesameproportionasthe capitalpaid-upin respectofthepreferenceshare bearstothetotalpaid-up equitycapitalofthecompany.

**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*. - Nocompanyformedafterthecommencement ofthisAct,orissuingany sharecapitalaftersuchcommencement,shallissueanyshares(notbeing preference shares)whichcarry votingrightsorrightsinthecompanyasto dividend,capitalorotherwisewhichare disproportionatetotherights attachingtotheholdersofothershares(notbeingpreferenceshares).'

**89. TERMINATION OF DISPROPORTIONATELY EXCESSIVE VOTING RIGHTS IN EXISTING COMPANIES**

(1)IfatthecommencementofthisActanyshares,bywhatevername called,ofanyexistingcompanylimitedby sharescarry votingrights in excessofthevotingrightsattachingundersub-section(1)ofsection 87to equityshares inrespectofwhichthesameamountofcapitalhasbeenpaid-up, thecompanyshall, withina periodofoneyearfrom thecommencementofthis Act,reducethevotingrightsinrespectofthesharesfirst-mentionedsoasto bringthem intoconformitywiththevotingrightsattachedtosuchequity sharesundersub-section(1)ofsection87.

(2)Beforethevotingrightsarebroughtintosuchconformity,theholdersof thesharesinquestionshallnotexercisein respectthereofvotingrightsin excessofwhatwouldhavebeenexercisablebythemifthecapital paid-upon their shareshadbeenequitysharecapital,inrespectofthefollowing resolutionsplacedbeforethecompany,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*)anyresolutionrelatingtotheappointmentofbuyingorselling agents ; (*c*)[2][***].

(3) If, byreasonofthefailureoftherequisiteproportionofanyclassof memberstoagree,itisnotfoundpossibleto complywiththeprovisionsof sub-section(1),thecompanyshall,withinonemonthoftheexpiryofthe period ofone yearmentionedinthatsub-section,applytotheCourtforanorder specifyingthemannerinwhichtheprovisionsof thatsub-sectionshallbe compliedwith ;andanyordermadebytheCourtinthisbehalfshallbindthe companyandall itsshareholders.

Ifdefaultismadeincomplyingwiththissub-section,thecompany,andevery officerofthecompanywhoisindefault, shallbepunishablewithfinewhich mayextendto[3][ten] thousandrupees.

(4)TheCentralGovernmentmay,inrespectofanysharesissuedbya companybeforethe1stdayofDecember, 1949,exemptthecompanyfromthe requirementsofsub-sections(1),(2)and(3),whollyorinpart,ifintheopinion of theCentralGovernmenttheexemptionisrequiredeitherinthepublic interestorintheinterestofthecompanyorof anyclassofshareholders thereinorofthecreditorsoranyclassofcreditorsthereof.

EveryorderofexemptionmadebytheCentral Governmentunderthis sub-sectionshallbelaidbeforebothHousesof Parliamentassoonasmaybeafter itismade.

**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)Nothinginsections85,86,88and89shall,inthecaseofanyshares issuedbya publiccompanybeforethe commencementofthisAct,affect anyvotingrightsattachedtothesharessaveasotherwiseprovidedin section 89,or anyrightsattachedtothesharesastodividend,capitalorotherwise.

(2)Nothinginsections85to89shallapplytoa privatecompany,unlessitisa subsidiaryofa publiccompany.

(3)Fortheremovalofdoubts,itisherebydeclaredthatonandfromthe commencementoftheCompanies (Amendment)Act,1974,theprovisions of section87shallapplyinrelationtothevotingrightsattachedtopreference sharesissuedbya publiccompanybeforethe1stdayofApril,1956,asthey applytothepreferencesharesissuedby a publiccompanyafterthatdate.

*Explanation*. - Forthepurposesofthissection,referencestoa publiccompany shallbeconstruedasincluding referencestoa privatecompanywhichisa subsidiaryofa publiccompany.

***Miscellaneous provisions as to share capital***

**91. CALLS ON SHARES OF SAME CLASS TO BE MADE ON UNIFORM BASIS**

WhereafterthecommencementofthisAct,anycallsforfurthershare capitalaremadeonshares,suchcallsshallbe madeona uniformbasison allsharesfallingunderthesameclass.

*Explanation*. - Forthepurposesofthissection,sharesofthesamenominal valueonwhichdifferentamountshave beenpaid-upshallnotbedeemedto fallunderthesameclass.

**92. POWER OF COMPANY TO ACCEPT UNPAID SHARE CAPITAL, ALTHOUGH NOT CALLED UP**

(1)A companymay,ifsoauthorisedbyitsarticlesacceptfromany memberthewholeora partoftheamount remainingunpaidonany sharesheldbyhim,althoughnopartofthatamounthasbeencalledup.

(2)Themembershallnothoweverbeentitled,wherethecompanyisone limitedbyshares,toanyvotingrightsin respectofthemoneyssopaidbyhim untilthesamewould,butforsuchpayment,becomepresently payable.

**93. PAYMENT OF DIVIDEND IN PROPORTION TO AMOUNT PAID-UP**

A companymay,ifsoauthorisedbyitsarticles,paydividendsin proportiontotheamountpaid-uponeachshare wherea largeramount is paid-uponsomesharesthanonothers.

**94. POWER OF LIMITED COMPANY TO ALTER ITS SHARE CAPITAL**

(1)A limitedcompanyhavinga sharecapital,may,ifsoauthorisedbyits articles,altertheconditionsofits memorandumasfollows,thatistosay, itmay -

(*a*)increaseitssharecapitalbysuchamountasitthinksexpedientby issuingnewshares ;

(*b*)consolidateanddividealloranyofitssharecapitalintosharesof largeramountthanitsexistingshares ;

(*c*)convertalloranyofitsfullypaid-upsharesintostock,andreconvert thatstockintofullypaid-upsharesofany denomination ;

(*d*)sub-divideitsshares,oranyofthem,intosharesofsmalleramount thanisfixedbythememorandum,so, however,thatinthesub-divisiontheproportionbetweentheamountpaidandtheamount,if any,unpaidoneach reducedshareshallbethesameasitwasinthe caseoftheshare fromwhichthereducedshareisderived ; (*e*)cancelshareswhich,atthedateofthepassingoftheresolutioninthat behalf,havenotbeentakenoragreedto betakenbyanyperson,and diminishtheamountofitssharecapitalbytheamountoftheshares socancelled. (2)Thepowersconferredbythissectionshallbeexercisedbythecompanyin generalmeetingandshallnotrequire tobeconfirmedbytheCourt.

(3)A cancellationofsharesinpursuanceofthissectionshallnotbedeemedto bea reductionofsharecapitalwithin themeaningofthisAct.

**94A. SHARE CAPITAL TO STAND INCREASED WHERE AN ORDER IS MADE UNDER SECTION 81(4)**

(1)NotwithstandinganythingcontainedinthisAct,wheretheCentral Governmenthas,byanordermadeundersub-section(4)ofsection81, directedthatanydebentureorloanoranypartthereofshallbeconvertedinto sharesina company,theconditionscontainedinthememorandumofsuch company shall,wheresuchorderhastheeffectof increasing thenominal sharecapitalofthecompany,standalteredandthenominalsharecapitalof suchcompany shallstandincreasedbyanamountequaltotheamountofthe valueofthesharesintowhichsuchdebenturesor loansorpartthereofhas beenconverted.

(2)Where,inpursuanceofanoptionattachedtodebenturesissuedorloans raisedbythecompany,anypublic financialinstitutionproposestoconvert suchdebenturesorloansintosharesinthecompany,theCentralGovernment may,ontheapplicationofsuchpublicfinancialinstitution,directthatthe conditionscontainedinthememorandumof such

companyshallstandaltered andthenominalsharecapitalofsuchcompanyshallstandincreasedbyan amount equaltotheamountofthevalueofthesharesintowhichsuch debenturesorloansorpartthereofhasbeen converted.

(3)Wherethememorandumofa companybecomesaltered,whetherby reasonofanordermadebytheCentral Governmentundersub-section(4)of section81orsub-section(2)ofthissection,theCentralGovernmentshallsend a copyofsuchordertotheRegistrarandalsotothecompanyandonreceiptof suchorder,thecompanyshallfilein



theprescribedform,withinthirtydays fromthedateofsuchreceipt,a returntotheRegistrarwithregardtothe increaseofsharecapitalandtheRegistrarshall,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*)consolidatedanddivideditssharecapitalintosharesoflarger amountthanitsexistingshares ;

(*b*)convertedanysharesintostock ;

(*c*)re-convertedanystockintoshares ;

(*d*)sub-divideditssharesoranyofthem ;

(*e*)redeemed anyredeemablepreferenceshares ;or

(*f*)cancelledanyshares,otherwisethaninconnectionwitha reduction ofsharecapitalundersections100 to104 ;

thecompanyshallwithinthirtydaysafterdoingso,givenoticethereofto theRegistrarspecifying,asthecasemaybe, thesharesconsolidated, divided, converted, sub-divided, redeemedorcancelled,orthestockreconverted. (2) TheRegistrarshallthereuponrecordthenotice,andmakeany alterations whichmaybenecessary inthe company'smemorandumorarticlesorboth.

(3)Ifdefaultismadein complyingwithsub-section(1),thecompany,and everyofficerofthecompanywhoisin default,shallbepunishablewithfine whichmayextendto[1][five hundred] rupeesforeverydayduringwhichthe 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**

Wherea companyhavinga sharecapitalhasconvertedanyofitsshares intostock,andgivennoticeofthe conversiontotheRegistrar,allthe provisionsofthisActwhichareapplicabletosharesonly,shallceasetoapplyas to somuchofthesharecapitalasisconvertedintostock.

**97. NOTICE OF INCREASE OF SHARE CAPITAL OR OF MEMBERS**

(1)Wherea companyhavinga sharecapital,whetheritsshareshaveor havenotbeenconvertedintostock,has increaseditssharecapital beyond theauthorisedcapital,andwherea company,notbeinga companylimitedby shares,hasincreasedthenumberofitsmembersbeyondtheregistered number,itshallfilewiththeRegistrar,notice oftheincreaseofcapitalorof memberswithinthirtydaysafterthepassing oftheresolutionauthorising theincrease ; andtheRegistrarshallrecordtheincreaseandalsomakeany alterationswhichmaybenecessaryinthecompany's memorandumorarticles orboth.

(2)Thenoticetobegivenasaforesaidshallincludeparticularsoftheclassesof sharesaffectedandtheconditions,if any,subject towhichthenewshareshave beenoraretobeissued.

(3)Ifdefaultismadeincomplyingwiththissection,thecompany,andevery officerofthecompanywhoisindefault, shallbepunishablewithfinewhich mayextendto[1][five hundred] rupeesforeverydayduringwhichthedefault 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** Anunlimitedcompanyhavinga sharecapitalmay,byitsresolutionfor registrationasa limitedcompanyinpursuance ofthisAct,doeitheror both of the following things, namely :

(*a*)increasethenominalamountofitssharecapitalbyincreasingthe nominalamountofeachofitsshares,but subjecttothecondition thatnopartoftheincreasedcapitalshallbecapableofbeingcalledup exceptintheevent andforthepurposesofthecompanybeingwound up ;

(*b*)providethata specifiedportionofitsuncalledsharecapitalshallnot becapableofbeingcalledupexceptinthe eventandforthepurposes ofthecompanybeingwoundup.

**99. RESERVE LIABILITY OF LIMITED COMPANY**

A limitedcompanymay,byspecialresolution,determinethatanyportion ofitssharecapitalwhichhasnotbeen alreadycalledupshallnotbe capableofbeingcalledup,exceptintheeventandforthepurposesofthe 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 bythe [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 forreducingsharecapital, it may apply, by petition, to the 1[*Tribunal*] for an order confirming the reduction.

(2)Wheretheproposed 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, the1[*Tribunal*]may,ifitthinksfit,dispensewiththeconsentofthat creditor,onthecompanysecuring paymentof hisdebtorclaimby appropriating,asthe1[*Tribunal*]maydirect,thefollowingamount :
(*i*)ifthecompanyadmitsthe fullamountofthedebtorclaim,or, thoughnotadmittingit,iswillingtoprovideforit,then, thefull amountofthedebtorclaim ;
(*ii*)ifthecompanydoesnotadmitandisnotwillingtoprovideforthe fullamountofthedebtorclaim,oriftheamount iscontingentor notascertained,then,anamountfixedbythe1[*Tribunal*]afterthelike inquiryandadjudicationasifthe companywerebeingwoundup bythe1[*Tribunal*].
(3) Where a proposed reduction of share capital involves either the diminution ofanyliabilityinrespectofunpaid sharecapitalorthepaymenttoany shareholderofanypaid-upsharecapital,the1[*Tribunal*]may,if,havingregardto anyspecialcircumstancesofthecase,itthinkspropersotodo,directthatthe provisionsofsub-section(2)shallnot applyas regardsanyclassoranyclasses ofcreditors.

**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)The1[*Tribunal*],ifsatisfiedwithrespecttoeverycreditoroftheco mpany whoundersection101isentitledtoobject tothereduction,thateither hisconsenttothereductionhasbeenobtainedorhisdebtorclaimhasbeen discharged, orhasdetermined,or hasbeensecured,maymakeanorder confirmingthereductiononsuchtermsandconditions asitthinksfit.

(2)Wherethe1[*Tribunal*]makesanysuchorder,itmay -
(*a*)ifforanyspecialreasonitthinkspropersotodo,makeanorder directingthatthecompanyshall,duringsuch periodcommencingon, oratanytimeafter,thedateoftheorder,asisspecifiedintheorder, addtoitsnameasthe lastwordsthereofthewords"andreduced" ; and
(*b*)makeanorderrequiringthecompanytopublishasthe1[*Tribunal*]directs thereasonsforreductionorsuchother informationinregardthereto asthe1[*Tribunal*]maythinkexpedientwitha viewtogivingproper informationtothe public,and,ifthe1[*Tribunal*]thinksfit,thecauseswhich ledtothereduction.
(3)Wherea companyisorderedtoaddtoitsnamethewords"and reduced", thosewordsshall,untiltheexpirationof theperiodspecified,intheorder,be deemedtobepartofthenameofthecompany.

**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)TheRegistrar -
(*a*)onproduction tohimofanorderofthe1[*Tribunal*]confirming the reductionofthesharecapitalofa company ;and
(*b*)onthedeliverytohimofa certifiedcopyoftheorderandofa minute approvedbythe1[*Tribunal*]showing,with respecttothesharecapitalof thecompanyasalteredbytheorder,(*i*)theamountoftheshare capital,(*ii*)thenumber

ofsharesintowhichitistobedivided, (*iii*) the amountofeachshare,and(*iv*)theamount,ifany,atthedateofthe registrationdeemedtobepaid-uponeachshare ; shallregistertheorderandminute.

(2)Ontheregistrationoftheorderandminute,andnotbefore,theresolution forreducingsharecapitalasconfirmed bytheordershalltakeeffect.

(3)Noticeoftheregistrationshallbepublishedinsuchmannerasthe1[*Tribunal*] maydirect.

(4)TheRegistrarshallcertifyunderhishandtheregistrationoftheorderand minute,andhiscertificateshallbe conclusiveevidencethatalltherequirementsofthisActwithrespecttoreductionofsharecapitalhavebeencomplied with,andthatthesharecapitalofthecompanyissuchasisstatedinthe minute.

(5)Theminutewhenregisteredshallbedeemedtobesubstitutedforthe correspondingpartofthememorandumof thecompany,andshallbevalid andalterableasifithadbeenoriginallycontainedtherein.

(6)Thesubstitutionofanysuchminuteasaforesaidforpartofthe memorandumofthecompanyshallbedeemedto beanalterationofthe memorandumwithinthemeaningandforthepurposes ofsection40.



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

**104. LIABILITY OF MEMBERS IN RESPECT OF REDUCED SHARES**

(1)A memberofthecompany,pastorpresent,shallnotbeliable,in respectofanyshare,toanycallorcontribution exceedinginamountthe difference,ifany,betweentheamountpaidontheshare,orthereduced amount,ifany, whichistobedeemedtohavebeenpaidthereon,asthecase maybe,andtheamountoftheshareasfixedbythe minuteof reduction :

***Provided*** that,ifanycreditorentitledinrespect ofanydebtorclaimtoobject tothereductionofsharecapitalis,by reasonofhisignoranceofthe proceedings forreductionoroftheirnatureandeffectwithrespect tohisdebt orclaim, notenteredonthelistofcreditors,andafterthereductionthe companyisunable,withinthemeaningofsection434, topaytheamountofhis debtorclaim,then -

(*a*)everypersonwhowasa memberofthecompanyatthedateof the registrationoftheorderforreductionand minute,shallbeliableto contributeforthepaymentofthatdebtorclaimanamountnot exceedingtheamountwhich hewouldhavebeenliabletocontribute ifthecompanyhadcommencedtobewoundupontheday immediately beforethesaiddate ;and

(*b*)ifthecompanyiswoundup,the1[*Tribunal*],ontheapplicationof anysuch creditorandproofofhisignoranceas aforesaid,may,ifitthinksfit, settleaccordinglya listofpersonssoliabletocontribute,andmake andenforcecalls andordersonthecontributoriessettledonthelist, asiftheywereordinarycontributoriesina winding up.

(2)Nothinginthissectionshallaffecttherightsofthecontributoriesamong themselves.

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

**105. PENALTY FOR CONCEALING NAME OF CREDITOR, ETC**

Ifanyofficerofthecompany -

(*a*)knowinglyconcealsthenameofanycreditorentitledtoobjecttothe reduction ;

(*b*)knowinglymisrepresentsthenatureoramountofthedebtorclaimof anycreditor ;or

(*c*)abetsorisprivytoanysuchconcealmentormisrepresentationas aforesaid ;

heshallbepunishablewithimprisonmentfora termwhichmayextendtoone year,orwithfine,orwithboth.

***Variation of shareholders' rights***

**106. ALTERATION OF RIGHTS OF HOLDERS OF SPECIAL CLASSES OF SHARES**

Wherethesharecapitalofa companyisdivided intodifferentclassesof shares,therightsattachedtothesharesof anyclassmaybevariedwith theconsentinwritingoftheholders ofnotlessthanthree-fourthsoftheissued sharesof thatclassorwiththesanctionofa specialresolutionpassedata separatemeetingoftheholdersoftheissuedshares ofthatclass -

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

(*b*)intheabsenceofanysuchprovisioninthememorandumor articles, ifsuchvariationisnotprohibitedbytheterms ofissueofthesharesof thatclass.

**107. RIGHTS OF DISSENTIENT SHAREHOLDERS**

(1)If,inpursuanceofanyprovisionsuchasisreferredtoinsection106, therightsattachedtoanysuchclassof sharesareatanytimevaried,the holdersofnotlessintheaggregatethantenpercentoftheissuedsharesof that class,beingpersonswhodidnotconsenttoorvoteinfavouroftheresolution forthevariation,mayapplytothe 1[*Tribunal*]tohavethevariationcancelled,and whereanysuchapplicationismade,thevariationshallnothaveeffect unless anduntilitisconfirmedbythe1[*Tribunal*].

(2)Anapplicationunderthissectionshallbemadewithintwenty-onedays afterthedateonwhichtheconsentwas givenortheresolution waspassed,as thecasemaybe,andmaybemadeonbehalfoftheshareholdersentitledto maketheapplicationbysuchoneormoreoftheirnumberastheymayappoint inwritingforthepurpose.

(3)Onanysuchapplication,the1[*Tribunal*],afterhearingtheapplicantandany otherpersonswhoapplytothe 1[*Tribunal*]tobeheardandappeartothe1[*Tribunal*]tobe interestedintheapplication,may,ifitissatisfied,having regardtoallthe

circumstancesofthecase,thatthevariationwouldunfairlyprejudicethe shareholdersoftheclass representedbythe applicant,disallowthevariation ; andshall,ifnotsosatisfied,confirmthevariation.

(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 INSTRU-MENT 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*** thatnothinginthissectionshallprejudiceanypowerofthe companytoregisterasshareholderor debenture holderany persontowhom therightto anysharesin,ordebenturesof, thecompanyhasbeentransmitted byoperationoflaw.

(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*)everyinstrumentoftransferintheprescribedformwiththedateof suchpresentationstamped 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*) inthecaseofsharesdealtinorquotedonarecognisedstock exchange,atanytimebeforethedateonwhichthe registerof membersisclosed,inaccordancewithlaw,forthefirsttimeafter thedateofthepresentationofthe prescribedformtothe prescribedauthority underclause (*a*)orwithin1[twelve]months fromthedateofsuch presentation, whicheveris later ;

(*ii*)in any other case, presentation withintwomonthsfromthedateofsuch 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,inaccordance with law, for the first time after such commencement whicheverislater ;

(*b*)inanyother case,atanytimenotlaterthantheexpiryofsixmonths fromsuchcommencement.

(1C)Nothingcontainedinsub-sections(1A)and(1B)shallapplyto -

(*A*) anyshare -

(*i*) whichisheldbya company inany otherbodycorporateinthe nameofa directorornomineein pursuanceofsub- section(2),or asthecasemaybe,sub-section(3),ofsection49, or

(*ii*) whichisheldbya corporation,ownedorcontrolledbythe CentralGovernmentora State Government,inanyother body corporateinthenameofa directorornominee,or

(*iii*)inrespectofwhicha declarationhasbeenmadetothe Public Trusteeundersection153B,

if-

(*1*) thecompanyorcorporation,asthecasemaybe,stampsor otherwiseendorses,ontheformoftransferinrespect ofsuch share,thedateonwhichitdecidesthatsuchshareshallnotbe heldinthenameofthesaiddirectoror nomineeor,asthecase maybe,inthecaseof anyshareinrespectofwhichanysuch declarationhasbeenmadeto thePublicTrustee,thePublic Trusteestampsorotherwiseendorses,ontheformoftransferin respectofsuchshare underhisseal,thedateonwhichtheformis presentedtohim,and

(*2*)theinstrumentoftransferinsuchform duly completed in all respects,isdeliveredtothe -

(*a*) bodycorporateinwhosesharesuchcompanyor corporation hasmade investmentinthenameofitsdirectoror nominee, or

(*b*)companyinwhichsuchshareisheldintrust, withintwomonthsofthedatesostampedorotherwise endorsed ;or (*B*) anysharedeposited byanypersonwith -

(*i*)theStateBankofIndia,or
(*ii*) anyscheduledbank,or
(*iii*)any bankingcompany(otherthana scheduledbank)orfinancial institutionapprovedbytheCentralGovernment bynotification intheOfficialGazette(andanysuchapprovalmaybeaccorded soastoberetrospectivetoanydate notearlierthanthe1stdayof April,1966),or
(*iv*) theCentralGovernmentora StateGovernmentorany corporationownedorcontrolledbytheCentral Governmentora State Government,
bywayofsecurityfortherepaymentofanyloanoradvanceto,orfor theperformanceofanyobligationundertaken by,suchperson,if -
(*1*) thebank,institution,Governmentorcorporation,asthecasemay be,stampsorotherwiseendorsesontheformof transferofsuch share -
(*a*)thedateonwhichsuchshareisreturned byittothedepositor, or
(*b*)inthecaseoffailureonthepartofthedepositortorepaythe loanoradvanceortoperformtheobligation,thedate on whichsuchshareisreleasedforsalebysuchbank,institution, Governmentorcorporation,asthecasemaybe,or
(*c*)wherethebank,institution,Governmentorcorporation,as thecasemaybe,intendstogetsuchshare registeredin its ownname,thedateonwhichtheinstrumentoftransfer relatingtosuchshareisexecutedbyit ;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 [5][*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 [2][*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 publiccompanylimitedbyshares,ifsoauthorisedbyitsarticles, may,withthepreviousapprovaloftheCentral Government,with respecttoanyfullypaid-upshares,issueunderitscommonseala warrant statingthatthebearerof thewarrantisentitledtothesharesthereinspecified, andmayprovide,bycouponsorotherwise,forthepaymentof thefuture dividendsonthesharesspecifiedinthewarrant.

(2)ThewarrantaforesaidisinthisActreferredtoasa "sharewarrant".

(3)A sharewarrantshallentitlethebearerthereoftothesharestherein specified,andthesharesmaybetransferred bydeliveryofthewarrant.

**115. SHARE WARRANTS AND ENTRIES IN REGISTER OF MEMBERS**

(1)Ontheissueofa sharewarrant,thecompanyshallstrikeoutofits registerofmembersthenameofthemember thenenteredthereinas holdingthesharesspecifiedinthewarrantasifhehadceasedtobea member, andshall enterinthatregisterthefollowingparticulars, namely : -

(*a*)thefactoftheissueofthewarrant ;
(*b*)a statementofthesharesspecifiedinthewarrant,distinguishingeach sharebyitsnumber ;and
(*c*)thedateoftheissueofthewarrant.

(2)Thebearerofa sharewarrantshall,subjecttothearticlesofthe company, beentitled,onsurrenderingthewarrant forcancellationandpayingsuchfee tothecompanyastheBoardofdirectorsmayfromtimetotimedetermine,to havehisnameenteredasa memberintheregisterofmembers.

(3)Thecompanyshallberesponsibleforanylossincurredbyanypersonby reasonofthecompanyenteringinits registerofmembersthenameofa 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 particularsof 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 [1][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 noticeof 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 inadvertenceorto someothersufficientcauseorisnotofa natureto prejudicethepositionofcreditorsorshareholdersofthe company; or
(*b*)thatonothergroundsitisjustandequitabletograntrelief ;
may,ontheapplicationofthecompanyor anypersoninterestedandonsuch termsandconditionsasseemto theCompanyLawBoardjustand expedient,directthatthetimeforthefilingoftheparticularsorforthe registrationofthechargeorforthegivingofintimationofpaymentor satisfactionshallbeextendedor,asthe casemayrequire,thattheomissionor mis-statementshallberectified.
(2)TheCompany LawBoardmaymakesuchorderastothecostsofan applicationundersub-section(1)asit thinksfit.
(3)WheretheCompanyLaw Boardextendsthetimefortheregistrationof a charge,theordershallnot prejudiceanyrightsacquiredinrespectofthe propertyconcernedbeforethechargeisactuallyregistered.'

**142. PENALTIES**

(1) IfdefaultismadeinfilingwiththeRegistrarforregistrationthe particulars -
(*a*)ofanychargecreatedbythecompany ;
(*b*)ofthepaymentorsatisfactionofa debtinrespectofwhicha chargehasbeenregisteredunderthisPart ;or
(*c*)oftheissuesofdebenturesofa series ;
requiringregistrationwiththeRegistrarundertheprovisionsofthisPart,then unlesstheregistrationhasbeeneffected ontheapplicationofsomeother person,thecompany,andeveryofficerofthecompanyorotherpersonwhois in default,shallbepunishablewithfinewhichmayextendto [1][five thousand] rupees foreverydayduringwhichthe defaultcontinues.

(2)Subjectasaforesaid,ifanycompanymakesdefaultincomplyingwithany oftheotherrequirements ofthisActas tothe registrationwiththeRegistrarof anychargecreatedbythecompany orofanyfactconnectedtherewith,the company,andeveryofficerofthecompanywhoisindefault,shall,without prejudicetoanyotherliability,be punishablewithfinewhichmayextendto [2][ten] thousandrupees.

**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) Everycompanyshallkeepatitsregisteredofficea registerof chargesandenterthereinallchargesspecifically affectingpropertyof the company,andallfloatingchargesontheundertakingoronanyproperty ofthe company, givingineachcase -
(*i*)a shortdescriptionofthepropertycharged ;
(*ii*) theamountofthecharge ;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 commencementofthisActhadbeensubstitutedthereinforthedateof creationofthecharge,orthedateof completionoftheacquisitionofthe propertysubjecttothecharge,asthecasemaybe. Nothingcontainedinthis sectionshallbedeemedtoaffecttherelative prioritiesastheyexistedimmediatelybeforethecommencementofthis Act,as betweenchargesonthesameproperty.

## 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.

**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 [1][ten] thousand rupees.

**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 declarationsby 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 consi-dered 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 holderin 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. Substi**tuted 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.

**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.

**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 REPORTOF 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.

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 :
***Providedfurther*** 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 :
***Providedfurther*** 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.*]

**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 :

`167. Power of Company Law Board to call annual general meeting. - (1) If default is made in holding an annual general meeting in accordance with section 166, the 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.

**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, otherthan 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 applicationeither 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, notwith- standing 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 Court1[*or the Tribunal, as the case may be*] may make an order that that person shall not, without the leave of the Court1[*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 Court1[*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 Court1[*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 :

***Providedfurther*** 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.

3[(2B) A company which fails to comply with the provisions of section 80A shall not, so long as such failure continues, declare any dividend on its equity shares.]

(3) No dividend shall be payable except in cash :

***Provided*** that nothing in this sub-section shall be deemed to prohibit the 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.

[5][(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 theCentral 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 :

***Providedfurther*** 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 (*ii*) and the proviso by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

"(*ii*) by such officer of Government as may be authorised by the Central Government in this behalf:

**Provided** that such inspection may be made without giving any previous notice to the company or any officer thereof."

**2.** 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 ACCOUNT-ING 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 Accoun-tants 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) of section 209, having been charged by the [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 ma 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 willfully.

**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*)ofsub-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 insub-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 [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.

(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 [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.

**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 29of 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 supple-mentary 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 prescribedform 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][***Providedalso*** 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 accountantwithin 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.**

Ifdefault 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 227AND 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 [1][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 [1][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.

**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.

**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.]

**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.

**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 mana-ging or other director, [2][***] or the manager, of the company.

**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*)(*ii*), (*b*)(*iii*), (*c*)or(*d*)of sub-section (1), the inspector shall not exercise his power of investigating into, and reporting on, its or his affairs without first having obtained the prior approval of the Central Government thereto:

***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.

**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 bythe 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 secreataries 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 secreataries 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 secreataries 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][2][*Tribunal* ], 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*)votesin 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 INVESTI-GATION 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 [2][3][*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 per-missible 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*** thatsuch 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 mutandi*s, 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 undertakingto take and pay for his qualificationshares, 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 *suomotu* 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 imprison- ment 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 everyday 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 punish- able 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) Acompany 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 applicationeither 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 [1][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 ;

[1][*(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)Notwithstandinganythingcontainedinanyotherprovision ofthis Act, -
(*a*)noGovernmentcompany ;and
(*b*)noothercompanywhichhasbeeninexistenceforlessthanthree financialyears,
shallcontributeanyamountoramounts,directlyorindirectly, -
(*i*)toanypoliticalparty ;or
(*ii*)foranypolitical purposetoanyperson.

(2)A company,notbeinga companyreferredtoinclause(*a*)orclause (*b*)of sub-section (1), may contribute any amount or amounts, directly or indirectly, -
(*a*)toanypoliticalparty ;or
(*b*)foranypoliticalpurposetoanyperson :
***Provided*** that the amount or, as the case may be, the aggregate of the amounts whichmaybesocontributedbya companyinanyfinancialyearshallnot exceedfive per cent of its average net profits determined in accordance with the provisions of sections 349 and 350 during the three immediately preceding financialyears.
*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)Withoutprejudicetothegeneralityoftheprovisionsofsub-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 partyshallalsobe deemedtobecontributionoftheamountofsuch donation,subscriptionorpaymenttosuchpersonfora political purpose;
(*b*)theamountofexpenditureincurred,directlyorindirectly,bya companyonadvertisementinanypublication(being a publicationin thenatureofa souvenir,brochure,tract,pamphletorthelike)byor onbehalfofa politicalpartyorfor itsadvantageshallalsobe deemed, -
(*i*)wheresuchpublicationisbyoronbehalfofa politicalparty,tobe a contributionofsuchamounttosuchpolitical party,and
(*ii*) wheresuchpublicationisnotbyoronbehalfofbutforthe advantageofa politicalparty,tobea contributionfora political purposetothepersonpublishingit.
(4)Everycompanyshalldiscloseinitsprofitandlossaccountanyamountor amountscontributedbyittoanypolitical partyorforanypoliticalpurposeto anypersonduringthefinancialyeartowhichthataccountrelates,giving particularsofthetotalamountcontributedandthenameofthepartyor persontowhichortowhomsuchamounthas beencontributed.
(5) If a company makes any contribution in contravention of the provisions of this section, -
(*a*)thecompanyshallbepunishablewithfinewhichmayextendtothree timestheamountsocontributed ;and
(*b*)everyofficerofthecompanywhoisindefaultshallbepunishable withimprisonmentfora termwhichmayextend tothreeyearsand shallalsobeliabletofine.

**293B. POWER OF BOARD AND OTHER PERSONS TO MAKE CONTRIBUTIONS TO THE NATIONAL DEFENCE FUND, ETC**

(1)TheBoardofdirectorsofanycompanyoranypersonorauthority exercisingthepowersofthe Boardofdirectors ofa company,orofthe companyingeneralmeeting,may,notwithstandinganythingcontainedin sections293and 293A oranyotherprovisionofthisActorinthememorandum, articlesoranyotherinstrumentrelatingtothe company,contributesuch amountasitthinksfittotheNationalDefenceFundoranyotherfundapprovedbythe CentralGovernmentforthepurposeofnationaldefence.

(2)Everycompanyshalldiscloseinitsprofits andlossaccountthetotal amountoramountscontributedbyittothe Fundreferredto insub-section (1) duringthefinancialyeartowhichtheamountrelates.

***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 [1][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 [1][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.

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).

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 rightsof 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 theprovisions 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 approvalof 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 anyoffice 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 whichthe 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.



(3) Where, at the commencement of this Act, any person is holding the office either of managing director or of manager in more than two companies of which each one or at least one is a public company or a private company which is a subsidiary of a public company, he shall, within one year from the commencement of the Companies (Amendment) Act, 1960, choose not more than two of those companies as companies in which he wishes to continue to hold the office of managing director or manager, as the case may be ; and the provisions of clauses (*b*) and (*c*) of sub-section (1) and of sub-sections (2) and (3) of section 276 shall apply *mutatis mutandis* in relation to this case, as those provisions apply in relation to the case of a director.

(4) Notwithstanding anything contained in sub-sections (1) to (3), the Central Government may, by order, permit any person to be appointed as a managing director of more than two companies if the Central Government is satisfied that it is necessary that the companies should, for their proper working, function as a single unit and have a common managing director.

**317. MANAGING DIRECTOR NOT TO BE APPOINTED FOR MORE THAN FIVE YEARS AT A TIME**

(1) No company shall, after the commencement of this Act, appoint or employ any individual as its managing director for a term exceeding five years at a time.

(2) Any individual holding at the commencement of this Act the office of managing director in a company shall, unless his term expires earlier, be deemed to have vacated his office immediately on the expiry of five years from the commencement of this Act.

(3) Nothing contained in sub-section (1) shall be deemed to prohibit the re-appointment, re-employment, or the extension of the term of office, of any person by further periods not exceeding five years on each occasion : ***Provided*** that any such re-appointment, re-employment or extension shall not be sanctioned earlier than two years from the date on which it is to come into force.

(4) This section shall not apply to a private company unless it is a subsidiary of a public company.

***Compensation for loss of office***

**318. COMPENSATION FOR LOSS OF OFFICE NOT PERMISSIBLE EXCEPT TO MANAGING OR WHOLE-TIME DIRECTORS OR TO DIRECTORS WHO ARE MANAGERS**

(1) Payment may be made by a company, except in the cases specified in sub-section (3) and subject to the limit specified in sub-section (4), to a managing director, or a director holding the office of manager or in the whole-time employment of the company, by way of compensation for loss of office, or as consideration for retirement from office, or in connection with such loss or retirement.

(2) No such payment shall be made by the company to any other director.

(3) No payment shall be made to a managing or other director in pursuance of sub-section (1), in the following cases, namely : -

(*a*) where the director resigns his office in view of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing director, [1][***] manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation ;

(*b*)where the director resigns his office otherwise than on the reconstruction of the company or its amalgamation as afore- said ;

(*c*)where the office of the director is vacated by virtue of section 203, or any of the clauses (*a*) to (*l*), of sub-section (1) of section 283 ;

(*d*)where the company is being wound up, whether by [2][*order of the Tribunal*] or voluntarily, provided the winding up was due to the negligence or default of the director ;

(*e*)where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement

of, the conduct of the affairs of the company or any subsidiary or holding company thereof ; (*f*)where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

(4) Any payment made to a managing or other director in pursuance of sub-section (1) shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold the office, or where he held the office for a lesser period than three years, during such period :

***Provided*** that no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before, or at any time within twelve months after, the date on which he ceased to hold office, if the assets of the company on the winding up, after deducting the expenses thereof, are not sufficient to repay to the shareholders the share capital (including the premiums, if any,) contributed by them.

(5) Nothing in this section shall be deemed to prohibit the payment to a managing director, or a director holding the office of manager, of any remuneration for services rendered by him to the company in any other capacity.

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

**2.** Substituted for "or subject to supervision of the Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

**319. PAYMENT TO DIRECTOR, ETC., FOR LOSS OF OFFICE, ETC., IN CONNECTION WITH TRANSFER OF UNDERTAKING OR PROPERTY**



(1) No director of a company shall, in connection with the transfer of the whole or any part of any undertaking or property of the company, receive any payment, by way of compensation for loss of office, or as consideration for retirement from office, or in connection with such loss or retirement -

(*a*)from such company ; or

(*b*)from the transferee of such undertaking or property or from any other person (not being such company), unless particulars with respect to the payment proposed to be made by such transferee or person (including the amount thereof) have been disclosed to the members of the company and the proposal has been approved by the company in general meeting.

(2) Where a director of a company receives payment of any amount in contravention of sub-section (1), the amount shall be deemed to have been received by him in trust for the company.

(3) Sub-sections (1) and (2) shall not affect in any manner the operation of section 318.

**320. PAYMENT TO DIRECTOR FOR LOSS OF OFFICE, ETC., IN CONNECTION WITH TRANSFER OF SHARES**

(1) No director of a company shall, in connection with the transfer to any persons of all or any of the shares in a company, being a transfer resulting from -

(*i*) an offer made to the general body of shareholders ;

(*ii*) an offer made by or on behalf of some other body corporate with a view to the company becoming a subsidiary of such body corporate or a subsidiary of its holding company ;

(*iii*)an offer made by or on behalf of an individual with a view to his obtaining the right to exercise, or control the exercise of, not less than one-third of the total voting power at any general meeting of the company ; or

(*iv*)any other offer which is conditional on acceptance to a given extent ;

receive any payment by way of compensation for loss of office, or as consideration for retirement from office, or in connection with such loss or retirement, -

(*a*)from such company ; or

(*b*)except as otherwise provided in this section, from the transferees of the shares or from any other person (not being such company).

(2) In the case referred to in clause (*b*) of sub-section (1), it shall be the duty of the director concerned to take all reasonable steps to secure that particulars with respect to the payment proposed to be made by the transferees or other person (including the amount thereof) are included in, or sent with, any notice of the offer made for their shares which is given to any shareholders.

(3) If -

(*a*) any such director fails to take reasonable steps as aforesaid ; or

(*b*)any person who has been properly required by any such director to include the said particulars in, or send them with, any such notice as aforesaid fails so to do ;

he shall be punishable with fine which may extend to 1[two thousand and five hundred] rupees.

(4) If -

(*a*)the requirements of sub-section (2) are not complied with in relation to any such payment as is governed by clause (*b*) of sub-section (1) ; or

(*b*)the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a

meeting, called for the purpose, of the holders of the shares to which the offer relates and other holders of shares of the same class (other than shares already held at the date of the offer by, or by a nominee for, the offerer, or where the offerer is a company, by, or by a nominee for, any subsidiary thereof) as any of the said shares ;
any sum received by the director on account of the payment shall be deemed to have been received by him in trust for any persons who have sold their shares as a result of the offer made, and the expenses incurred by him in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.
(5) If at a meeting called for the purpose of approving any payment as required by clause (*b*) of sub-section (4), a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall, for the purposes of that sub-section, be deemed to have been approved.

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

**321. PROVISIONS SUPPLEMENTARY TO SECTIONS 318, 319 AND 320**

(1) Where in proceedings for the recovery of any payments as having, by virtue of sub-section (2) of section 319 or sub-section (4) of section 320, been received by any person in trust, it is shown that -
(*a*) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question, or within one year before, or within two years after, that agreement or the offer leading thereto ; and (*b*)the company or any person to whom the transfer was made was privy to that arrangement ;
the payment shall be deemed, except insofar as the contrary is shown, to be one to which that sub-section applies.

(2) If in connection with any such transfer as is mentioned in section 319 or in section 320, -
(*a*)the price to be paid, to a director of the company whose office is to be abolished or who is to retire from office, for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares ; or
(*b*)any valuable consideration is given to any such director ;
the excess or the money value of the consideration, as the case may be, shall for the purposes of that section, be deemed to have been a payment made to him by way of compensation for loss of office, or as consideration for retirement from office, or in connection with such loss or retirement.



(3) References in sections 318,319 and 320 to payments made to any director of a company by way of compensation for loss of office, or as consideration for retirement from office, or in connection with such loss or retirement, do not include any *bona fide* payment by way of damages for breach of contract or by way of pension in respect of past services ; and for the purposes of this sub-section the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.
(4) Nothing in sections 319 and 320 shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are therein mentioned or with respect to any other like payments made or to be made to the directors of a company.

***Directors with unlimited liability***

**322. DIRECTORS, ETC., WITH UNLIMITED LIABILITY IN LIMITED COMPANY**

(1) In a limited company, the liability of the directors or of any director [1][***] or manager may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of a director [2][***] or manager is unlimited, the directors [3][***] and the manager of the company, and the member who proposes a person for appointment to the office of director [2][***] or manager, shall add to that proposal a statement that the liability of the person holding that office will be unlimited ; and before the person accepts the office or acts therein, notice in writing that his liability will be unlimited, shall be given to him by the following or one of the following persons, namely, the promoters of the company, its directors, [4][***] or manager, if any, and its officers.
(3) If any director [2][***], manager or proposer makes default in adding such a statement, or if any promoter, director [2][***], manager or officer of the company makes default in giving such a notice, he shall be punishable with fine which may extend to [5][ten] thousand rupees and shall also be liable for any damage which the person so appointed may sustain from the default ; but the liability of the person appointed shall not be affected by the default.

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

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

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

**323. SPECIAL RESOLUTION OF LIMITED COMPANY MAKING LIABILITY OF DIRECTORS, ETC., UNLIMITED** (1) A limited company may, if so authorised by its articles, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or of any director [1][***] or manager.

(2) Upon the passing of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum :

***Provided*** that no alteration of the memorandum making the liability of any of the officers referred to in sub-section (1) unlimited shall apply to such officer, if he was holding the office from before the date of the alteration, until the expiry of his then term, unless he has accorded his consent to his liability becoming unlimited.

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

## CHAPTER III: MANAGING AGENTS

***Prohibition of appointment of managing agent in certain cases***

**324. POWER OF CENTRAL GOVERNMENT TO NOTIFY THAT COMPANIES ENGAGED IN SPECIFIED CLASSES OF INDUSTRY OR BUSINESS SHALL NOT HAVE MANAGING AGENTS.**

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

**324A. ABOLITION OF MANAGING AGENCIES AND SECRETARIES AND TREASURERS** [*Omitted by the Companies* (*Amendment*) *Act, 2000 w.e.f. 13-12-2000.*]

**325. MANAGING AGENCY COMPANY NOT TO HAVE MANAGING AGENT** [*Omitted by the Companies* (*Amendment*) *Act, 2000 w.e.f. 13-12-2000.*]

**325A. SUBSIDIARY OF A BODY CORPORATE NOT TO BE APPOINTED AS MANAGING AGENT** [*Omitted by the Companies* (*Amendment*) *Act, 2000 w.e.f. 13-12-2000.*]

***Appointment and term of office***



**326. CENTRAL GOVERNMENT TO APPROVE OF APPOINTMENT, ETC., OF MANAGING AGENT ; AND CIRCUMSTANCES IN WHICH APPROVAL MAY BE ACCORDED**

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

**327. APPLICATION OF SECTIONS 328 TO 331**

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

**328. TERM OF OFFICE OF MANAGING AGENT**

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

***Variation of managing agency agreement***

**329. VARIATION OF MANAGING AGENCY AGREEMENT**

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

***Special provisions regarding existing managing agents***

**330. TERM OF OFFICE OF EXISTING MANAGING AGENTS TO TERMINATE ON 15TH AUGUST, 1960** [*Omitted by the Companies* (*Amendment*) *Act, 2000 w.e.f. 13-12-2000.*]

**331. APPLICATION OF ACT TO EXISTING MANAGING AGENTS**

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

***Restrictions on number of managing agencies***

**332. NO PERSON TO BE MANAGING AGENT OF MORE THAN TEN COMPANIES AFTER 15TH AUGUST, 1960**

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

***Right to charge on assets***

**333. RIGHT OF MANAGING AGENT TO CHARGE ON COMPANY'S ASSETS**

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

***Vacation of office, removal and resignation***

**334. VACATION OF OFFICE ON INSOLVENCY, DISSOLUTION OR WINDING UP, ETC**

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

**335. SUSPENSION FROM OFFICE WHERE RECEIVER APPOINTED**

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

**336. VACATION OF OFFICE ON CONVICTION IN CERTAIN CASES**

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

**337. REMOVAL FOR FRAUD OR BREACH OF TRUST**

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

**338. REMOVAL FOR GROSS NEGLIGENCE OR MISMANAGEMENT**

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

**339. POWER TO CALL MEETINGS FOR THE PURPOSES OF SECTIONS 337 AND 338 AND PROCEDURE**
[*Omitted by the Companies* (*Amendment*) *Act, 2000 w.e.f. 13-12-2000.*]
**340. TIME WHEN CERTAIN DISQUALIFICATIONS WILL TAKE EFFECT**
[*Omitted by the Companies* (*Amendment*) *Act, 2000 w.e.f. 13-12-2000.*]
**341. CONVICTION NOT TO OPERATE AS DISQUALIFICATION IF CONVICTED PARTNER, DIRECTOR, ETC., IS EXPELLED**
[*Omitted by the Companies* (*Amendment*) *Act, 2000 w.e.f. 13-12-2000.*]
**342. RESIGNATION OF OFFICE BY MANAGING AGENT**
[*Omitted by the Companies* (*Amendment*) *Act, 2000 w.e.f. 13-12-2000.*]

***Transfers of, and succession to, office***

**343. TRANSFER OF OFFICE BY MANAGING AGENT**



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

**344. MANAGING AGENCY NOT TO BE HERITABLE AFTER COMMENCEMENT OF ACT** [*Omitted by the Companies* (*Amendment*) *Act, 2000 w.e.f. 13-12-2000.*]

**345. SUCCESSION TO MANAGING AGENCY BY INHERITANCE OR DEVICE UNDER AGREEMENT BEFORE COMMENCEMENT OF ACT, TO BE SUBJECT TO CENTRAL GOVERNMENT'S APPROVAL**
[*Omitted by the Companies* (*Amendment*) *Act, 2000 w.e.f. 13-12-2000.*]

***Changes in constitution of firms and corporations***

**346. CHANGES IN CONSTITUTION OF MANAGING AGENCY, FIRM OR CORPORATION TO BE APPROVED BY CENTRAL GOVERNMENT**
[*Omitted by the Companies* (*Amendment*) *Act, 2000 w.e.f. 13-12-2000.*]

**347. APPLICATION OF SCHEDULE VIII TO CERTAIN MANAGING AGENTS** [*Omitted by the Companies* (*Amendment*) *Act, 2000 w.e.f. 13-12-2000.*]

***Remuneration of managing agents***

**348. REMUNERATION OF MANAGING AGENT ORDINARILY NOT TO EXCEED L0 PER CENT OF NET PROFITS** [*Omitted by the Companies* (*Amendment*) *Act, 2000 w.e.f. 13-12-2000.*]

**349. DETERMINATION OF NET PROFITS**

(1) In computing [1][***] the net profits of a company in any financial year -

(*a*)credit shall be given for the sums specified in sub-section (2), and credit shall not be given for those specified in sub-section (3) ; and

(*b*)the sums specified in sub-section (4) shall be deducted, and those specified in sub-section (5) shall not be deducted.

(2) In making the computation aforesaid, credit shall be given for the following sums :

bounties and subsidies received from any Government, or any public authority constituted or authorised in this behalf, by any Government, unless and except insofar as the Central Government otherwise directs.

(3) In making the computation aforesaid, credit shall not be given for the following sums : -

(*a*)profits, by way of premium, on shares or debentures of the company, which are issued or sold by the company ; (*b*)profits on sales by the company of forfeited shares ;

(*c*)profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof ;

(*d*)profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets :

***Provided*** that where the amount for which any fixed asset is sold exceeds the written down value thereof referred to in section 350, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written down value.

(4) In making the computation aforesaid, the following sums shall be deducted :

(*a*)all the usual working charges ;

(*b*)directors' remuneration ;

(*c*) bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis ;

(*d*)any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits ; (*e*)any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf ;

(*f*)interest on debentures issued by the company ;

(*g*) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets ;

(*h*)interest on unsecured loans and advances ;
(*i*) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature; (*j*) outgoings inclusive of contributions made under clause (*e*) of sub-section (1) of section 293 ;
(*k*)depreciation to the extent specified in section 350 ;
(*l*) the excess of expenditure over income ; which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, insofar as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained ; (*m*)any compensation of damages to be paid in virtue of any legal liability, including a liability arising from a breach of contract ;
(*n*) any sum paid by way of insurance against the risk of meeting any liability such as is referred to in clause (*m*) ; (*o*)debts considered bad and written off or adjusted during the year of account.
[2][(p) *amount paid as cess under section 441A*.]



(5) In making the computation aforesaid, the following sums shall not be deducted :
(*a*)[3][***]
(*b*)income-tax and super tax payable by the company under the Indian Income-tax Act, 1922 (11 of 1922), or any other tax on the income of the company not falling under clauses (*d*) and (*e*) ofsub-section (4) ;
(*c*)any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (*m*)of sub-section (4) ;
(*d*)loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess referred to in the proviso to section 350 of the written down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value.

**1.** Words "for the purpose of section 348," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

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

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

**350. ASCERTAINMENT OF DEPRECIATION**

The amount of depreciation to be deducted in pursuance of clause (*k*) of sub-section (4) of section 349 shall be the [1][amount of depreciation on assets] as shown by the books of the company at the end of the financial year expiring at the commencement of this Act or immediately thereafter and at the end of each subsequent financial year [2][at the rate specified in Schedule XIV] : ***Provided*** that if any asset is sold, discarded, demolished or destroyed for any reason before depreciation of such asset has been provided for in full, the excess, if any, of the written down value of such asset over its sale proceeds or, as the case may be, its scrap value, shall be written off in the financial year in which the asset is sold, discarded, demolished or destroyed.

**1.** Substituted for "amount calculated with reference to the written down value of the assets" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

**2.** Substituted for following by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988 :
"at the rate specified for the assets by the Indian Income-tax Act, 1922 (11 of 1922), and the rules made thereunder for the time being in force, as normal depreciation including therein extra and multiple shift allowances but not including therein any special, initial or other depreciation or any development rebate, whether allowed by that Act or those rules or otherwise."

**351. SPECIAL PROVISION WHERE THERE IS A PROFIT-SHARING ARRANGEMENT BETWEEN TWO OR MORE COMPANIES**

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

**352. PAYMENT OF ADDITIONAL REMUNERATION**

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

**353. TIME OF PAYMENT OF REMUNERATION**

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

**354. MANAGINGAGENT NOT ENTITLED TO OFFICE ALLOWANCE BUT ENTITLED TO BE REIMBURSED IN RESPECT OF EXPENSES**

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

**355. SAVING**

Sections [1][349 and 350] shall not apply to a private company unless it is a subsidiary of a public company.

**1.** Substituted for "348 to 354" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

***Appointments as selling and buying agents***

**356. APPOINTMENT OF MANAGING AGENT OR ASSOCIATE AS SELLING AGENT OF GOODS PRODUCED BY THE COMPANY**

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

**357. APPLICATION OF SECTION 356 TO CASE WHERE BUSINESS OF COMPANY CONSISTS OF THE SUPPLY OR RENDERING OF ANY SERVICES**
[*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]

**358. APPOINTMENT OF MANAGING AGENT OR ASSOCIATE AS BUYING AGENT FOR COMPANY** [*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000*]

**359. COMMISSION, ETC., OF MANAGING AGENT AS BUYING OR SELLING AGENT OF OTHER CONCERNS** [*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]



**360. CONTRACTS BETWEEN MANAGING AGENT OR ASSOCIATE AND COMPANY FOR THE SALE OR PURCHASE OF GOODS OR THE SUPPLY OF SERVICES, ETC**
[*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]

**361. EXISTING CONTRACTS RELATING TO MATTERS DEALT WITH IN SECTIONS 356 TO 360 TO TERMINATE ON 1ST MARCH, 1958**
[*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]

**362. REGISTERS TO BE OPEN TO INSPECTION**
[*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]

**363. REMUNERATION RECEIVED IN CONTRAVENTION OF FOREGOING SECTIONS TO BE HELD IN TRUST FOR COMPANY**
[*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]

***Assignment of, or charge on, remuneration***

**364. COMPANY NOT TO BE BOUND BY ASSIGNMENT OF, OR CHARGE ON, MANAGING AGENT'S REMUNERATION**
[*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]

***Compensation for termination of office***

**365. PROHIBITION OF PAYMENT OF COMPENSATION FOR LOSS OF OFFICE IN CERTAIN CASES** [*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]

**366. LIMIT OF COMPENSATION FOR LOSS OF OFFICE**
[*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]

***Other rights and liabilities not affected on termination of office***

**367. MANAGING AGENT'S RIGHTS AND LIABILITIES AFTER TERMINATION OF OFFICE** [*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]

***Restrictions on powers***

**368. MANAGING AGENT TO BE SUBJECT TO CONTROL OF BOARD AND TO RESTRICTIONS IN SCHEDULE VII**
[*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]

**369. LOANS TO MANAGING AGENT**
[*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]

**370. LOANS, ETC., TO COMPANIES UNDER THE SAME MANAGEMENT**
(1) No company (hereinafter in this section referred to as "the lending company") shall -
(*a*)make any loan to, or
(*b*)give any guarantee, or provide any security, in connection with a loan made by any other person to, or to any other person by,
any body corporate, unless the making of such loan, the giving of such guarantee or the provision of such security has been previously authorised by a special resolution of the lending company :
***Provided*** that no special resolution shall be necessary in the case of loans made to other bodies corporate not under the same management as the lending company where the aggregate of such loans does not exceed [1][such percentage of the aggregate of the subscribed capital of the lending company and its free reserves as may be prescribed] :
***Provided further*** that the aggregate of the loans made to all bodies corporate shall not exceed without the prior approval of the Central Government -
(*a*) [2][such percentage of the aggregate of the subscribed capital of the lending company and its free reserves as may be prescribed] where all such other bodies corporate are not under the same management as the lending company ; (*b*)[3][such percentage of the aggregate of the subscribed capital of the lending company and its free reserves as may be prescribed] where all such other bodies corporate are under the same management as the lending company. *Explanation 1.* - If a special resolution

has been passed by the lending company authorising the making of loans up to the limit of [4][the per-centage of the aggregate specified in clause (*a*), or, as the case may be, the percentage of the



aggregate specified in clause (*b*) of the second proviso] then, no further special resolution or resolutions shall be deemed to be necessary for the making of any loan or loans within such limit.

*Explanation 2*. - If a special resolution has been passed by the lending company authorising the Board of directors to give any guarantee or provide any security up to a limit specified in the resolution, then, no further special resolution or resolutions shall be deemed to be necessary for giving any guarantee or providing any security within such limit.

(1A)Where the lending company -

(*a*) makes any loan to, or

(*b*) gives any guarantee, or provides any security, in connection with a loan made by any other person to, or to any other person by,

a firm in which a partner is a body corporate under the same management as the lending company -

(*i*) the loan shall be deemed to have been made to, or

(*ii*) the guarantee or the security shall be deemed to have been given or provided in connection with the loan made by such other person to, or to such other person by,

a body corporate under the same management.

(1B) For the purposes of sub-sections (1) and (1A), two bodies corporate shall be deemed to be under the same management -

(*i*)if the managing agent, secretaries and treasurers, managing director or manager of the one body, or where such managing agent or secretaries and treasurers are a firm, any partner in the firm, or where such managing agent or secretaries and treasurers are a private company, any director of such company, is -

(*a*)the managing agent, secretaries and treasurers, managing director or manager of the other body ; or

(*b*) a partner in the firm acting as managing agent or secretaries and treasurers of the other body ; or

(*c*) a director of the private company acting as managing agent or secretaries and treasurers of the other body ; or (*ii*) if a majority of the directors of the one body constitute, or at any time within the six months immediately preceding constituted, a majority of the directors of the other body ; or

(*iii*) if not less than one-third of the total voting power with respect to any matter relating to each of the two bodies corporate is exercised or controlled by the same individual or body corporate ; or

(*iv*) if the holding company of the one body corporate is under the same management as the other body corporate within the meaning of clause (*i*), clause (*ii*) or clause (*iii*) ; or

(*v*)if one or more directors of the one body corporate while holding, whether by themselves or together with their relatives, the majority of shares in that body corporate also hold, whether by themselves or together with their relatives, the majority of shares in the other body corporate.

(1C) Every lending company shall keep a register showing -

(*a*)the names of all bodies corporate under the same management as the lending company and the name of every firm in which a partner is a body corporate under the same management as the lending company, and

(*b*)the following particulars in respect of every loan made, guarantee given or security provided by the lending company in relation to any such body corporate under this section :

(*i*)the name of the body corporate to which the loan has been made whether such loan has been made before or after that body corporate came under the same management as the lending company,

(*ii*) the amount of the loan,

(*iii*) the date on which the loan has been made,

(*iv*) the date on which the guarantee has been given or security has been provided in connection with a loan made by any other person to, or to any other person by, any body corporate or firm referred to in sub-section (1) or (1A) together with the name of the person, body corporate or firm.

(1D) Particulars of every loan, guarantee or security referred to in sub-section (1C) shall be entered in the register aforesaid within three days of the making of such loan, or the giving of such guarantee or the provision of such security or in the case of any loan made, guarantee given or security provided before the commencement of the Companies (Amendment) Act, 1960, within three months, from such commencement or such further time not exceeding six months as the company may by special resolution allow.

(1E) If default is made in complying with the provisions of sub-section (1C) or (1D), the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees and also with a further fine which may extend to fifty rupees for every day after the first during which the default continues.

(1F) The register aforesaid shall be kept at the registered office of the lending company and -

(*a*)shall be open to inspection at such office, and

(*b*)extracts may be taken therefrom or copies thereof may be required, by any member of the company to the same extent and in the same manner and on the payment of the same fees as in the case of the register of members of the company ; and the provisions of section 163 shall apply accordingly.

5[(1G) A company, which has defaulted in the repayment of any deposit referred to in section 58A or part thereof or interest thereupon in accordance with the terms and conditions of such deposit, shall not make any loan or give guarantee under this section till the default is made good.]

(2) Nothing contained in the foregoing provisions of this section shall apply to -

(*a*) any loan made -

(*i*) by a holding company to its subsidiary ; or

(*ii*) by the managing agent or secretaries and treasurers to any company under his or their management ; or (*iii*) by a banking company, or an insurance company, in the ordinary course of its business ; or

(*iv*) by a private company, unless it is a subsidiary of a public company ; or

(*v*)by a company established with the object of financing industrial enterprises ;



(*b*)any guarantee given or any security provided -

(*i*) by a holding company in respect of any loan made to its subsidiary ; or

(*ii*) by the managing agent or secretaries and treasurers in respect of any loan made to any company under his or their management ; or

(*iii*) by a banking company, or an insurance company, in the ordinary course of its business ; or

(*iv*) by a private company, unless it is a subsidiary of a public company ; or

(*v*) by a company established with the object of financing industrial enterprises.

(3) Nothing in this section shall apply to a book debt unless the tran-saction represented by the book debt was from its inception in the nature of a loan or an advance.

(4) For the purposes of this section, 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.

(5) Where before the commencement of the Companies (Amendment) Act, 1965, any loan, guarantee or security has been made, given or provided by a company which could not have been made, given or provided under this section as amended by that Act, and such loan, guarantee or security is outstanding at such commencement, the company shall, within six months from such commencement, enforce the repayment of the loan made or, as the case may be, revoke the guarantee given or the security provided, notwithstanding any agreement to the contrary :

***Provided*** that the aforesaid period of six months may be extended by the Central Government on an application made to it in that behalf by the company.

6[(6) Nothing contained in this section shall apply to a company on and after the commencement of the Companies (Amendment) Act, 1999.]

7[*Explanation.* - For the purposes of this section, "loan" includes any deposit of money made by one company with another company, not being a banking company.]

1. Substituted for ``ten per cent of the aggregate of the subscribed capital of the lending company and its free reserves'' by the Companies (Amendment) Act, 1988 w.e.f. 17-4-1989.

2. Substituted for ``thirty per cent of the aggregate of the subscribed capital of the lending company and its free reserves'' by the Companies (Amendment) Act, 1988 w.e.f. 17-4-1989.

3. Substituted for ``twenty per cent of the aggregate of the subscribed capital of the lending company and its free reserves'' by the Companies (Amendment) Act, 1988 w.e.f. 17-4-1989.

4. Substituted for ``thirty per cent of the aggregate specified in clause (a), or, as the case may be, of twenty per cent of the aggregate specified in clause (b), of the second proviso'' by the Companies (Amendment) Act, 1988 w.e.f. 17-4-1989.

5. Inserted by the Companies (Amendment) Act, 1996 w.e.f. 1-3-1997.

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

7. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 17-4-1989.

**370A. PROVISIONS AS TO CERTAIN LOANS WHICH COULD NOT HAVE BEEN MADE IF SECTIONS 369 AND 370 WERE IN FORCE**

Where any loan made, guarantee given or security provided by a company and outstanding at the commencement of the Companies (Amendment) Act, 1960 would not have been made, given or provided if 1[***] section 370 had been in force at the time when such loan was made, guarantee given or security provided, the company shall, within six months from the commencement of that Act, enforce the repayment of the loan made or, as the case may be, revoke the guarantee given or the security provided, notwithstanding any agreement to the contrary :

***Provided*** that the period of six months within which the company is

required by this section to enforce the repayment of the loan or to revoke the guarantee or security, may be extended -

(*a*) 2[***]

(*b*)in the case of a loan, guarantee or security under section 370, by a special resolution of the company.

1. Words "section 369 or" omitted 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. Prior to its omission, clause (a) read as under :
"(a) in the case of a loan, guarantee or secutiry under section 369, by the Central Government on an application made to it by the company for that purpose ;"

**371. PENALTY FOR CONTRAVENTION OF [1][***] SECTION 370 OR 370A**

(1) Every person who is a party to any contravention of [1][***] section 370 [excluding sub-section (1C) or (1D)], or section 370A, including in particular any person to whom the loan is made, or in whose interest the guarantee is given or the security is provided, shall be punishable with fine which may extend to [2][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.



(2) All persons who are knowingly parties to any such contravention shall be liable, jointly and severally, to the lending company for the repayment of the loan, or for making good the sum which the lending company may have been called upon to pay in virtue of the guarantee given or the security provided by such company.

**1.** Words "section 369 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.

**372. PURCHASE BY COMPANY OF SHARES, ETC., OF OTHER COMPANIES**

[1][(1) A company, whether by itself or together with its subsidiaries (hereafter in this section and section 373 referred to as the investing company), shall not be entitled to acquire, by way of subscription, purchase or otherwise (whether by itself, or by any individual or association of individuals in trust for it or for its benefit or on its account) the shares of any other body corporate except to the extent, and except in accordance with the restrictions and conditions, specified in this section.]

[2][(2) The Board of directors of the investing company shall be entitled to invest in any shares of any other body corporate up to such percentage of the subscribed equity share capital, or the aggregate of the paid-up equity and preference share capital, of such other body corporate, whichever is less, as may be prescribed:]

***Provided*** that the aggregate of the investments so made by the Board in all other bodies corporate shall not exceed [3][such percentage of the aggregate of the subscribed capital and free reserves of the investing company, as may be prescribed] :

***Providedfurther*** that the aggregate of the investments made in all other bodies corporate in the same group shall not exceed [3][such percentage of the aggregate of the subscribed capital and free reserves of the investing company, as may be prescribed].

(3) In computing at any time the percentages specified in sub-section (2) and the provisos thereto, the aggregate of the investments made by the investing company in other body or bodies corporate [whether before or after the commencement of the Companies (Amendment) Act, 1960] up to that time shall be taken into account.

[4][(3A) A company, which has defaulted in the repayment of any deposit referred to in section 58A or part thereof or interest due thereupon in accordance with the terms and conditions of such deposit, shall not make any investment under this section till the default is made good.]

(4) The investing company shall not make any investment in the shares of any other body corporate in excess of the percentages specified in sub-section (2) and the provisos thereto, unless the investment is sanctioned by a resolution of the investing company in general meeting and unless [5][previously] approved by the Central Government : ***Provided*** that the investing company may at any time invest up to any amount in shares offered to it under clause (*a*) of sub-section (1) of section 81 (hereafter in this section referred to as rights shares) irrespective of the aforesaid percentages :

***Provided further*** that when at any time the investing company intends to make any investments in shares other than rights shares, then, in computing at that time any of the aforesaid percentages, all existing investments, if any, made in rights shares up to that time shall be included in the aggregate of the investments of the company.

(5) No investment shall be made by the Board of directors of an investing company in pursuance of sub-section (2), unless it is sanctioned by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting, except those not entitled to vote thereon, and unless further notice of the resolution to be moved at the meeting has been given to every director in the manner specified in section 286.

(6) Every investing company shall keep a register of all investments made by it in shares of any other body or bodies corporate (whether in the same group or not and whether in the case of a body corporate in the same group, such investments were made before or after that body came within the same group as the investing company), showing in respect of each investment the following particulars -

(*a*)the name of the body corporate in which the investment has been made ;

(*b*)the date on which the investment has been made ;

(*c*)where the body corporate is in the same group as the investing company, the date on which the body corporate came in the

same group ;
(*d*) the names of all bodies corporate in the same group as the investing company.
(7) Particulars of every investment to which sub-section (6) applies shall be entered in the register aforesaid within seven days of the making thereof or in the case of investments made before the commencement of the Companies (Amendment) Act, 1960, within six months from such commencement, or such further time as the Central Government may grant on an application by the company in that behalf.
(8) If default is made in complying with the provisions of sub-section (6) or (7), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees and also with a further fine which may extend to fifty rupees for every day after the first during which the default continues.
(9) The register aforesaid shall be kept at the registered office of the investing company and -
(*a*) shall be open to inspection at such office, and
(*b*) extracts may be taken therefrom and copies thereof may be required, by any member of the investing company to the same extent, in the same manner, and on the payment of the same fees as in the case of the register of members of the investing company ; and the provisions of section 163 shall apply accordingly.
(10) Every investing company shall annex in each balance sheet prepared by it after the commencement of the Companies (Amendment) Act, 1960, a statement showing the bodies corporate (indicating separately the bodies corporate in the same group) in the shares of which investments have been made by it (including all investments,



whether existing or not, made subsequent to the date as at which the previous balance sheet was made out) and the nature and extent of the investments so made in each body corporate :
***Provided*** that in the case of a company whose principal business is the acquisition of shares, stock, debentures or other securities (hereafter in this section referred to as an investment company), it shall be sufficient if the statement shows only the investments existing on the date as at which the balance sheet to which the statement is annexed has been made out.
(11) For the purposes of this section, a body corporate shall be deemed to be in the same group as the investing company -
(*a*) if the body corporate is the managing agent of the investing company ; or
(*b*)if the body corporate and the investing company should, in virtue of sub-section (1B) of section 370, be deemed to be under the same management.
(12) References in the foregoing provisions of this section to shares shall in the case of investments made by the investing company in other bodies corporate in the same group, be deemed to include references to debentures also. (13) The provisions of this section except the first proviso to sub-section (2) and sub-section (5) shall also apply to an investment company.
(14) This section shall not apply -
(*a*)to any banking or insurance company ;
(*b*)to a private company, unless it is a subsidiary of a public company;
(*c*)to any company established with the object of financing, whether by way of making loans or advances to, or subscribing to the capital of, private industrial enterprises in India, in any case where the Central Government has made or agreed to make to the company a special advance for the purpose or has guaranteed or agreed to guarantee the payment of moneys borrowed by the company from any institution outside India ;
[6][(*d*) to investments by a holding company in its subsidiary, other than a subsidiary within the meaning of clause (*a*) of sub-section (1) of section 4 ;]
(*e*)to investments by a managing agent or secretaries and treasurers in a company managed by him or them. [7][(15) Nothing contained in this section shall apply to a company on and after the commencement of the Companies (Amendment) Act, 1999.]

**1.** Substituted by the Companies (Amendment) Act, 1988 w.e.f. 17-4-1989.

2. Substituted by the Companies (Amendment) Act, 1988 w.e.f. 17-4-1989.

3. Substituted for "thirty per cent of the subscribed capital of the investing company" by the Companies (Amendment) Act, 1988 w.e.f. 17-4-1989.

4. Inserted by the Companies (Amendment) Act, 1996 w.e.f. 1-3-1997.

5. Substituted for "further it is" by the Companies (Amendment) Act, 1988 w.e.f. 17-4-1989.

6. Substituted for "(d) to investments by a holding company in its subsidiary ; or" by the Companies (Amendment) Act, 1988 w.e.f. 17-4-1989.

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

**[1][372A. INTER-CORPORATE LOANS AND INVESTMENTS**
(*1*) No company shall, directly or indirectly, -
(*a*) make any loan to any other body corporate ;
(*b*) give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person by, any body corporate ; and
(*c*) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate,
exceeding sixty per cent of its paid-up share capital and free reserves, or one hundred per cent of its free reserves, whichever is

more :
***Provided*** that where the aggregate of the loans and investments so far made, the amounts for which guarantee or security so far provided to or in all other bodies corporate, along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceeds the aforesaid limits, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting :
***Providedfurther*** that the Board may give guarantee, without being previously authorised by a special resolution, if, - (*a*) a resolution is passed in the meeting of the Board authorising to give guarantee in accordance with the provisions of this section ;
(*b*) there exists exceptional circumstances which prevent the company from obtaining previous authorisation by a special resolution passed in a general meeting for giving a guarantee ; and
(*c*) the resolution of the Board under clause (*a*) is confirmed within twelve months, in a general meeting of the company or the annual general meeting held immediately after passing of the Board's resolution, whichever is earlier : ***Providedalso*** that the notice of such resolution shall indicate clearly the specific limits, the particulars of the body corporate in which the investment is proposed to be made or loan or security or guarantee to be given, the purpose of the investment, loan or security or guarantee, specific sources of funding and such other details.

(2) No loan or investment shall be made or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution referred to in section 4A, where any term loan is subsisting, is obtained :



**Provided that** prior approval of a public financial institution shall not be required where the aggregate of the loans and investments so far made, the amounts for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given does not exceed the limit of sixty per cent specified in sub-section (1), if there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution :
(3) No loan to any body corporate shall be made at a rate of interest lower than the prevailing bank rate, being the standard rate made public under section 49 of the Reserve Bank of India Act, 1934 (2 of 1934).
(4) No company, which has defaulted in complying with the provisions of section 58A, shall, directly or indirectly, - (*a*) make any loan to any body corporate ;
(*b*) give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person by, any body corporate ; and
(*c*) acquire, by way of subscription, purchase or otherwise the securities of any other body corporate,
till such default is subsisting.
(5) (*a*) Every company shall keep a register showing the following particulars in respect of every investment or loan made, guarantee given or security provided by it in relation to any body corporate under sub-section (1) namely : - (*i*) the name of the body corporate ;
(*ii*) the amount, terms and purpose of the investment or loan or security or guarantee ;
(*iii*) the date on which the investment or loan has been made ; and
(*iv*) the date on which the guarantee has been given or security has been provided in connection with a loan. (*b*) The particulars of investment, loan, guarantee or security referred to in clause (*a*) shall be entered chronologically in the register aforesaid within seven days of the making of such investment or loan, or the giving of such guarantee or the provision of such security.
(6) The register referred to in sub-section (5) shall be kept at the registered office of the company concerned and - (*a*) shall be open to inspection at such office ; and
(*b*) extracts may be taken therefrom and copies thereof may be required, by any member of the company to the same extent, in the same manner, and on payment of the same fees as in the case of the register of members of the company ; and the provisions of section 163 shall apply accordingly.
(7) The Central Government may prescribe guidelines for the purposes of this section.
(8) Nothing contained in this section shall apply -
(*a*) to any loan made, any guarantee given or any security provided or any investment made by -
(*i*) a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of financing industrial enterprises, or of providing infrastructural facilities ; (*ii*) a company whose principal business is the acquisition of shares, stock, debentures or other securities ;
(*iii*) a private company, unless it is a subsidiary of a public company ;
(*b*) to investment made in shares allotted in pursuance of clause (*a*) of sub-section (1) of section 81 ;
(*c*) to any loan made by a holding company to its wholly-owned subsidiary ;
(*d*) to any guarantee given or any security provided by a holding company in respect of loan made to its wholly-owned subsidiary ; or
(*e*) to acquisition by a holding company, by way of subscription, purchases or otherwise, the securities of its wholly-owned subsidiary.

(9) If default is made in complying with the provisions of this section, other than sub-section (5), the company and every officer of the company who is in default shall be punishable with imprisonment which may extend to two years or with fine which may extend to fifty thousand rupees :

***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 company, has been repaid in full, no punishment by way of imprisonment shall be imposed under this sub-section, and where such loan has been repaid in part, the maximum punishment which may be imposed under this sub-section by way of imprisonment shall be appropriately reduced :

***Provided further*** that all persons who are knowingly parties to any such contravention shall be liable, jointly and severally, to the company for the repayment of the loan or for making good the same which the company may have been called upon to pay by virtue of the guarantee given or the securities provided by such company.

(10) If default is made in complying with the provisions of sub-section (5), the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees and also with a further fine which may extend to five hundred rupees for every day after the first day during which the default continues.

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

(*a*) "loan" includes debentures or any deposit of money made by one company with another company, not being a banking company ;

(*b*) "free reserves" means those reserves which, as per the latest audited balance sheet of the company, are free for distribution as dividend and shall include balance to the credit of the securities premium account but shall not include share application money.]

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

**373. INVESTMENTS MADE BEFORE COMMENCEMENT OF ACT**

Where any investments have been made by a company in any other body corporate in the same group at any time after the first day of April, 1952, which, if section 372 had been then in force, could not have been made except on the authority of a resolution passed by the investing company and the approval of the Central Government, the authority



of the company by means of a resolution and the approval of the Central Government shall be obtained to such investments, within six months from the commencement of this Act ; and if such authority and approval are not so obtained, the Board of directors of the company shall dispose of the investments, insofar as they may be in excess of the limits specified in sub-section (2) of section 372 and the second proviso to that sub- section, within two years from the commencement of this Act.

**374. PENALTY FOR CONTRAVENTION OF SECTION 372 OR 373**

If default is made in complying with the provisions of section 372 [excluding sub-sections (6) and (7)] or section 373, every officer of the company who is in default shall be punishable with fine which may extend to [1][fifty] thousand rupees.

section has become inoperative so far as inter-corporate investments made after 30th October, 1998 are concerned. This section which specified the penalty for contraventions of section 372 or 373, has now been incorporated in newly inserted section 372A.

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

**375. MANAGING AGENT NOT TO ENGAGE IN BUSINESS COMPETING WITH BUSINESS OF MANAGED COMPANY**

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

**[1][376. CONDITIONS PROHIBITING RECONSTRUCTION OR AMALGAMATION OF COMPANY**

Where any provision in the memorandum or articles of a company, or in any resolution passed in general meeting by, or by the Board of directors of the company, or in an agreement between the company and any other person, whether made before or after the commencement of this Act, prohibits the reconstruction of the company or its amalgamation with any body corporate or bodies corporate, either absolutely or except on the condition that the managing director or manager of the company is appointed or reappointed as managing director or manager of the reconstructed company or of the body resulting from amalgamation, as the case may be, shall become void with effect from the commencement of this Act, or be void, as the case may be.]

**1.** Substituted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000. Prior to its substitution, section 376, read as under :

"376. Condition prohibiting reconstruction or amalgamation of company except on continuance of managing agent, e*tc. to be void.* - Where any provision in the memorandum or articles of a company, or in any resolution passed in general meeting by, or by the Board of directors of the company, or in an agreement between the company and its managing agent or any other person, whether made before or after the commencement of this Act, prohibits the reconstruction of the company or its amalgamation with any other body corporate or bodies corporate, either absolutely or except on the condition that the managing director, managing agent, secretaries and treasurers, or manager of the company is appointed or reappointed as secretaries and treasurers, managing director, managing agent or manager of the

reconstructed company or of the body resulting from amalgamation, as the case may be, shall become void with effect from the commencement of this Act, or be void, as the case may be."

**377. RESTRICTIONS ON RIGHT OF MANAGING AGENT TO APPOINT DIRECTORS** [*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]

***CHAPTER IV: A. SECRETARIES AND TREASURERS***

**378. APPOINTMENT OF SECRETARIES AND TREASURERS**
[*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]

**379. PROVISIONS APPLICABLE TO MANAGING AGENTS TO APPLY TO SECRETARIES AND TREASURERS WITH THE EXCEPTIONS AND MODIFICATIONS SPECIFIED IN SECTIONS 380 TO 383**
[*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]

**380. SECTIONS 324, 330 AND 332 NOT TO APPLY**
[*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]

**381. SECTION 348 TO APPLY SUBJECT TO A MODIFICATION**
[*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]

**382. SECRETARIES AND TREASURERS NOT TO APPOINT DIRECTORS** [*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]



**383. SECRETARIES AND TREASURERS NOT TO SELL GOODS OR ARTICLES PRODUCED BY COMPANY, ETC., UNLESS AUTHORISED BY BOARD**
[*Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*]

**383A. CERTAIN COMPANIES TO HAVE SECRETARIES**

(1) Every company [1][having such paid-up share capital as may be prescribed] shall have a whole time secretary, and where the Board of directors of any such company comprises only two directors, neither of them shall be the secretary of the company.

[2][***Provided*** that every company not required to employ a whole time secretary under sub-section (1) and having a paid-up share capital of ten lakhs rupees or more shall file with the Registrar a certificate from a secretary in whole-time practice in such form and within such time and subject to such conditions as may be prescribed, as to whether the company has complied with all provisions of this Act and a copy of such certificate shall be attached with Board's report referred to in section 217.]

[3][(1A) If a company fails to comply with the provisions 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][five hundred] rupees for every day during which the default continues :

***Provided*** that in any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole time secretary.] (2) Where, at the commencement of the Companies (Amendment) Act, 1974, -

(*a*)any firm or body corporate is holding office, as the secretary of a company, such firm or body corporate shall, within six months from such commencement, vacate office as secretary of such company ;

(*b*)any individual is holding office as the secretary of more than one company having a paid-up share capital of rupees twenty-five lakhs or more, he shall, within a period of six months from such commencement, exercise his option as to the company of which he intends to continue as the secretary and shall, on and from such date, vacate office as secretary in relation to all other companies.

**1**. Substituted for "having a paid-up share capital of rupees twenty-five lakhs or more" by the Companies (Amendment) Act, 1988 w.e.f. 1-12-1988.

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

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

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

**B. MANAGERS**

**384. FIRM OR BODY CORPORATE NOT TO BE APPOINTED MANAGER**

No company shall, after the commencement of this Act, appoint or employ, or after the expiry of six months from such commencement, continue the appointment or employment of, any firm, body corporate or association as its manager.

**385. CERTAIN PERSONS NOT TO BE APPOINTED MANAGERS**

(1) No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of, any person as its manager who -

(*a*)is an undischarged insolvent, or has at any time within the preceding five years been adjudged an insolvent ; or (*b*)suspends,

or has at any time within the preceding five years suspended, payment to his creditors ; or makes, or has at any time within the preceding five years made, a composition with them ; or

(*c*)is, or has at any time within the preceding five years been, convicted by a Court in India of an offence involving moral turpitude.

(2) The Central Government may, by notification in the Official Gazette, remove the disqualification incurred by any person in virtue of clause (*a*), (*b*)or (*c*) of sub-section (1), either generally or in relation to any company or companies specified in the notification.

**386. NUMBER OF COMPANIES OF WHICH A PERSON MAY BE APPOINTED MANAGER**

(1) No company shall, after the commencement of this Act, appoint or employ any person as manager, if he is either the manager or the managing director of any other company, except as provided in sub-section (2).

(2) A company may appoint or employ a person as its manager, if he is the manager or managing director of one, and not more than one, other company :

***Provided*** that such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting, and of which meeting and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

(3) Where, at the commencement of this Act, any person is holding the office either of manager or of managing director in more than two companies, he shall, within one year from the commencement of this Act, choose not more than two of those companies as companies in which he wishes to continue to hold the office of manager or managing director, as the case may be ; and the provisions of clauses (*b*)and (*c*) of sub-section (1) and of sub-sections (2) and (3) of section 276 shall apply *mutatis mutandis* in relation to this case, as those provisions apply in relation to the case of a director.



(4) Notwithstanding anything contained in sub-sections (1) to (3), the Central Government may, by order, permit any person to be appointed as a manager of more than two companies, if the Central Government is satisfied that it is necessary that the companies should, for their proper working, function as a single unit and have a common manager.

(5) [*Omitted by the Companies* (*Amendment*) *Act, 1960.*]

**387. REMUNERATION OF MANAGER**

The manager of a company may, subject to the provisions of section 198, receive remuneration either by way of a monthly payment, or by way of a specified percentage of the "net profits" of the company calculated in the manner laid down in sections 349, [1][and 350], or partly by the one way and partly by the other :

***Provided*** that except with the approval of the Central Government such remuneration shall not exceed in the aggregate five per cent of the net profits.

**1.** Substituted for ", 350 and 351" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

**388. APPLICATION OF SECTIONS 269, 310, 311 AND 317 TO MANAGERS**

The provisions of sections 269, 310, 311 and 317 shall apply in relation to the manager of a company as they apply in relation to a managing director thereof, and those of section 312 shall apply in relation to the manager of a company, as they apply to a director thereof.

**388A.SECTIONS 386 TO 388 NOT TO APPLY CERTAIN PRIVATE COMPANIES**

Sections 386, 387 and 388 shall not apply to a private company unless it is a subsidiary of a public company.

***CHAPTER IVA: POWERS OF CENTRAL GOVERNMENT TO REMOVE MANAGERIAL PERSONNEL FROM OFFICE ON THE RECOMMENDATION OF THE*** [1]**[TRIBUNAL]**

**388B. REFERENCE TO [1][*TRIBUNAL*] OF CASES AGAINST MANAGERIAL PERSONNEL**

(1) Where in the opinion of the Central Government there are circumstances suggesting -

(*a*)that any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law, or breach of trust ; or

(*b*)that the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices ; or

(*c*) that a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains ; or

(*d*)that the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

the Central Government may state a case against the person aforesaid and refer the same to the [1][*Tribunal*] with a request that the [1][*Tribunal*] may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(2) Every case under sub-section (1) shall be stated in the form of an application which shall be presented to the [1][*Tribunal*] or such officer thereof as it may appoint in this behalf.

(3) The person against whom a case is referred to the [1][*Tribunal*] under this section shall be joined as a respondent to the application.

(4) Every such application -

(*a*) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purpose of the inquiry, and

(*b*)shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the signature and verification of a plaint in a suit by the Central Government.

(5) The [1][*Tribunal*] may at any stage of the proceedings allow the Central Government to alter or amend the application in such manner and on such terms as may be just, and all such alterations or amendments shall be made as may be necessary for the purpose of determining the real questions in the inquiry.

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

**388C. INTERIM ORDER BY [1][*TRIBUNAL*]**

(1) Where during the pendency of a case before the [1][*Tribunal*] it appears necessary to the [1][*Tribunal*] so to do in the interest of the members or creditors of the company or in the public interest, the [1][*Tribunal*] may on the application of the Central Government or on its own motion, by an order -

(*a*) direct that the respondent shall not discharge any of the duties of his office until further orders of the [1][*Tribunal*], and



(*b*) appoint a suitable person in place of the respondent to discharge the duties of the office held by the respondent subject to such terms and conditions as the [1][*Tribunal*] may specify in the order.

(2) Every person appointed under clause (*b*) of sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

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

**388D. DECISION OF THE [1][*TRIBUNAL*]**

At the conclusion of the hearing of the case, the [1][*Tribunal*] shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

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

**388E. POWER OF CENTRAL GOVERNMENT TO REMOVE MANAGERIAL PERSONNEL ON THE BASIS OF [1][*TRIBUNAL'S*] DECISION**

(1) Notwithstanding any other provision contained in this Act, the Central Government shall, by order, remove from office any director, or any other person concerned in the conduct and management of the affairs, of a company, against whom there is a decision of the [1][*Tribunal*] under this Chapter :

[2][***]

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

(3) The person against whom an order of removal from office is made under this section shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company during a period of five years from the date of the order of removal :

***Provided*** that the Central Government may, with the previous concurrence of the [1][*Tribunal* ], permit such person to hold any such office before the expiry of the said period of five years.

(4) Notwithstanding anything contained in any other provision of this Act, or any other law or any contract, memorandum or articles, on the removal of a person from the office of a director or, as the case may be, any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.

(5) On the removal of a person from the office of a director or, as the case may be, any other office connected with the conduct and management of the affairs of the company, the company may, with the previous approval of the Central Government, appoint another person to that office in accordance with the provisions of this Act.

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

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

**389. POWER FOR COMPANIES TO REFER MATTERS TO ARBITRATION** [Omitted by the Companies (Amendment) Act, 1960.]

**390. INTERPRETATION OF SECTIONS 391 AND 393**

In sections 391 and 393, -

(*a*) the expression "company" means any company liable to be wound up under this Act ;

(*b*)the expression "arrangement" includes a reorganisation of the share capital of the company by the consolidation of shares of different classes, or by the division of shares into shares of different classes or, by both those methods ; and (*c*)unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

**391. POWER TO COMPROMISE OR MAKE ARRANGEMENTS WITH CREDITORS AND MEMBERS**

(1) Where a compromise or arrangement is proposed -

(*a*)between a company and its creditors or any class of them ; or

(*b*)between a company and its members or any class of them ;

the 1[*Tribunal*] may, on the application of the company or of any creditor or member of the company, or, in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the 1[*Tribunal*] directs.

(2) If a majority in number representing three-fourths in value of the creditors, or class of creditors, or members, or class of members, as the case may be, present and voting either in person or, where proxies are allowed under the rules made under section 643,by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the 1[*Tribunal*], be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class, as the case may be, and also on the company, or in the case of a company which is being wound up, on the liquidator and contributories of the company :



***Provided*** that no order sanctioning any compromise or arrangement shall be made by the 1[*Tribunal*] unless the 2[*Tribunal*] is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the 2[*Tribunal*], by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like.

(3) An order made by the 2[*Tribunal*] under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar.

(4) A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(5) If default is made in complying with sub-section (4), 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.

(6) The 2[*Tribunal*] may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the company on such terms as the 1[*Tribunal*] thinks fit, until the application is finally disposed of.

(7)4[***]

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

1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). 2. Substituted for "ten" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to omission, sub-section 7 read as under:

"(7) An appeal shall lie from any order made by a Court exercising original jurisdiction under this section to the Court empowered to hear appeals from the decisions of that Court, or if more than one Court is so empowered, to the Court of inferior jurisdiction.The provisions of sub-sections (3) to (6) shall apply in relation to the appellate order and the appeal as they apply in relation to the original order and the application."

**1[392. POWER OF TRIBUNAL TO ENFORCE COMPROMISES AND ARRANGEMENTS.**

(*1*) *Where the Tribunal makes an order under section 391 sanctioning a compromise or an arrangement in respect of a company, it -*

(a) *shall have power to supervise the carrying out of the compromise or an arrangement ; and*

(b) *may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.*

(*2*) *If the Tribunal aforesaid is satisfied that a compromise or an arrangement sanctioned under section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 433 of this Act.*

1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution, section 392 read as under :

"392. Power of High Court to enforce compromises and arrangements. - (1) Where a High Court makes an order under section 391 sanctioning a compromise or an arrangement in respect of a company, it -

(a) shall have power to supervise the carrying out of the compromise or arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Court aforesaid is satisfied that a compromise or arrangement sanctioned under section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 433 of this Act.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act under section 153 of the Indian Companies Act, 1913 (7 of 1913), sanctioning a compromise or an arrangement."

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement the companies (Amendment) Act, 2001 sanctioning a compromise or an arrangement.]

**393. INFORMATION AS TO COMPROMISES OR ARRANGEMENTS WITH CREDITORS AND MEMBERS** (1) Where a meeting of creditors or any class of creditors, or of members or any class of members, is called under section 391, -

(*a*)with every notice calling the meeting which is sent to a creditor or member, there shall be sent also a statement setting forth the terms of the compromise or arrangement and explaining its effect ; and in particular, stating any material interests of the directors, managing director [1][***] or manager of the company, whether in their capacity as



such or as members or creditors of the company or otherwise, and the effect on those interests, of the compromise or arrangement, if, and insofar as, it is different from the effect on the like interests of other persons ; and

(*b*)in every notice calling the meeting which is given by advertisement, there shall be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like information and explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement setting forth the terms of the compromise or arrangement proposed and explaining its effect can be obtained by creditors or members entitled to attend the meeting, every creditor or member so entitled shall, on making an application in the manner indicated by the notice, be furnished by the company, free of charge, with a copy of the statement.

(4) Where default is made in complying with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [2][fifty] thousand rupees ; and for the purpose of this sub-section any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company :

***Provided*** that a person shall not be punishable under this sub-section if he shows that the default was due to the refusal of any other person, being a director, managing director, [3][***] manager or trustees for debenture holders, to supply the necessary particulars as to his material interests.

(5) Every director, managing director, [3][***] or manager of the company, and every trustee for debenture holders of the company, shall give notice to the company of such matters relating to himself as may be necessary for the purposes of this section ; and if he fails to do so, he shall be punishable with fine which may extend to [4][five thousand] rupees.

**1.** Words ", managing agent, secretaries and treasurers" 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.

3. Words "managing agent, secretaries and treasurers" omitted 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.

**394. PROVISIONS FOR FACILITATING RECONSTRUCTION AND AMALGAMATION OF COMPANIES**

(1) Where an application is made to the [1][*Tribunal*] under section 391 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the [1][*Tribunal*] -

(*a*) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies ; and (*b*)that under the scheme the whole or any part of the undertaking, property or liabilities of any company concerned in the scheme (in this section referred to as a "transferor-company") is to be transferred to another company (inthis section referred to as "the transferee-company") ;

the [1][*Tribunal*] may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters :

(*i*) the transfer to the transferee-company of the whole or any part of the undertaking, property or liabilities of any transferor-company ;

(*ii*)the allotment or appropriation by the transferee-company of any shares, debentures, policies, or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person ;

(*iii*) the continuation by or against the transferee-company of any legal proceedings pending by or against any transferor-company ;

(*iv*)the dissolution, without winding up, of any transferor-company ;

(*v*)the provision to be made for any persons who, within such time and in such manner as the [1][*Tribunal*] directs, dissent from the compromise or arrangement ; and

(*vi*)such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out :

***Provided*** that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company, which is being wound up, with any other company or companies, shall be sanctioned by the [1][*Tribunal*] unless the [1][*Tribunal*] has received a report from [2][***] the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest :

***Provided further*** that no order for the dissolution of any transferor-company under clause (*iv*) shall be made by the [1][*Tribunal*] unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the [1][*Tribunal*] that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest.

(2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee-company ; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.



(3) Within thirty days after the making of an order under this section, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration. If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [3][five hundred] rupees.

(4) In this section -

(*a*)"property" includes property rights and powers of every description ; and "liabilities" includes duties of every description ; and

(*b*)"transferee-company" does not include any company other than a company within the meaning of this Act ; but "transferor-company" includes any body corporate, whether a company within the meaning of this Act or not.

**1.** Substituted for `Court' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). **2.** Words "the Company Law Board or" omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

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

**394A. NOTICE TO BE GIVEN TO CENTRAL GOVERNMENT FOR APPLICATIONS UNDER SECTIONS 391 AND 394**

The [1][*Tribunal*] shall give notice of every application made to it under section 391 or 394 to the Central Government, and shall take into consideration the representations, if any, made to it by that Government before passing any order under any of these sections.

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

**395. POWER AND DUTY TO ACQUIRE SHARES OF SHAREHOLDERS DISSENTING FROM SCHEME OR CONTRACT APPROVED BY MAJORITY**

(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor-company") to another company (in this section referred to as "the transferee-company"), has, within four months

after the making of the offer in that behalf by the transferee-company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee-company or its subsidiary), the transferee-company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder, that it desires to acquire his shares ; and when such a notice is given, the transferee-company, shall, unless, on an application made by the dissenting shareholder within one month from the date on which the notice was given, the [1][*Tribunal*] thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee-company :

***Provided*** that where shares in the transferor-company of the same class as the shares whose transfer is involved are already held as aforesaid to a value greater than one-tenth of the aggregate of the values of all the shares in the company of such class, the foregoing provisions of this sub-section shall not apply, unless -

(*a*) the transferee-company offers the same terms to all holders of the shares of that class (other than those already held as aforesaid) whose transfer is involved ; and

(*b*)the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares, or shares of any class, in a company are transferred to another company or its nominee, and those shares together with any other shares or any other shares of the same class, as the case may be, in the first-mentioned company held at the date of the transfer by, or by a nominee for, the transferee-company or its subsidiary comprise nine-tenths in value of the shares, or the shares of that class, as the case may be, in the first-mentioned company, then, -

(*a*) the transferee-company shall, within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement), give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and

(*b*)any such holder may, within three months from the giving of the notice to him, require the transferee-company to acquire the shares in question ;

and where a shareholder gives notice under clause (*b*) with respect to any shares, the transferee-company shall be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed, or as the [1][*Tribunal*] on the application of either the transferee-company or the shareholder thinks fit to order.

(3) Where a notice has been given by the transferee-company under sub-section (1) and the [1][*Tribunal*] has not, on an application made by the dissenting shareholder, made an order to the contrary, the transferee-company shall, on the expiry of one month from the date on which the notice has been given, or, if an application to the [1][*Tribunal*] by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor-company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee-company and on its own behalf by the transferee-company, and pay or transfer to the transferor-company the amount or other consideration representing the price payable by the transferee-company for the shares which, by virtue of this section, that company is entitled to acquire ; and the transferor-company shall -



(*a*)thereupon register the transferee-company as the holder of those shares, and

(*b*)within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee-company :

***Provided*** that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

(4) Any sums received by the transferor-company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(4A) (*a*) The following provisions shall apply in relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor-company to the transferee-company, namely :

(*i*) every such offer or every circular containing such offer or every recommendation to the members of the transferor-company by its directors to accept such offer shall be accompanied by such information as may be prescribed ; (*ii*)every such offer shall contain a statement by or on behalf of the transferee-company, disclosing the steps it has taken to ensure that necessary cash will be available ;

(*iii*) every circular containing, or recommending acceptance of, such offer shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered ;

(*iv*)the Registrar may refuse to register any such circular which does not contain the information required to be given under sub-

clause (*i*) or which sets out such information in a manner likely to give a false impression ; and
(*v*)an appeal shall lie to the [1][*Tribunal*] against an order of the Registrar refusing to register any such circular. (*b*) Whoever issues a circular referred to in sub-clause (*iii*)of clause (*a*), which has not been registered, shall be punishable with fine which may extend to [2][five thousand] rupees.
(5) In this section -
(*a*)"dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee-company in accordance with the scheme or contract ;
(*b*)"transferor-company" and "transferee-company" shall have the same meaning as in section 394.
(6) In relation to an offer made by the transferee-company to share- holders of the transferor-company before the commencement of this Act, this section shall have effect -
(*a*) with the substitution, in sub-section (1), for the words "the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee-company or its subsidiary)," of the words "the shares affected" and with the omission of the proviso to that sub-section ;
(*b*)with the omission of sub-section (2) ;
(*c*)with the omission in sub-section (3) of the words "together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee-company and on its own behalf by the transferee-company" and of the proviso to that sub-section ; and
(*d*)with the omission of clause (*b*)of sub-section (5).

**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. 13-12-2000.

**396. POWER OF CENTRAL GOVERNMENT TO PROVIDE FOR AMALGAMATION OF COMPANIES IN NATIONAL INTEREST.**

(1) Where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, then, notwithstanding anything contained in sections 394 and 395 but subject to the provisions of this section, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution ; with such property, powers, rights, interests, authorities and privileges ; and with such liabilities, duties, and obligations ; as may be specified in the order. (2) The order aforesaid may provide for the continuation by or against the transferee-company of any legal proceedings pending by or against any transferor-company and may also contain such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.
(3) Every member or creditor (including a debenture holder) of each of the companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the company resulting from the amalgamation as he had in the company of which he was originally a member or creditor ; and to the extent to which the interest or rights of such member or creditor in or against the company resulting from the amalgamation are less than his interest in or rights against the original company, he shall be entitled to compensation which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette.
The compensation so assessed shall be paid to the member or creditor concerned by the company resulting from the amalgamation.
(3A) Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (3) may, within thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the [1][*Tribunal*] and thereupon the assessment of the compensation shall be made by the [1][*Tribunal*].
(4) No order shall be made under this section, unless -
(*a*)a copy of the proposed order has been sent in draft to each of the companies concerned ;



(*aa*)the time for preferring an appeal under sub-section (3A) has expired, or where any such appeal has been preferred, the appeal has been finally disposed of ; and
(*b*)the Central Government has considered, and made such modi-fica-tions, if any, in the draft order as may seem to it desirable in the light of any suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by that company, or from any class of share- holders therein, or from any creditors or any class of creditors thereof.
(5) Copies of every order made under this section shall, as soon as may be after it has been made, be laid before both Houses of Parliament.

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

**396A. PRESERVATION OF BOOKS AND PAPERS OF AMALGAMATED COMPANY**

The books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another

company under this Chapter shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the first-mentioned company or its amalgamation or the acquisition of its shares.

## CHAPTER VI: PREVENTION OF OPPRESSION AND MISMANAGEMENT

### A. Powers of [1][Tribunal]

### 397. APPLICATION TO [1][*TRIBUNAL*] FOR RELIEF IN CASES OF OPPRESSION

(1) Any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may apply to the [1][*Tribunal*] for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the [1][*Tribunal*] is of opinion-

(*a*) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members ; and

(*b*)that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up ;

the [1][*Tribunal*] may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

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

### 398. APPLICATION TO [1][*TRIBUNAL*] FOR RELIEF IN CASES OF MISMANAGEMENT

(1) Any members of a company who complain -

(*a*)that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company ; or

(*b*)that a material change (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company, whether by an alteration in its Board of directors [2][***] or manager [3][***] or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company ;

may apply to the [1][*Tribunal*] for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If**,** on any application under sub-section (1), the [1][*Tribunal*] is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the [1][*Tribunal*] may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.

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

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

3. Words ", or in the constitution or control of the firm or body corporate acting as its managing agent or secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

### 399. RIGHT TO APPLY UNDER SECTIONS 397 AND 398



(1) The following members of a company shall have the right to apply under section 397 or 398 :

(*a*)in the case of a company having a share capital, not less than one hundred members of the company or, not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares ;

(*b*)in the case of a company not having a share capital, not less than one-fifth of the total number of its members. (2) For the purposes of sub-section (1), where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(3) Where any members of a company are entitled to make an application in virtue of sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

(4) The Central Government may, if in its opinion circumstances exist which make it just and equitable so to do, authorise any member or members of the company to apply to the [1][*Tribunal*] under section 397 or 398, notwithstanding that the requirements of clause (*a*) or clause (*b*), as the case may be, of sub-section (1) are not fulfilled.

(5) The Central Government may, before authorising any member or members as aforesaid, require such member or members to give security for such amount as the Central Government may deem reasonable for the payment of any costs which the 1[*Tribunal*] dealing with the application may order such member or members to pay to any other person or persons who are parties to the application.

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

**400. NOTICE TO BE GIVEN TO CENTRAL GOVERNMENT OF APPLICATIONS UNDER SECTIONS 397 AND 398** The 1[*Tribunal*] shall give notice of every application made to it under section 397 or 398 to the Central Government, and shall take into consideration the representations, if any, made to it by that Government before passing a final order under that section.

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

**401. RIGHT OF CENTRAL GOVERNMENT TO APPLY UNDER SECTIONS 397 AND 398**

The Central Government may itself apply to the 1[*Tribunal*] for an order under section 397 or 398, or cause an application to be made to the 1[*Tribunal*] for such an order by any person authorised by it in this behalf.

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

**402. POWERS OF 1[*TRIBUNAL*] ON APPLICATION UNDER SECTION 397 OR 398**

Without prejudice to the generality of the powers of the 1[*Tribunal*] under section 397 or 398, any order under either section may provide for -

(*a*) the regulation of the conduct of the company's affairs in future ;

(*b*)the purchase of the shares or interests of any members of the company by other members thereof or by the company ;

(*c*)in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital ; (*d*)the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other, namely :

(*i*)the managing director,

(*ii*)any other director,

(*iii*)and (*iv*)2[***]

(*v*)the manager,

upon such terms and conditions as may, in the opinion of the 1[*Tribunal*] be just and equitable in all the circumstances of the case ;

(*e*) the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (*d*), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned ;

(*f*)the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under section 397 or 398, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference ; (*g*) any other matter for which in the opinion of the 1[*Tribunal*] it is just and equitable that provision should be made.

**1.** Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002. **2.** Sub-clauses (*iii*) and (*iv*) omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

**403. INTERIM ORDER BY 1[*TRIBUNAL*]**



Pending the making by it of a final order under section 397 or 398, as the case may be, the 1[*Tribunal*] may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs, upon such terms and conditions as appear to it to be just and equitable.

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

**404. EFFECT OF ALTERATION OF MEMORANDUM OR ARTICLES OF COMPANY BY ORDER UNDER SECTION 397 OR 398**

(1) Where an order under section 397 or 398 makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make without the leave of the 1[*Tribunal*], any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(2) Subject to the provisions of sub-section (1), the alterations made by the order shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act ; and the said provisions shall apply accordingly to the memorandum or articles as so altered.
(3) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same. (4) If default is made in complying with the provisions of sub-section (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [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.

**405. ADDITION OF RESPONDENTS TO APPLICATION UNDER SECTION 397 OR 398**

If the managing director or any other director [1][***] or the manager, of a company, or any other person, who has not been impleaded as a respondent to any application under section 397 or 398 applies to be added as a respondent thereto, the [2][*Tribunal*] shall, if it is satisfied that there is sufficient cause for doing so, direct that he may be added as a respondent accordingly.

**1.** Words ", the managing agent, secretaries and treasurers," omitted 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).

**406. APPLICATION OF SECTIONS 539 TO 544 TO PROCEEDINGS UNDER SECTIONS 397 AND 398**

In relation to an application under section 397 or 398, sections 539 to 544, both inclusive, shall apply in the form set forth in Schedule XI.

**407. CONSEQUENCES OF TERMINATION OR MODIFICATION OF CERTAIN AGREEMENTS**

(1) Where an order [1][***] made under section 397 or 398 terminates, sets aside, or modifies an agreement such as is referred to in clause (*d*) or (*e*) of section 402, -
(*a*)the order shall not give rise to any claim whatever against the company by any person for damages or for compensation for loss of office or in any other respect, either in pursuance of the agreement or otherwise ;
(*b*)no managing or other director [2] [***] or manager whose agreement is so terminated or set aside [3][***] shall, for a period of five years from the date of the order terminating or setting aside the agreement, without the leave of the [4][*Tribunal*] be appointed, or act, as the managing or other director [2][***] or manager of the company.

(2) (*a*)Any person who knowingly acts as a managing or other director [2][***] or manager of a company in contravention of clause (*b*)of sub-section (1) ;
(*b*)[5][***]
(*c*) every other director or every director, as the case may be, of the company, who is knowingly a party to such contravention ; shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to [6][fifty] thousand rupees, or with both.

(3) [7][No leave shall be granted] under clause (*b*) of sub-section (1) unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given an opportunity of being heard in the matter.

**1.** Words ", managing agent, secretaries and treasurers," omitted by the Companies (Amendment) Act, 2000 *part06C/13-7-02*

**2.** Words "of a Court" omitted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

w.e.f. 13-12-2000.

**3.** Words ", managing agent or secretaries and treasurers," omitted by the Companies (Amendment) Act, 2000. Words "and no person who, at the date of the order terminating or setting aside the agreement was, or subsequently becomes, an associate of such" though need to be omitted by the Companies (Amendment) Act, 2000 have not been so omitted.



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

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

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

**7.** Substituted for "No Court shall grant leave" by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

**408. POWERS OF GOVERNMENT TO PREVENT OPPRESSION OR MIS-MANAGEMENT**

[1][(1) Notwithstanding anything contained in this Act, the Central Government may appoint such number of persons as the [2][*Tribunal*] may, by order in writing, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interests to hold office as directors thereof for such period, not exceeding three years on any one

occasion, as it may think fit, if the [2][*Tribunal*], on a reference made to it by the Central Government or on an application of not less than one hundred members of the company or of the members of the company holding not less than one-tenth of the total voting power therein, is satisfied, after such inquiry as it deems fit to make, that it is necessary to make the appointment or appointments in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of the company or to public interest :
***Provided*** that *in lieu* of passing an order as aforesaid, the [2][*Tribunal*] may, if the company has not availed itself of the option given to it under section 265, direct the company to amend its articles in the manner provided in that section and make fresh appointments of directors in pursuance of the articles as so amended, within such time as may be specified in that behalf by the [1][*Tribunal*].

(2) In case the [2][*Tribunal*] passes an order under the proviso to sub-section (1), it may, if it thinks fit, direct that until new directors are appointed in pursuance of the orders aforesaid, such number of persons as the [1][*Tribunal*] may, by order, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interest, shall hold office as additional directors of the company and on such directions, the Central Government shall appoint such additional directors.]
(3) For the purpose of reckoning two-thirds or any other proportion of the total number of directors of the company, any director or directors appointed by the Central Government under sub-section (1) or (2) shall not be taken into account.
(4) A person appointed under sub-section (1) to hold office as a director or a person directed under sub-section (2) to hold office as an additional director, shall not be required to hold any qualification shares nor his period of office shall be liable to determination by retirement of directors by rotation ; but any such director or additional director may be removed by the Central Government from his office at any time and another person may be appointed by that Government in his place to hold office as a director or, as the case may be, an additional director.
(5) No change in the Board of directors made after a person is appointed or directed to hold office as a director or additional director under this section shall, so long as such director or additional director holds office, have effect unless confirmed by the [2][*Tribunal*].
(6) Notwithstanding anything contained in this Act or in any other law for the time being in force, where any person is appointed by the Central Government to hold office as director or additional director of a company in pursuance of sub-section (1) or sub-section (2), the Central Government may issue such directions to the company as it may consider necessary or appropriate in regard to its affairs [1][and such directions may include directions to remove an auditor already appointed and to appoint another auditor in his place or to alter the articles of the company, and upon such directions being given, the appointment, removal or alteration, as the case may be, shall be deemed to have come into effect as if the provisions of this Act in this behalf have been complied with without requiring any further act or thing to be done.]
(7) The Central Government may require the persons appointed as directors or additional directors in pursuance of sub-section (1) or sub-section (2) to report to the Central Government from time to time with regard to the affairs of the company.

**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).

**409. POWER OF [1][*TRIBUNAL*] TO PREVENT CHANGE IN BOARD OF DIRECTORS LIKELY TO AFFECT COMPANY PREJUDICIALLY**

(1) Where a complaint is made to the [1][*Tribunal*] by the managing director or any other director [2][***], or the manager, of a company that as a result of a change which has taken place or is likely to take place in the ownership of any shares held in the company, a change in the Board of directors is likely to take place which (if allowed) would affect prejudicially the affairs of the company, the [1][*Tribunal*] may, if satisfied, after such inquiry as it thinks fit to make that it is just and proper so to do, by order, direct that no resolution passed or that may be passed or no action taken or that may be taken to effect a change in the Board of directors after the date of the complaint shall have effect unless confirmed by the [1][*Tribunal*] ; and any such order shall have effect notwithstanding anything to the contrary contained in any other provision of this Act or in the memorandum or articles of the company, or in any agreement with, or any resolution passed in general meeting by, or by the Board of directors of, the company.

(2) The [1][*Tribunal*] shall have power when any such complaint is received by it, to make an interim order to the effect set out in sub-section (1), before making or completing the inquiry aforesaid.



(3) Nothing contained in sub-sections (1) and (2) shall apply to a private company, unless it is a subsidiary of a public company.

**1.** Substituted for "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, 2000 w.e.f. 13-12-2000.

**CHAPTER VII: CONSTITUTION AND POWERS OF ADVISORY COMMITTEE**

**410. APPOINTMENT OF ADVISORY COMMITTEE**

For the purpose of advising the Central Government and the [1][*Tribunal*] on such matters arising out of the administration of this Act as may be referred to it by that Government or [2][*the Tribunal*], the Central Government may constitute an Advisory Committee consisting of not more than five persons with suitable qualifications.

**1.** Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002. 2. Substituted for "Board" by the Companies (Second Amendment) Act, 2002.

**411. DUTIES OF ADVISORY COMMISSION**

[*Omitted by the Companies* (*Amendment*) *Act, 1965, w.e.f. 15-10-1965.*]

**412. FORMS AND PROCEDURE IN CASES REFERRED TO ADVISORY COMMISSION** [*Omitted by the Companies* (*Amendment*) *Act, 1965, w.e.f. 15-10-1965.*]

**413. POWERS OF ADVISORY COMMISSION**

[*Omitted by the Companies* (*Amendment*) *Act, 1965, w.e.f. 15-10-1965.*]

**414. PENALTIES**

[*Omitted by the Companies* (*Amendment*) *Act, 1965, w.e.f. 15-10-1965.*]

**415. IMMUNITY FOR ACTION TAKEN IN GOOD FAITH**

[*Omitted by the Companies* (*Amendment*) *Act, 1965, w.e.f. 15-10-1965.*]

## CHAPTER VIII: MISCELLANEOUS PROVISIONS

***Contracts where company is undisclosed principal***

**416. CONTRACTS BY AGENTS OF COMPANY IN WHICH COMPANY IS UNDISCLOSED PRINCIPAL**

(1) Every person, being the [1][***] manager or other agent of a public company or of a private company which is a subsidiary of a public company, who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the terms of the contract, and specify therein the person with whom it is entered into.

(2) Every such person who enters into a contract as aforesaid shall forthwith deliver the memorandum to the company and send copies thereof to each of the directors ; and such memorandum shall be filed in the office of the company and laid before the Board of directors at its next meeting.

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

(*a*) the contract shall, at the option of the company, be voidable as against the company ; and

(*b*)the person who enters into the contract, or every officer of the company who is in default, as the case may be, shall be punishable with fine which may extend to [2][two thousand] rupees.

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

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

***Employees' securities and provident funds***

**417. EMPLOYEES' SECURITIES TO BE DEPOSITED IN POST OFFICE SAVINGS BANK OR SCHEDULED BANK** (1)Any money or security deposited with a company by any of its employee in pursuance of his contract of service with the company shall be kept or deposited by the company within fifteen days from the date of deposit -

(*a*)in a post office savings bank account, or

(*b*)in a special account to be opened by the company for the purpose in the State Bank of India or in a scheduled bank, or

(*c*)where the company itself is a scheduled bank, in a special account to be opened by the company for the purpose either in itself or in the State Bank of India or in any other scheduled bank.

(2) No portion of such moneys or securities shall be utilised by the company except for the purposes agreed to in the contracts of service.



(3) A receipt for moneys deposited with a company by its employee shall not be deemed to be a security within the meaning of this section ; and the moneys themselves shall accordingly be deposited as provided in sub-section (1).

**418. PROVISIONS APPLICABLE TO PROVIDENT FUNDS OF EMPLOYEES**

(1) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or received or accruing by way of interest or otherwise to such fund shall, within fifteen days from the date of contribution, receipt or accrual, as the case may be, either-

(*a*) be deposited -

(*i*) in a post office savings bank account, or

(*ii*)in a special account to be opened by the company for the purpose in the State Bank of India or in a scheduled bank, or

(*iii*)where the company itself is a scheduled bank, in a special account to be opened by the company for the purpose either in

itself or in the State Bank of India or in any other scheduled bank ; or
(*b*)be invested in the securities mentioned or referred to in clauses (*a*)to (*e*)of section 20of the Indian Trusts Act, 1882 (2 of 1882).

(2) Notwithstanding anything to the contrary in the rules of any provident fund to which sub-section (1) applies or in any contract between a company and its employees, no employee shall be entitled to receive, in respect of such portion of the amount to his credit in such fund as is invested in accordance with the provisions of sub-section (1), interest at a rate exceeding the rate of interest yielded by such investment.
(3) Nothing in sub-section (1) shall affect any rights of an employee under the rules of a provident fund to obtain advances from or to withdraw money standing to his credit in the fund, where the fund is a recognised provident fund within the meaning of clause (*a*)of section 58A of the Indian Income-tax Act, 1922 (11 of 1922), or where the rules of the fund contain provisions corresponding to rules 4, 5, 6, 7, 8 and 9 of the Indian Income-tax (Provident Funds Relief) Rules.
(4) Where a trust has been created by a company with respect to any provident fund referred to in sub-section (1), the company shall be bound to collect the contributions of the employees concerned and pay such contribution as well as its own contributions, if any, to the trustees within fifteen days from the date of collection ; but in other respects, the obligations laid on the company by this section shall devolve on the trustees and shall be discharged by them instead of by the company.

**419. RIGHT OF EMPLOYEE TO SEE BANK RECEIPT FOR MONEYS OR SECURITIES REFERRED TO IN SECTION 417 OR 418**

An employee shall be entitled, on request made in this behalf to the company, or to the trustees referred to in sub-section (4) of section 418, as the case may be, to see the bank's receipt for any money or security such as is referred to in sections 417 and 418.

**420. PENALTY FOR CONTRAVENTION OF SECTIONS 417, 418 AND 419**

Any officer of a company, or any such trustee of a provident fund as is referred to in sub-section (4) of section 418 who, knowingly, contravenes, or authorises or permits the contravention of, the provisions of section 417, 418 or 419, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to [1][ten] thousand rupees.

***Receivers and managers***

**421. FILING OF ACCOUNTS OF RECEIVERS**

Every receiver of the property of a company who has been appointed under a power conferred by any instrument and who has taken possession, shall once in every half year while he remains in possession, and also on ceasing to act as receiver, file with the Registrar an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates.

**422. INVOICES, ETC., TO REFER TO RECEIVER WHERE THERE IS ONE**

Where a receiver of the property of a company has been appointed, every invoice, order for goods, or business letter issued by or on behalf of the company, or the receiver of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.

**423. PENALTY FOR NON-COMPLIANCE WITH SECTIONS 421 AND 422**

If default is made in complying with the requirements of section 421 or 422, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [1][two thousand] rupees.

For the purposes of this section, the receiver shall be deemed to be an officer of the company.

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

**[1][424. APPLICATION OF SECTIONS 421 TO 423 TO RECEIVERS AND MANAGERS APPOINTED BY TRIBUNAL AND MANAGERS APPOINTED IN PURSUANCE OF AN INSTRUMENT**



*The provisions of sections 421 to 423 shall apply to the receiver of, or any person appointed to manage, the property of a company, appointed by theTribunal or to any person appointed to manage, the property of a company under any powers contained in an instrument, in like manner as they apply to a receiver appointed under any powers contained in an instrument*.]

**2.** Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to substitution section 424 read as under:
"424. Application of sections 421 to 423 to receivers and managers appointed by Court and managers appointed in pursuance of an instrument. - The provisions of sections 421, 422 and 423 shall apply to the receiver of, or any person appointed to manage, the property of

**[1][PART VIA]**

**Revival and Rehabilitation of Sick Industrial Companies**

**424A. REFERENCE TO TRIBUNAL**

(*1*) *Where an industrial company, has become a sick industrial company, the Board of directors of such company shall make a*

*reference to the Tribunal, and prepare a scheme of its revival and rehabilitation and submit the same to the Tribunal along with an application containing such particulars as may be prescribed, for determination of the measures which may be adopted with respect to such company* :

**Provided***that nothing contained in this sub-section shall apply to a Government company* :

**Provided further** *that a Government company may, with the prior approval of the Central Government or a State Government, as the case may be, make a reference to the Tribunal in accordance with the provisions of this sub-section and thereafter all the provisions of this Act shall apply to such Government company.*

(*2*) *The application under sub-section* (*1*) *shall be accompanied by a certificate from an auditor from a panel of auditors prepared by the Tribunal indicating -*

(a) *the reasons of the net worth of such company being fifty per cent or less than fifty per cent ; or*

(b) *the default in repayment of its debt making such company a sick industrial company,*

*as the case may be.*

(*3*) *Without prejudice to the provisions of sub-section* (*1*)*, the Central Government or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that any industrial company has become, for the purposes of this Act, a sick industrial company, make a reference in respect of such company to the Tribunal for determination of the measures which may be adopted with respect to such company* :

**Provided** *that a reference shall not be made under this sub-section in respect of any industrial company by -* (a) *the Government of any State unless all or any of the industrial undertakings belonging to such company are situated in such State;*

(b) *a public financial institution or a State level institution or a scheduled bank unless it has, by reason of any financial assistance or obligation rendered by it, or undertaken by it, with respect to such company, an interest in such company.*

(*4*) *A reference under sub-section* (*1*) *or sub-section* (*3*) *shall be made to the Tribunal within a period of one hundred and eighty days from the date on which the Board of directors of the company or the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank, as the case may be, come to know, of the relevant facts giving rise to causes of such reference or within sixty days of final adoption of accounts, whichever is earlier.*

(*5*) *The Tribunal may, on receipt of a reference under sub-section* (*1*)*, pass an order as to whether a company in respect of which a reference has been made has become a sick industrial company and such order shall be final.*

**1.** Part VIA including sections 424A to 424L, inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

**424B. INQUIRY INTO WORKING OF SICK INDUSTRIAL COMPANIES**

(*1*) *The Tribunal may make such inquiry as it may deem fit for determining whether any industrial company has become a sick industrial company -*

(a) *upon receipt of a reference with respect to such company under section 424A* ; *or*

(b) *upon information received with respect to such company or upon its own knowledge as to the financial condition of the company.*

(*2*) *The Tribunal may, if it deems necessary or expedient so to do for the expeditious disposal of an inquiry under sub-section* (*1*)*, require by order any operating agency to enquire into the scheme for revival and make a report with respect to such matters as may be specified in the order.*

(*3*) *The operating agency shall complete its inquiry as expeditiously as possible and submit its report to the Tribunal within twenty-one days from the date of such order* :

**Provided** *that the Tribunal may extend the said period to forty days for reasons to be recorded in writing for such extension.*

(*4*) *The Tribunal shall conclude its inquiry as expeditiously as possible and pass final orders in the proceedings within sixty days from the commencement of the inquiry* :



**Provided** *that the Tribunal may extend the said period to ninety days for reasons to be recorded in writing for such extension.*

Explanation. - *For the purposes of this sub-section, an inquiry shall be deemed to have commenced upon the receipt by the Tribunal of any reference or information or upon its own knowledge reduced to writing by the Tribunal.* (*5*) *Where the Tribunal deems it fit to make an inquiry or to cause an inquiry to be made into any industrial company under sub-section* (*1*) *or, as the case may be, under sub-section* (*2*)*, it may appoint one or more* persons *who possess knowledge, experience and expertise in management and control of the affairs of any other company to be a special director or special directors on the Board of such industrial company on such terms and conditions as may be prescribed for safeguarding its financial and other interests or in the public interest.*

(*6*) *The special director or special directors appointed under sub- section* (*5*) *shall submit a report to the Tribunal within sixty days from the date of appointment of such director or directors about the state of affairs of the company in respect of which reference has been made under sub-section* (*1*) *and such special director or directors shall have all the powers of a director of a company under this Act, necessary for discharge of his or their duties.* (*7*) *The Tribunal may issue such directions to a special director appointed under sub-section* (*5*) *as it may deem necessary or expedient for proper discharge of his duties.*

(*8*) *The appointment of a special director referred to in sub-section* (*5*) *shall be valid and effective notwithstanding anything to the contrary contained in any other provision of this Act or in any other law for the time being in force or in the memorandum and articles of association or any other instrument relating to the industrial company, and any provision regarding share qualification, age limit, number of directorships, removal from office of directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any special director or directors appointed by the Tribunal.*

(*9*) *Any special director appointed under sub-section* (*5*)*, shall -*

(a) *hold office during the pleasure of the Tribunal and may be removed or substituted by any person by order of the Tribunal* ;

(b) *not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith inthe discharge of his duties as a director or anything in relation thereto*;

(c) *not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement* ;

(d) *not be liable to be prosecuted under any law for anything done or omitted to be done in good faith in the discharge of his duties in relation to the sick industrial company.*

**424C. POWERS OF TRIBUNAL TO MAKE SUITABLE ORDER ON COMPLETION OF INQUIRY**

(*1*) *If after making an inquiry under section 424 B, the Tribunal is satisfied that a company has become a sick industrial company, the Tribunal shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be, by an order in writing, whether it is practicable for the company to make its net worth exceed the accumulated losses or make the repayment of its debts referred to in clause* (b) *of sub-section* (*2*) *of section 424A within a reasonable time.*

(*2*) *If the Tribunal decides under sub-section* (*1*) *that it is practicable for a sick industrial company to make its net worth exceed the accumulated losses or pay its debt referred to in that sub-section within a reasonable time, the Tribunal shall, by order in writing and subject to such restrictions or conditions as may be specified in the order, give such time to the company as it may deem fit to make its net worth exceed the accumulated losses or make repayment of the debts.*

(*3*) *If the Tribunal decides under sub-section* (*1*) *that it is not practicable for a sick industrial company to make its net worth exceed the accumulated losses or make the repayment of its debts referred to in clause* (b) *of sub-section* (*2*) *of section 424A, within a reasonable time and that it is necessary or expedient in the public interest to adopt all or any of the measures specified in section 424D in relation to the said company it may, as soon as may be, by order in writing, direct any operating agency specified in the order to prepare, having regard to such guidelines as may be specified in the order, a scheme providing for such measures in relation to such company.*

(*4*) *The Tribunal may, -*

(a) *if any of the restrictions or conditions specified in an order made under sub-section* (*2*) *are not complied with by the company concerned, or if the company fails to revive in pursuance of the said order, review such order on a reference in that behalf from any agency referred to in sub-section* (*3*) *of section 424A or on its own motion and pass a fresh order in respect of such company under sub-section* (*3*) ;

(b) *if the operating agency specified in an order made under sub-section* (*3*) *makes a submission in that behalf, review such order and modify the order in such manner as it may deem appropriate.*

**424D. PREPARATION AND SANCTION OF SCHEMES**

(*1*) *Where an order is made under sub-section* (*3*) *of section 424C in relation to any sick industrial company, the operating agency specified in the order shall prepare as expeditiously as possible and ordinarily within a period of sixty days from the date of such order, having regard to the guidelines framed by the Reserve Bank of India in this behalf, a scheme with respect to such company providing for any one or more of the following measures, namely*:- (a) *the financial reconstruction of such industrial company* ;

(b) *the proper management of such industrial company by change in, or take over of, the management of such industrial company* ;

(c) *the amalgamation of -*

(i) *such industrial company with any other company* ; *or*



(ii) *any other company with suoh industrial company* (*hereafter in this section, in the case of sub-clause* (i)*, the other company, and in the case of sub-clause* (ii)*, such industrial company, referred to as "transferee-company"*) ; (d) *the sale or lease of a part or whole of any industrial undertaking of such industrial company* ;

(e) *the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law* ;

(f) *such other preventive ameliorative and remedial measures as may be appropriate* ;

(g) *repayment of debt* ;

(h) *such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses* (a) *to* (g) :

**Provided***that the Tribunal may extend the said period of sixty days to ninety days for reasons to be recorded in writing for such extension.*

(*2*) *The scheme referred to in sub-section* (*1*) *may provide for any one or more of the following, namely* : -
(a) *the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, duties and obligations of the sick industrial company or, as the case may be, of the transferee-company* ;
(b) *the transfer to the transferee-company of the business, properties, assets and liabilities of the sick industrial company on such terms and conditions as may be specified in the scheme* ;
(c) *any change in the Board of directors, or the appointment of a new Board of directors, of the sick industrial company and the authority by whom, the manner in which and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of directors or of any director, the period for which such appointment shall be made* ;
(d) *the alteration of the memorandum or articles of association of the sick industrial company or, as the case may be, of the transferee-company for the purpose of altering the capital structure thereof, or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation* ;
(e) *the continuation by or against the sick industrial company or, as the case may be, the transferee-company of any action or other legal proceeding pending against the sick industrial company immediately before the date of the order made under sub-section* (*3*) *of section 424C* ;
(f) *the reduction of the interest or rights which the shareholders have in the sick industrial company to such extent as the Tribunal considers necessary in the interests of the reconstruction, revivalor rehabilitation or repayment of debts of such sick industrial company or for the maintenance of the business of such industrial company* ;
(g) *the allotment to the shareholders of the sick industrial company, of shares in such company or, as the case may be, in the transferee-company and where any shareholder claims payment in cash and not allotment of shares, or where it is not possible to allot shares to any shareholder, the payment of cash to those shareholders in full satisfaction of their claims* -
(i) *in respect of their interest in shares in the sick industrial company before its reconstruction or amalgamation* ; *or* (ii) *where such interest has been reduced under clause* (f) *in respect of their interest in shares as so reduced* ; (h) *any other terms and conditions for the reconstruction or amalgamation of the sick industrial company* ;
(i) *sale of the industrial undertaking of the sick industrial company free from all encumbrances and all liabilities of the company or other such encumbrances and liabilities as may be specified, to any person, including a co-operative society formed by the employees of such undertaking and fixing of reserve price for such sale* ;
(j) *lease of the industrial undertaking of the sick industrial company to any person, including a co-operative society formed by the employees of such, undertaking* ;
(k) *method of sale of assets of the industrial undertaking of the sick industrial company such as by public auction or by inviting tenders or in any other manner as may be specified and for the manner of publicity therefor* ;
(l) *issue of the shares in the sick industrial company at the face value or at the intrinsic value which may be at discount value or such other value as may be specified to any industrial company or any person including the executives and employees of such sick industrial company* ;
(m) *such incidental, consequential and supplemental matters as may be necessary to secure that the reconstruction or amalgamation or other measures mentioned in the scheme are fully and effectively carried out.*
(*3*)(a) *The scheme prepared by the operating agency shall be examined by the Tribunal and a copy of the scheme with modification, if any, made by the Tribunal shall be sent, in draft, to the sick industrial company and the operating agency and in the case of amalgamation, also to any other company concerned, and the Tribunal may publish or cause to be published thedraft scheme in brief in such daily newspapers as the Tribunal may consider necessary, for suggestions and objections, if any, within such period as the Tribunal may specify.*
(b) *The complete draft scheme shall be kept at the place where registered office of the company is situated or at such places as mentioned in the advertisement.*
(c) *The Tribunal may make such modifications, if any, in the draft scheme as it may consider necessary in the fight of the suggestions and objections received from the sick industrial company and the operating agency and also from the transferee-company and any other company concerned in the amalgamation and from any shareholder or any creditors or employees of such companies* :
**Provided** *that where the scheme relates to amalgamation, the said scheme shall be laid before the company other than the sick industrial company in the general meeting for the approval of the scheme by its shareholders and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of the transferee-company.*
(*4*) *The scheme may thereafter be sanctioned, within sixty days by the Tribunal* (*hereinafter referred to as the sanctioned scheme*) *and shall come into force on such date as the Tribunal may specify in this behalf* :
**Provided [further]** *that the Tribunal may extend the said period of sixty days to ninety days for reasons to be recorded in writing for such extension*:



**Provided also** *that different dates may be specified for different provisions of the scheme.*

(*5*) *The Tribunal may, on the recommendations of the operating agency or otherwise, review any sanctioned scheme and make such modifications as it may deem fit or may by order in writing direct any operating agency specified in the order, having regard to such guidelines including the guidelines framed by the Reserve Bank of India in this behalf in order to prepare a fresh scheme providing for such measures as the operating agency may consider necessary.* (*6*) *When a fresh scheme is prepared under sub-section* (*5*)*, the provisions of sub-sections* (*3*) *and* (*4*) *shall apply in relation thereto as they apply to in relation to a scheme prepared under sub-section* (*1*).

(*7*) *Where a sanctioned scheme provides for the transfer of any property or liability of the sick industrial company in favour of any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick industrial company, then, by virtue of, and to the extent provided in, the scheme, onand from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick industrial company.*

(*8*) *The sanction accorded by the Tribunal under sub-section* (*4*) *shall be conclusive evidence that all the requirements of this scheme relating to the reconstruction or amalgamation, or any other measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Tribunal to be a true copy thereof, shall, in all legal proceedings* (*whether in appeal or otherwise*)*, be admitted as evidence.*

(*9*) *A copy of the sanctioned scheme referred to in sub-section* (8) *shall be filed with the Registrar within the prescribed time by the company in respect of which such scheme relates.*

(*10*) *On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee-company or, as the case may be, the other company and also on the shareholders, creditors and guarantors and employees of the said companies.* (*11*) *The creditors of a sick industrial company may also prepare a scheme for revival or rehabilitation of such sick industrial company and submit the same to the Tribunal for its sanction:*

**Provided** *that no scheme shall be submitted by the creditors to the Tribunal unless such scheme has been approved by at least three fourth in value of creditors of the sick industrial company.*

(*12*) *All the provisions relating to the preparation of scheme by the operating agency and sanction of such scheme by the Tribunal shall, as far as may be, apply to the scheme referred to in sub-section* (*11*).

(*13*) *The scheme referred to in sub-section* (*11*) *if sanctioned by the Tribunal shall be binding on all the creditors and on other concerned.*

(*14*) *If any difficulty arises in giving effect to the provisions of the sanctioned scheme, the Tribunal may, on the recommendation of the operating agency or otherwise, by order, do anything, not inconsistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing the difficulty.*

(*15*) *The Tribunal may, if it deems necessary or expedient so to do, by order in writing, direct any operating agency specified in the order to implement a sanctioned scheme with such terms and conditions and in relation to the sick industrial company as may be specified in the order.*

(*16*) *Where the whole of the undertaking of the sick industrial company is sold under a sanctioned scheme, the Tribunal may distribute the sale proceeds to the parties entitled thereto in accordance with the provisions of section 529A and other provisions of this Act.*

(*17*) *The Tribunal may monitor periodically the implementation of the sanctioned scheme.*

**424E. REHABILITATION BY GIVING FINANCIAL ASSISTANCE**

(*1*) *Where the scheme relates to preventive, ameliorative, remedial and other measures with respect to the sick industrial company, the scheme may provide for financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices from the Central Government, a State Government, any scheduled bank or other bank, a public financial institution or State level institution or any institution or other authority* (*any Government, bank, institution or other authority required by a scheme to provide for such financial assistance being hereafter in this section referred to as the person required by the scheme to provide financial assistance*) *to the sick industrial company.*

(*2*) *Every scheme referred to in sub-section* (*1*) *shall be circulated to every person required by the scheme to provide financial assistance for his consent within a period of sixty days from the date of such circulation or within such further period, not exceeding sixty days, as may be allowed by the Tribunal, and if no consent is received within such period or further period, it shall be deemed that consent has been given.*

(*3*) *Where in respect of any scheme the consent referred to in sub-section* (*2*) *is given by every person required by the scheme to provide financial assistance, the Tribunal may, as soon as may be, sanction the scheme andon and from the date of such sanction the scheme shall be binding on all concerned.*

(*4*) *On the sanction of the scheme under sub-section* (*3*)*, the financial institutions and the banks required to provide financial assistance, shall designate by mutual agreement a financial institution and a bank from amongst themselves which shall be responsible to disburse financial assistance by way of loans or advances or guarantees or reliefs or concessions or sacrifices agreed to be provided or granted under the scheme on behalf of all financial institutions and banks concerned.*

(*5*) *The financial institution and the bank designated under sub-section* (*4*) *shall forthwith proceed to release the financial assistance to the sick industrial company in fulfilment of the requirement in this regard.*

(*6*) *Where in respect of any scheme consent under sub-section* (*2*) *is not given by any person required by the scheme to provide financial assistance, the Tribunal may adopt such other measures, including the winding up of the sick industrial company, as it may deem fit.*



such other measures including winding up of the sick industrial company, as it may deem fit.

**424F. ARRANGEMENT FOR CONTINUING OPERATIONS, ETC., DURING INQUIRY**

(*1*) *At any time before completion of the inquiry under section 424B, the sick industrial company or the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank or any other institution, bank or authority providing or intending to provide any financial assistance by way of loans or advances or guarantees or reliefs, or concessions to such industrial company may make an application to the Tribunal -*

(a) *agreeing to an arrangement for continuing the operations of the sick industrial company* ; *or*

(b) *suggesting a scheme for the financial reconstruction of the sick industrial company.*

(*2*) *The Tribunal may, within sixty days of the receipt of the application under sub-section* (*1*)*, pass such orders thereon as it may deem fit.*

**424G. WINDING UP OF SICK INDUSTRIAL COMPANY**

(*1*) *Where the Tribunal, after making inquiry under section 424B and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of the opinion that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record its findings and order winding up of the company.*

(*2*) *For the purpose of winding up of the sick industrial company, the Tribunal may appoint any officer of the operating agency, if the operating agency gives its consent, as the liquidator of such industrial company and the officer so appointed shall for the purpose of the winding up of such sick industrial company, be deemed to be, and have all the powers of, the official liquidator under 5 this Act.*

(*3*) *Notwithstanding anything contained in sub-section* (*2*)*, the Tribunal may cause to be sold the assets of the sick industrial company in such manner as it may deem fit and pass orders for distribution in accordance with the provisions of section 529A, and other provisions of this Act.*

(*4*) *Without prejudice to the other provisions contained in this Act, the winding up of a company shall, as far as may be, concluded within one year from the date of the order made under sub-section* (*1*).

**424H. OPERATING AGENCY TO PREPARE COMPLETE INVENTORY, ETC**

*Where for the proper discharge of the functions of the Tribunal under this Part, the circumstances so require, the Tribunal may, through any operating agency, cause to be prepared -*

(a) *with respect to a company a complete inventory of -*

(i) *all assets and liabilities of whatever nature* ;

(ii) *all books of account, registers, maps, plans, records, documents of title or ownership of property and all other documents of whatever nature relating thereto* ;

(b) *a list of shareholders and a list of creditors showing separately inthe list of creditors, the secured creditors and unsecured creditors*;

(c) *a valuation report in respect of the shares and assets in order to arrive at the reserve price for the sale of a part or whole of the industrial undertaking of the company or for fixation of the lease rent or share exchange ratio* ; (d) *an estimate of reserve price, lease rent or share exchange ratio* ;

(e) *proforma accounts, where no up-to-date audited accounts are available.*

**424-I. DIRECTION NOT TO DISPOSE OF ASSETS**

*The Tribunal may, if it is of opinion, that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order, direct such company not to dispose of, except with the prior approval of the Tribunal, any of its assets during the period of inquiry under section 424B or during the period of preparation or consideration of the scheme under section 424C.*

**424J. POWER OF TRIBUNAL TO CALL FOR PERIODIC INFORMATION**

*On receipt of reference under section 424A, the Tribunal may call for any periodic information from the company as to the steps taken by the company to make its net worth exceed the accumulated losses or to make repayment of its debts referred to in that section, as the case may be, and the company shall furnish such information.*

**424K. MISFEASANCE PROCEEDINGS**

(*1*) *If, in the course of scrutiny or implementation of any scheme or proposal, it appears to the Tribunal that any person who has taken part in the promotion, formation or management of the sick industrial company or its undertaking, including any past*

*or present director, manager or officer or employee of the sick industrial company -*
(a) *has misapplied or retained, or become liable or accountable for, any money or property of the sick industrial company* ; *or*
(b) *has been guilty of any misfeasance, malfeasance or non-feasance of breach of trust in relation to the sick industrial company,*
*the Tribunal may, by order, direct him to repay or restore the money or property or any part thereof, with or without interest, as it thinks just, or to contribute such sum to the assets of the sick industrial company or the other person, entitled thereto by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as*



*the Tribunal thinks just, and also report the matter to the Central Government for any other action which that Government may deem fit.*
(*2*) *If the Tribunal is satisfied on the basis of the information and evidence in its possession with respect to any person who is or was a director or an officer or other employee of the sick industrial company, that such person by himself or along with others had diverted the funds or other property of such company for any purpose other than a* bona fide *purpose of the company or had managed the affairs of the company in a manner highly detrimental to the interests of the company, the Tribunal shall by order, direct the public financial institutions, scheduled banks and State level institutions not to provide, during a period often years from the date of the order, any financial assistance to such person or any firm of which such person is a partner or any company or other body corporate of which such person is a director* (*by whatever name called*). (*3*) *No order shall be made by the Tribunal under this section against any person unless such person has been given an opportunity for making his submissions.*
(*4*) *This section shall apply notwithstanding that the matter is pne for which the person may be criminally liable.*

**424L. PENALTY FOR CERTAIN OFFENCES**

(*1*) *Whoever violates provisions of this Part or any scheme, or any order, of the Tribunal or the Appellate Tribunal or makes a false statement or gives false evidence to the Tribunal or the Appellate Tribunal, and attempts to tamper the records of reference or appeal filed under this Act, shall be punishable with simple imprisonment for a term which may extend to three years or shall be liable to fine not exceeding ten lakhs rupees.*

(*2*) *No court shall take cognisance of any offence under sub-section* (*1*) *except on a complaint in writing of an officer of the Tribunal or the Appellate Tribunal or any officer of the Central Government authorised by it or any officer of an operating agency as may be authorised in this behalf by the Tribunal or the Appellate Tribunal, as the case may be.*]

## PART VII : WINDING UP

## CHAPTER I : PRELIMINARY

**425. MODES OF WINDING UP**

(1) The winding up of a company may be either, -
(*a*)by the [1][*Tribunal*] ; or
(*b*)voluntary ; [2][***]
(*c*)[3][*** ]
(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) 2. Word `or' omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) 3. Words "subject to supervision of the court" omitted by the Companies (Second Amendment) Act, 2002 (w.e.f.

a date yet to be notified)

***Contributories***

**426. LIABILITY AS CONTRIBUTORIES OF PRESENT AND PAST MEMBERS**

(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of section 427 and subject also to the following qualifications, namely : -
(*a*)a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up ;
(*b*)a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member ;
(*c*) no past member shall be liable to contribute unless it appears to the [1][*Tribunal*] that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act ;
(*d*)in the case of a company limited by shares, no contribution shall be required from any past or present member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as such member ;

(*e*)in the case of a company limited by guarantee, no contribution shall, subject to the provisions of sub-section (2), be required from any past or present member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up ;

(*f*)nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract ;

(*g*) a sum due to any past or present member of the company in his character as such, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member, in a case of competition



between himself and any creditor claiming otherwise than in the character of a past or present member of the company; but any such sum shall be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him as if the company were a company limited by shares.

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

**427. OBLIGATIONS OF DIRECTORS AND MANAGERS WHOSE LIABILITY IS UNLIMITED**

In the winding up of a limited company, any director [1][***] or manager, whether past or present, whose liability is, under the provisions of this Act, unlimited, shall, in addition to his liability, if any, to contribute as an ordinary member, be liable to make a further contribution as if he were, at the commencement of the winding up, a member of an unlimited company :

***Provided*** that -

(*a*)a past director [1][***] or manager shall not be liable to make such further contribution, if he has ceased to hold office for a year or upwards before the commencement of the winding up ;

(*b*)a past director [1][***] or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office ;

(*c*) subject to the articles of the company, a director [1][***] or manager shall not be liable to make such further contribution, unless the [2][*Tribunal*] deems it necessary to require the contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

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

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

**428. DEFINITION OF "CONTRIBUTORY"**

The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and includes the holder of any shares which are fully paid-up ; and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

**429. NATURE OF LIABILITY OF CONTRIBUTORY**

(1) The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the times specified in calls made on him for enforcing the liability.

(2) No claim founded on the liability of a contributory shall be cognisable by any Court of Small Causes sitting outside the presidency towns.

**430. CONTRIBUTORIES IN CASE OF DEATH OF MEMBER**

(1) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives shall be liable in a due course of administration, to contribute to the assets of the company in discharge of his liability, and shall be contributories accordingly.

(2) If the legal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and compelling payment thereout of the money due. (3) For the purposes of this section, where the deceased contributory was a member of a Hindu joint family governed by the Mitakshara School of Hindu Law, his legal representatives shall be deemed to include the surviving coparceners.

**431. CONTRIBUTORIES IN CASE OF INSOLVENCY OF MEMBER**

If a contributory is adjudged insolvent, either before or after he has been placed on the list of contributories, - (*a*) his assignees in insolvency shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company ; and

(*b*)there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made.

**432. CONTRIBUTORIES IN CASE OF WINDING UP OF A BODY CORPORATE WHICH IS A MEMBER**

If a body corporate which is a contributory is ordered to be wound up, either before or after it has been placed on the list of contributories, -

(*a*) the liquidator of the body corporate shall represent it for all the purposes of the winding up of the company and shall be a contributory accordingly, and may be called on to admit to proof against the assets of the body corporate, or otherwise to allow to be paid out of its assets in due course of law, any money due from the body corporate in respect of its liability to contribute to the assets of the company ; and



(*b*) there may be proved against the assets of the body corporate the estimated value of its liability to future calls as well as calls already made.

## CHAPTER II: WINDING UP BY THE [1][TRIBUNAL]

### *Cases in which company may be wound up by the* [1][Tribunal]

**[2][433. CIRCUMSTANCES IN WHICH COMPANY MAY BE WOUND UP BY TRIBUNAL**

*A company may be wound up by the Tribunal, -*

(a) *if the company has, by special resolution, resolved that the company be wound up by the Tribunal* ;

(b) *if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting* ;

(c) *if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year* ;

(d) *if the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two*;

(e) *if the company is unable to pay its debts* ;

(f) *if the Tribunal is of opinion that it is just and equitable that the company should be wound up* ;

(g) *if the company has made a default in filing with the Registrar itsbalance sheet and profit and loss account or annual return for any five consecutive financial years* ;

(h) *if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality* ;

(i) *if the Tribunal is of the opinion that the company should be wound up under the circumstances specified in section 424G* :

**Provided***that the Tribunal shall make an order for winding up of a company under clause* (h) *on application made by the Central Government or a State Government.*]

**1.** Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) **2.** Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to substitution, section 433 read as under :

"433. *Circumstances in which company may be wound up by Court*. - A company may be wound by the Court, - (*a*)if the company has, by special resolution, resolved that the company be wound up by the Court ; (*b*)if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting ;

(*c*) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year ;

(*d*)if the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two ;

(*e*)if the company is unable to pay its debts ;

(*f*)if the Court is of opinion that it is just and equitable that the company should be wound up."

**434. COMPANY WHEN DEEMED UNABLE TO PAY ITS DEBTS**

(1) A company shall be deemed to be unable to pay its debts -

(*a*)if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding [1][*one lakh*]rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor ;

(*b*)if execution or other process issued on a decree or order of any Court [2][*or Tribunal*] in favour of a creditor of the company is returned unsatisfied in whole or in part ; or

(*c*)if it is proved to the satisfaction of the [3][*Tribunal*] that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the [3][*Tribunal*] shall take into account the contingent and prospective liabilities of the company.

(2) The demand referred to in clause (*a*)of sub-section (1) shall be deemed to have been duly given under the hand of the creditor if it is signed by any agent or legal adviser duly authorised on his behalf, or in the case of a firm, if it is signed by any such agent or legal adviser or by any member of the firm.

1. Substituted for "five hundred" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)
2. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)
3. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

1[***]

**435. TRANSFER OF WINDING UP PROCEEDINGS TO DISTRICT COURT**

[*Omitted by the Companies* (*Second Amendment*) *Act, 2002* (w.e.f. a date yet to be notified) ]



1. Heading `Transfer of proceedings" omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

**436. WITHDRAWAL AND TRANSFER OF WINDING UP FROM ONE DISTRICT COURT TO ANOTHER** [*Omitted by the Companies* (*Second Amendment*) *Act, 2002* (w.e.f. a date yet to be notified) ]

**437. POWER OF HIGH COURT TO RETAIN WINDING UP PROCEEDINGS IN DISTRICT COURT** [*Omitted by the Companies* (*Second Amendment*) *Act, 2002* (w.e.f. a date yet to be notified) ]

**438. JURISDICTION OF HIGH COURT UNDER SECTIONS 435, 436 AND 437 TO BE EXERCISED AT ANY TIME AND AT ANY STAGE**

[*Omitted by the Companies* (*Second Amendment*) *Act, 2002* (w.e.f. a date yet to be notified) ]

***Petition for winding up***

**439. PROVISIONS AS TO APPLICATIONS FOR WINDING UP**

(1) An application to the 1[*Tribunal*] for the winding up of a company shall be by petition presented, subject to the provisions of this section, -

(*a*) by the company ; or

(*b*)by any creditor or creditors, including any contingent or prospective creditor or creditors ; or

(*c*)by any contributory or contributories ; or

(*d*)by all or any of the parties specified in clauses (*a*), (*b*)and (*c*), whether together or separately ; or

(*e*)by the Registrar ; or

(*f*)in a case falling under section 243, by any person authorised by the Central Government in that behalf ; or 2[(g) *In a case falling under clause* (h) *of section 433, by the Central Government or a State Government.*]

(2) A secured creditor, the holder of any debentures (including debenture stock), whether or not any trustee or trustees have been appointed in respect of such and other like debentures, and the trustee for the holders of debentures, shall be deemed to be creditors within the meaning of clause (*b*)of sub-section (1).

(3) A contributory shall be entitled to present a petition for winding up a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all, or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities.

(4) A contributory shall not be entitled to present a petition for winding up a company unless -

(*a*) either the number of members is reduced, in the case of a public company, below seven, and, in the case of a private company, below two ; or

(*b*)the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

(5) Except, in the case where he is authorised in pursuance of clause (*f*) of sub-section (1), the Registrar shall be entitled to present a petition for winding up a company only on the grounds specified in clauses (*b*), (*c*), (*d*), (*e*)3[(f) *and* (g)]of section 433 :

***Provided*** that the Registrar shall not present a petition on the ground specified in clause (*e*)aforesaid, unless it appears to him either from the financial condition of the company as disclosed in its balance sheet or from the report of a special auditor appointed under section 233A or an inspector appointed under section 235 or 237, that the company is unable to pay its debts :

***Providedfurther*** that the Registrar shall obtain the previous sanction of the Central Government to the presentation of the petition on any of the grounds aforesaid.

(6) The Central Government shall not accord its sanction in pursuance of the foregoing proviso, unless the company has first been afforded an opportunity of making its representations, if any.

(7) Apetition for winding up a company on the ground specified in clause (*b*) of section 433 shall not be presented - (*a*)except by the Registrar or by a contributory ; or

(*b*) before the expiration of fourteen days after the last day on which the statutory meeting referred to in clause (*b*) aforesaid ought to have been held.

(8) Before a petition for winding up a company presented by a contingent or prospective creditor is admitted, the leave of the [1][*Tribunal*] shall be obtained for the admission of the petition and such leave shall not be granted -
(*a*)unless, in the opinion of the [1][*Tribunal*], there is a *prima facie* case for winding up the company ; and
(*b*)until such security for costs has been given as the [1][*Tribunal*] thinks reasonable.

1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) 2. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)
3. Substituted for "and (f)" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

**[1][439A. STATEMENT OF AFFAIRS TO BE FILED ON WINDING UP OF A COMPANY**
(*1*) *Every company shall file with the Tribunal a statement of its affairs along with the petition for winding up.* (*2*) *Where a company opposes a petition for its winding up, it shall file with the Tribunal a statement of its affairs.*

(*3*) *The statement of affairs referred to in sub-section* (*1*) *or sub-section* (*2*) *shall be accompanied by* - (*a*) *the last known addresses of all directors and company secretary of such company* ;



(*b*) *the details of location of assets of the company and their value* ;
(*c*) *the details of all debtors and creditors with their complete addresses*;
(*d*) *the details of workmen and other employees and any amount outstanding to them* ; (*e*) *such other details as the Tribunal may direct.*]

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

**[1][440. RIGHT TO PRESENT WINDING UP PETITION WHERE COMPANY IS BEING WOUND UP VOLUNTARILY** (*1*) *Where a company is being wound up voluntarily, a petition for its winding up by the Tribunal may be presented by* - (a) *any person authorised to do so under section 439* ; *or*
(b) *the Official Liquidator.*

(*2*) *The Tribunal shall not make a winding up order on a petition presented to it under sub-section* (*1*)*, unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories or both.*]

**1.** Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) . Prior to its substitution, section 440 read as under :

**[1][441. COMMENCEMENT OF WINDING UP BY TRIBUNAL**
(*1*) *Where, before the presentation of a petition for the winding up of a company by the Tribunal, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Tribunal, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.* (*2*) *In any other case, the winding up of a company by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up.*]

**1.** Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution section 441 read as under :
Commencement of winding up
"441. Commencement of winding up by Court. - (1) Where, before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Court, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.".

***[1][Levy by way of cess and formation of Rehabilitation and Revival Fund***

**441A. LEVY AND COLLECTION OF CESS ON TURNOVER OR GROSS RECEIPTS OF COMPANIES**
(*1*) *There shall be levied and collected, for the purposes of rehabilitation or revival or protection of assets of the sick industrial company, a levy by way of cess at such rate not less than 0.005 per cent and not more than 0.1 per cent on the value of annual turnover of every company or its annual gross receipt, whichever is more as the Central Government may, from time to time, specify by notification in the Official Gazette.*

(*2*) *Every company shall pay to the Central Government the cess referred to in sub-section* (*1*) *within three months from the close of every financial year.*
(*3*) *Every company shall furnish, in such form as may be prescribed, to the Central Government and the Tribunal the details of its turnover and gross receipts with payment of cess under sub-section* (*1*).
(*4*) *The Central Government may, by rules made in this behalf, specify the manner in which the cess shall be paid under sub-section* (*2*).

**1.** Sections 441A to 441G inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

**441B. CREDITING PROCEEDS OF CESS TO CONSOLIDATED FUND OF INDIA**

*The proceeds of the cess levied and collected under section 441A shall first be credited to the Consolidated Fund of India and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, pay to the Tribunal, from time to time, out of such proceeds* (*after deducting the cost of collection*)*, such sums of money as it may think fit for being utilised for the purposes of the Fund.*

**441C. REHABILITATION FUND**

(*1*) *There shall be formed for the purposes of rehabilitation or revival or protection of assets of a sick industrial company, a Fund to be called the Rehabilitation and Revival Fund.*

(*2*) *There shall be credited to the Fund -*

(a) *all amounts paid under section 441B* ;

(b) *any amount given as grants by the Central Government for the purposes of this Fund* ; (c) *any amount given to the Fund from any other source* ;



(d) *any income from investment of the amount in the Fund* ; (e) *amount refunded by the company under section 441G.*

**441D. APPLICATION OF FUND**

*The Fund shall be applied by the Tribunal for the purpose of -*

(a) *making interim payment of workmen's dues pending the revival or rehabilitation of the sick industrial company* ; *or* (b) *payment of workmen's dues due to the workmen, referred to in subsection* (*3*) *of section 529, of the sick industrial company* ; *or* (c) *protection of assets of sick industrial company* ; *or*

(d) *revival or rehabilitation of sick industrial company* ;

*which in the opinion of the Tribunal are necessary or expedient for the said purposes.*

**441E. POWER TO CALL FOR INFORMATION**

*The Central Government or Tribunal may require any company to furnish for the purposes of rehabilitation or revival or protection of assets of sick industrial companies, such statistical and other information in such form and within such period as may be prescribed.*

**441F. PENALTY FOR NON-PAYMENT OF CESS**

(*1*) *If any cess payable by a company under section 441A is not paid in accordance with the provisions of that section, it shall be deemed to be in arrears and the same shall be recovered by the Tribunal in such manner as may be prescribed.*

(*2*) *The Tribunal may, after such inquiry as it deems fit, impose on thecompany, which is in arrears under sub-section* (*1*)*, a penalty not exceeding ten times the amount in arrears* :

**Provided** *that before imposing such penalty, such company shall be given a reasonable opportunity of being heard, and if, after such hearing, theTribunal is satisfied that the default was for any good and sufficient reason, no penalty shall be imposed under this sub-section.*

**441G. REFUND OF FUND IN CERTAIN CASES**

(*1*) *Where the fund has been applied by the Tribunal for any of the purposes specified in clauses* (a) *to* (d) *of section 441 D, such amount of fund shall be recovered from the company after its revival or rehabilitation or out of sale proceeds of its assets after discharging the statutory liabilities and payment of dues to creditors.*

(*2*) *The amount referred to in sub-section* (*7*) *shall be recovered in the manner as the Tribunal may direct.*]

***Powers of*** [1][**Tribunal**]

**442. POWER OF COURT TO STAY OR RESTRAIN PROCEEDINGS AGAINST COMPANY** [2][*Omitted by the Companies* (*Second Amendment*) *Act, 2002* (w.e.f. a date yet to be notified)]

1. Substituted for `Court' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) 2. Prior to its omission section 442 read as under :

"442. Power of Court to stay or restrain proceedings against company. - At any time after the presentation of a winding up petition and before a winding up order has been made, the company, or any creditor or contributory, may -

(a) where any suit or proceeding against the company is pending in the Supreme Court or in any High Court, apply to the Court in which the suit or proceeding is pending for a stay of proceedings therein ; and

(b) where any suit or proceeding is pending against the company in any other Court, apply to the Court having jurisdiction to wind up the company, to restrain further proceedings in the suit or proceeding ; and the Court to which application is so made may stay or restrain the proceedings accordingly, on such terms as it thinks fit."

**[1][443. POWERS OF TRIBUNAL ON HEARING PETITION**

(*1*) *On hearing a winding up petition, the Tribunal may -*

(a) *dismiss it, with or without costs* ; *or*

(b) *adjourn the hearing conditionally or unconditionally* ; *or*

(c) *make any interim order that it thinks fit* ; *or*

(d) *make an order for winding up the company with or without costs, or any other order that it thinks fit* :

**Provided** *that the Tribunal shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.*

(*2*) *Where the petition is presented on the ground that it is just and equitable that the company should be wound up, the Tribunal may refuse to make an order of winding up, if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing*



*that other remedy.* (*3*) *Where the petition is presented on the ground of default in delivering the statutory report to the Registrar, or in holding the statutory meeting, the Tribunal may -*

(a) *instead of making a winding up order, direct that the statutory report shall be delivered or that a meeting shall be held* ; *and*

(b) *order the costs to be paid by any persons who in the opinion of the Tribunal, are responsible for the default*.]

1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) . Prior to its substitution section 443 read as under :

"443. Powers of Court on hearing petition. - (1) On hearing a winding up petition, the Court may -

(a) dismiss it, with or without cost ; or

(b) adjourn the hearing conditionally or unconditionally ; or

(c) make any interim order that it thinks fit ; or

(d) make an order for winding up the company with or without costs, or any other order that it thinks fit :

Provided that the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground that it is just and equitable that the company should be wound, the Court may refuse to make an order of winding up, if it is of opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound instead of pursuing that other remedy.

(3) Where the petition is presented on the ground of default in delivering the statutory report to the Registrar, or in holding the statutory meeting, the Court may -

(a) instead of making a winding up order, direct that the statutory report shall be delivered or that a meeting shall be held ; and

(b) order the costs to be paid by any persons who in the opinion of the Court, are responsible for the default.

**[1][444. ORDER FOR WINDING UP TO BE COMMUNICATED TO OFFICIAL LIQUIDATOR AND REGISTRAR**

*Where the Tribunal makes an order for the winding up of a company, the Tribunal, shall within a period not exceeding two weeks from the date of passing of the order, cause intimation thereof to be sent to the Official Liquidator and the Registrar*.]

**1.** Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) . Prior to its substitution, section 444 read as under :

*Consequences of winding up order*

444. Order for winding up to be communicated to Official Liquidator and Registrar. - Where the Court makes an order for the winding up of a company, the Court shall forthwith cause intimation thereof to be sent to the Official Liquidator and the Registrar."

**445. COPY OF WINDING UP ORDER TO BE FILED WITH REGISTRAR**

(1) On the making of a winding up order, it shall be the duty of the petitioner in the winding up proceedings and of the company to file with the Registrar a certified copy of the order, within thirty days from the date of the making of the order.

If default is made in complying with the foregoing provision, the petitioner, or as the case may require, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [1][one thousand] rupees for each day during which the default continues.

(1A) In computing the period of thirty days from the date of the making of a winding up order under sub-section (1), the time requisite for obtaining a certified copy of the order shall be excluded.

(2) On the filing of a certified copy of the winding up order, the Registrar shall make a minute thereof in his books relating to the company, and shall notify in the Official Gazette that such an order has been made.

(3) Such order shall be deemed to be notice of discharge to the officers and employees of the company, except when the business of the company is continued.

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

**446. SUITS STAYED ON WINDING UP ORDER**

(1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the [1][*Tribunal*] and subject to such terms as the [1][*Tribunal*] may impose. (2) The [2][*Tribunal*] shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of -

(*a*)any suit or proceeding by or against the company ;

(*b*)any claim made by or against the company (including claims by or against any of its branches in India) ; (*c*)any application made under section 391 by or in respect of the company ;

(*d*)any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company ;



whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960.

(3) [3][***]

(4) Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a high Court.

1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) 2. Substituted for "court which is winding up the company" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

3. Omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to omission sub-section (3) read as under :

"(3) Any suit or proceeding by or against the company which is pending in any Court other than that in which the winding up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by that Court."

**[1][446A. RESPONSIBILITY OF DIRECTORS AND OFFICERS TO SUBMIT TO TRIBUNAL AUDITED BOOKS AND ACCOUNTS**

*The directors and other officers of every company shall ensure that books of account of the company are completed and audited up to date of winding up order made by the Tribunal and submitted to it at the cost of the company, failing which such directors and officers shall be liable for punishment for a term not exceeding one year and fine for an amount not exceeding one lakh rupees.*]

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

**447. EFFECT OF WINDING UP ORDER**

An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if it had been made on the joint petition of a creditor and of a contributory.

***Official liquidators***

**[1][448. APPOINTMENT OF OFFICIAL LIQUIDATOR**

(*1*) *For the purposes of this Act, so far as it relates to the winding up of a company by the Tribunal, there shall be an Official Liquidator who -*

(a) *may be appointed from a panel of professional firms of chartered accountants, advocates, company secretaries, costs and works accountants or firms having a combination of these professions, which the Central Government shall constitute for the Tribunal* ; *or*

(b) *may be a body corporate consisting of such professionals as may be approved by the Central Government from time to time* ; *or*

(c) *may be a whole-time or a part-time officer appointed by the Central Government* :

**Provided** *that, before appointing the Official Liquidator, the Tribunal may give due regard to the views or opinion of the secured creditors and workmen.*

(*2*) *The terms and conditions for the appointment of the Official Liquidator and the remuneration payable to him shall be -*

(a) *approved by the Tribunal for those appointed under clauses* (a) *and* (b) *of sub-section* (*1*)*, subject to a maximum remuneration of five per cent of the value of debt recovered and realisation of sale of assets* ;

(b) *approved by the Central Government for those appointed under clause* (c) *of sub-section* (*1*) *in accordance with the rules made by it in this behalf.*

(*3*) *Where the Official Liquidator is an officer appointed by the Central Government under clause* (c) *of sub-section* (*1*)*, the Central Government may also appoint, if considered necessary, one or more Deputy Official Liquidators or Assistant Official Liquidators to assist the Official Liquidator in the discharge of his functions, and the terms and conditions for the appointment of such Official Liquidators and the remuneration payable to them shall also be in accordance with the rules made by the Central Government.*

(*4*) *All references to the "Official Liquidator" in this Act shall be construed as reference to the Official Liquidator specified in sub-section* (*1*)*, or to the Deputy Official Liquidator or Assistant Official Liquidator referred to in sub-section* (*3*)*, as the case may be.*

(*5*) *The amount of the remuneration payable shall -*

(a) *form part of the winding up order made by the Tribunal* ;

(b) *be treated as first charge on the realisation of the assets and be paid to the Official Liquidator or to the Central Government, as the case may be.*

(*6*) *The Official Liquidator shall conduct proceedings in the winding up of a company and perform such duties in reference thereto as the Tribunal may specify in this behalf* :

**Provided** *that the Tribunal may -*

(a) *transfer the work assigned from one Official Liquidator to another Official Liquidator for the reasons to be recorded in writing* ;

(b) *remove the Official Liquidator on sufficient cause being shown* ;



(c) *proceed against the Official Liquidator for professional misconduct.*]

1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution, section 448 read as under :

`448. Appointment of Official Liquidator. - (1) For the purposes of this Act, so far as it relates to the winding up of companies by the Court, -

(a) there shall be attached to each High Court, an Official Liquidator appointed by the Central Government, who shall be a whole-time officer, unless the Central Government considers that there will not be sufficient work for a whole-time officer in which case a part-time officer may be appointed ; and (b) the Official Receiver attached to a District Court for insolvency purposes, or if there is no such Official Receiver, then, such person as the Central Government may, by notification in the Official Gazette appoint for the purpose, shall be the Official Liquidator attached to the District Court.

(1A) The Central Government may appoint one or more Deputy or Assistant Official Liquidators to assist the Official Liquidator in the discharge of his functions.

(2) All references to the "Official Liquidator" in this Act shall be construed as references to the Official Liquidator referred to in clause (a) or clause (b), as the case may be, of sub-section (1) and as including references to Deputy or Assistant Official Liquidators appointed under sub-section (1A).'

**449. OFFICIAL LIQUIDATOR TO BE LIQUIDATOR**

On a winding up order being made in respect of a company, the Official Liquidator shall, by virtue of his office, become the liquidator of the company.

**450. APPOINTMENT AND POWERS OF PROVISIONAL LIQUIDATOR**

(1) At any time after the presentation of a winding up petition and before the making of a winding up order, the [1][*Tribunal*] may appoint the Official Liquidator to be liquidator provisionally.

(2) Before appointing a provisional liquidator, the [1][*Tribunal*] shall give notice to the company and give a reasonable opportunity to it to make its representations, if any, unless, for special reasons to be recorded in writing, the [1][*Tribunal*] thinks fit to dispense with such notice. (3) Where a provisional liquidator is appointed by the [1][*Tribunal*], the [1][*Tribunal*] may limit and restrict his powers by the order appointing him or by a subsequent order ; but otherwise he shall have the same powers as a liquidator.

(4) The Official Liquidator shall cease to hold office as provisional liquidator and shall become the liquidator, of the company, on a winding up order being made.

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

**451. GENERAL PROVISIONS AS TO LIQUIDATORS**

(1) The liquidator shall conduct the proceedings in winding up the company and perform such duties in reference thereto as the [1][*Tribunal*] may impose. (2) Where the [2][*Official Liquidator referred to in clause* (c) *of sub-section* (*1*) *of section 448*] becomes or acts as liquidator, there shall be paid to the

(3) The acts of a liquidator shall be valid, notwithstanding any defect that may afterwards be discovered in his appointment or qualification :

***Provided*** that nothing in this sub-section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid.

1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) 2. Substituted for "Official Liquidator" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

**452. STYLE, ETC., OF LIQUIDATOR**

A liquidator shall be described by the style of "The Official Liquidator" of the particular company in respect of which he acts, and not by his individual name.

**453. RECEIVER NOT TO BE APPOINTED OF ASSETS WITH LIQUIDATOR**

A receiver shall not be appointed of assets in the hands of a liquidator except by, or with the leave of, the [1][*Tribunal*].

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

**454. STATEMENT OF AFFAIRS TO BE MADE TO OFFICIAL LIQUIDATOR**

(1) Where the [1][*Tribunal*] has made a winding up order or appointed the Official Liquidator as provisional liquidator, unless the [1][*Tribunal*] in its discretion otherwise orders, there shall be made out and submitted to the Official Liquidator a statement as to the affairs of the company in the prescribed form, verified by an affidavit, and containing the following particulars, namely : -

(*a*) the assets of the company, stating separately the cash balance in hand and at the bank, if any, and negotiable securities, if any, held by the company ;

(*b*)its debts and liabilities ;



(*c*) the names, residences and occupations of its creditors, stating separately the amount of secured and unsecured debts ; and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given ;

(*d*) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised on account thereof ;

(*e*)such further or other information as may be prescribed, or as the Official Liquidator may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the manager, secretary or other chief officer of the company, or by such of the persons hereinafter in this sub-section mentioned, as the Official Liquidator, subject to the direction of the [1][*Tribunal*], may require to submit and verify the statement, that is to say, persons -

(*a*)who are or have been officers of the company ;

(*b*)who have taken part in the formation of the company at any time within one year before the relevant date ; (*c*)who are in the employment of the company, or have been in the employment of the company within the said year, and are, in the opinion of the Official Liquidator, capable of giving the information required ;

(*d*)who are or have been within the said year officers of, or in the employment of, a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within twenty-one days from the relevant date, or within such extended time not exceeding three months from that date as the Official Liquidator or the [1][*Tribunal*] may, for special reasons, appoint. (4) Any person making, or concurring in making, the statement and affidavit required by this section shall be allowed, and shall be paid by the Official Liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Official Liquidator may consider reasonable, subject to an appeal to the [1][*Tribunal*].

(5) If any person, without reasonable excuse, makes default in complying with any of the requirements of this section, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to [2][one thousand] rupees for every day during which the default continues, or with both.

(5A) The [1][*Tribunal*] by which the winding up order is made or the provisional liquidator is appointed, may take cognisance of an offence under sub-section (5) upon receiving a complaint of facts constituting such an offence and trying the offence itself in accordance with the procedure laid down in the Code of Criminal Procedure, 1898(5 of 1898), for the trial of summons cases by magistrates.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182of the Indian Penal Code (45 of 1860) ; and shall, on the application of the Official Liquidator, be punishable accordingly. (8) In this section, the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment, and in a case where no such appointment is made, the date of the winding up order.

1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) **2.** Substituted for "one hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

**455. REPORT BY OFFICIAL LIQUIDATOR**

(1) In a case where a winding up order is made, the Official Liquidator shall, as soon as practicable after receipt of the statement to be submitted under section 454 and not later than six months from the date of the order or such extended period as may be allowed by the 1[*Tribunal*], or in a case where the 1[*Tribunal*] orders that no statement need be submitted, as soon as practicable after the date of the order, submit a preliminary report to the 1[*Tribunal*] - (*a*) as to the amount of capital issued, subscribed, and paid-up, and the estimated amount of assets and liabilities, giving separately, under the heading of assets, particulars of (*i*) cash and negotiable securities ; (*ii*) debts due from contributories ; (*iii*)debts due to the company and securities, if any, available in respect thereof ; (*iv*) movable and immovable properties belonging to the company ; and (*v*)unpaid calls ;

(*b*)if the company has failed, as to the causes of the failure ; and

(*c*) whether, in his opinion, further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The Official Liquidator may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was promoted or formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any officer of the company in relation to the company since the formation thereof, and any other matters which, in his opinion, it is desirable to bring to the notice of the 1[*Tribunal*].

(3) If the Official Liquidator states in any such further report that in his opinion a fraud has been committed as aforesaid, the 1[*Tribunal*] shall have the further powers provided in section 478.

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

**456. CUSTODY OF COMPANY'S PROPERTY**

(1) Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, shall take into his custody or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.



(1A) For the purpose of enabling the liquidator or the provisional liquidator, as the case may be, to take into his custody or under his control, any property, effects or actionable claims to which the company is or appears to be entitled, the liquidator or the provisional liquidator, as the case may be, may by writing request the Chief Presidency Magistrate or the District Magistrate within whose jurisdiction such property, effects or actionable claims or any books of account or other documents of the company may be found, to take possession thereof, and the Chief Presidency Magistrate or the District Magistrate may thereupon after such notice as he may think fit to give to any party, take possession of such property, effects, actionable claims, books of account or other documents and deliver possession thereof to the liquidator or the provisional liquidator.

(1B) For the purpose of securing compliance with the provisions of sub-section (1A), the Chief Presidency 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.

(2) All the property and effects of the company shall be deemed to be in the custody of the 1[*Tribunal*] as from the date of the order for the winding up of the company.

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

**457. POWERS OF LIQUIDATOR**

(1) The liquidator in a winding up by the 1[*Tribunal*] shall have power, with the sanction of the 1[*Tribunal*], -

(*a*)to institute or defend any suit, prosecution, or other legal procee-ding, civil or criminal, in the name and on behalf of the company ;

(*b*)to carry on the business of the company so far as may be necessary for the beneficial winding up of the company ; (*c*)to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer the whole thereof to any person or body corporate, or to sell the same in parcels ; 2[(ca) *to sell whole of the undertaking of the company as a going concern*;

(*d*)to raise on the security of the assets of the company any money requisite ;

(*e*) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(2) The liquidator in a winding up by the 1[*Tribunal*] shall have power -

(*i*) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal ;

(*ia*) to inspect the records and returns of the company on the files of the Registrar without payment of any fee ; (*ii*)to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors ;

(*iii*) to draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi, or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business ;

(*iv*)to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any

other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself :

***Provided*** that nothing herein empowered shall be deemed to affect the rights, duties and privileges of any Administrator-General;

(*v*)to appoint an agent to do any business which the liquidator is unable to do himself.

[3][(*2A*) *The liquidator shall -*

(a) *appoint security guards to protect the property of the company taken into his custody and to make out an inventory of the assets in consultation with secured creditors after giving them notice* ;

(b) *appoint, as the case may be, valuer, chartered surveyors or chartered accountant to assess the value the company's assets within fifteen days after taking into custody of property, assets referred to in sub-clause* (a) *and effects or actionable claims subject to such terms and conditions as may be specified by the Tribunal* ;

(c) *give an advertisement, inviting bids for sale of the assets of the company, within fifteen days from the date of receiving valuation report from the valuer, chartered surveyors or chartered accountants referred to in clause* (b)*, as the case may be.*

(*2B*) *The liquidator shall, immediately after the order for winding up or appointing the liquidator as provisional Liquidator is made, issue a notice requiring any of the persons mentioned in sub-section* (*2*) *of section 454, to submit and verify a statement of the affairs of the company and such notice shall be served by the liquidator.*

(*2C*) *The liquidator may apply to the Tribunal for an order directing any person who, in his opinion, is competent to furnish a statement of the affairs under sections 439A and 454 and such person shall for the said purpose be served a notice by the liquidator in the manner as may be prescribed.*

(*2D*) *The liquidator may, from time to time, call any person for recording any statement for the purpose of investigating the affairs of the company which is being wound up and it shall be the duty of every such person to attend to the liquidator at such time and place as the liquidator may appoint and give the liquidator all information which he may require and answer all such questions relating to winding up of company as may be put to him by the liquidator.* (*2E*) *Every bidder shall, in response to advertisement referred to in clause* (c) *of sub-section* (*2A*)*, deposit, his offer in the manner as may be prescribed, with liquidator or provisional liquidator, as the case may be, within forty-five days*



*from the date of the advertisement and the liquidator or provisional liquidator shall permit inspection of property and assets in respect of which bids were invited* :

***Provided*** *that such bid may be withdrawn within three days before the last day of closing of the bid* :

***Provided further*** *that the inspection of property shall be open for not more than five days before closing of the bid.*

(*2F*) *The advertisement inviting bids shall contain the following details, namely* :-

(a) *name, address of registered office of the company and its branch offices, factories and plants and the place where assets of the company are kept and available for sale* ;

(b) *last date for submitting bids which shall not exceed ninety days from the date of advertisement* ;

(c) *time during which the premises of the company shall remain open for inspection* ;

(d) *the last date for withdrawing the bid* ;

(e) *financial guarantee which shall not be less than one-half of the value of the bid* ;

(f) *validity period of the bids* ;

(g) *place and date of opening of the bids in public* ;

(h) *reserve price and earnest money to be deposited along with the bid*;

(i) *any other terms and conditions of sale which may be prescribed.*

(*2G*) *The liquidator appointed shall -*

(a) *maintain a separate bank account for each company under his charge for depositing the sale proceeds of the assets and recovery of debts of each company* ;

(b) *maintain proper books of account in respect of all receipts and payments made by him in respect of each company and submit half yearly return of receipts and payments to the Tribunal.*]

(3) The exercise by the liquidator in a winding up by the [1][*Tribunal*] of the powers conferred by this section shall be subject to the control of the [1][*Tribunal*] ; and any creditor or contributory may apply to the [1][*Tribunal*] with respect to the exercise or proposed exercise of any of the powers conferred by this section.

**1.** Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) 2. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

3. Sub-sections (2A) to (2G) inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

**458. DISCRETION OF LIQUIDATOR**

The [1][*Tribunal*] may, by order, provide that the liquidator may exercise any of the powers referred to in sub-section (1) of section 457 without the sanction or intervention of the [1][*Tribunal*] :

***Provided*** always that the exercise by the liquidator of such powers shall be subject to the control of the [1][*Tribunal*].

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

**458A. EXCLUSION OF CERTAIN TIME IN COMPUTING PERIODS OF LIMITATION**

Notwithstanding anything in the Indian Limitation Act, 1908 (9 of 1908) or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application in the name and on behalf of a company which is being wound up by the [1][*Tribunal*], the period from the date of commencement of the winding up of the company to the date on which the winding up order is made (both inclusive) and a period of one year immediately following the date of the winding up order shall be excluded.

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

**[1]459. PROVISION FOR LEGAL ASSISTANCE TO LIQUIDATOR**

*The liquidator may, with the sanction of the Tribunal appoint one or more chartered accountants or company secretaries or cost accountants or legal practitioners entitled to appear before the Tribunal under section 10GD to assist him in the performance of his duties.*]

1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution, section 459 read as under :

"459. Provision for legal assistance to liquidator. - The Liquidator may, with the sanction of the court, appoint an advocate, attorney or pleader entitled to appear before the court to assist him in the performance of his duties."

**460. EXERCISE AND CONTROL OF LIQUIDATOR'S POWERS**

(1) Subject to the provisions of this Act, the liquidator shall, in the administration of the assets of the company and the distribution thereof among its creditors, have regard to any directions which may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection.

(2) Any directions given by the creditors or contributories at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.

(3) The liquidator -

(*a*)may summon general meetings of the creditors or contributories, whenever he thinks fit, for the purpose of ascertaining their wishes;



(*b*)shall summon such meetings at such times, as the creditors or contributories, as the case may be, may, by resolution, direct, or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories, as the case may be.

(4) The liquidator may apply to the [1][*Tribunal*] in the manner prescribed, if any, for directions in relation to any particular matter arising in the winding up.

(5) Subject to the provisions of this Act, the liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors.

(6) Any person aggrieved by any act or decision of the liquidator may apply to the [1][*Tribunal*] ; and the [1][*Tribunal*] may confirm, reverse or modify the act or decision complained of, and make such further order as it thinks just in the circumstances.

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

**461. BOOKS TO BE KEPT BY LIQUIDATOR**

(1) The liquidator shall keep, in the manner prescribed, proper books in which he shall cause entries or minutes to be made of proceedings at meetings and of such other matters as may be prescribed.

(2) Any creditor or contributory may, subject to the control of the [1][*Tribunal*], inspect any such books, personally or by his agent.

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

**462. AUDIT OF LIQUIDATOR'S ACCOUNTS**

(1) The liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the [1][*Tribunal*] an account of his receipts and payments as liquidator.

(2) The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form.

(3) The [1][*Tribunal*] shall cause the account to be audited in such manner as it thinks fit ; and for the purpose of the audit, the liquidator shall furnish the [1][*Tribunal*] with such vouchers and information as the [1][*Tribunal*] may require, and the [1][*Tribunal*] may, at any time, require the production of, and inspect, any books or accounts kept by the liquidator. (4) When the account has been audited, one copy thereof shall be filed and kept by the [1][*Tribunal*], and the other copy shall be delivered to the Registrar for filing ; and each copy shall be open to the inspection of any creditor, contributory or person interested.

[2][(4A) Where an account referred to in sub-section (4) relates to a Government company in liquidation, the liquidator shall forward a copy thereof, -

(*a*)to the Central Government, if that Government is a member of the Government company ; or
(*b*)to any State Government, if that Government is a member of the Government company ; or
(*c*) to the Central Government and any State Government, if both the Governments are members of the Government company.]
(5) The liquidator shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and to every contributory :
***Provided*** that the 1[*Tribunal*] may in any case dispense with compliance with this sub-section.

**1.** Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) **2.** Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

**463. CONTROL OF CENTRAL GOVERNMENT OVER LIQUIDATORS**

(1) The Central Government shall take cognisance of the conduct of liquidators of companies which are being wound up by the 1[*Tribunal*], and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by this Act, or by the Indian Companies Act, 1913 (7 of 1913), the rules thereunder, or otherwise, with respect to the performance of his duties, or if any complaint is made to the Central Government by any creditor or contributory in regard thereto, the Central Government shall inquire into the matter, and take such action thereon as it may think expedient :
***Provided*** that where the winding up of a company has commenced before the commencement of this Act, the 1[*Tribunal*] may, on the applica tion of the Central Government, appoint in place of such liquidator the Official Liquidator as the liquidator in such winding up.

(2) The Central Government may at any time require any liquidator of a company which is being wound up by the 1[*Tribunal*] to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Central Government thinks fit, apply to the 1[*Tribunal*] to examine him or any other person on oath concerning the winding up. (3) The Central Government may also direct a local investigation to be made of the books and vouchers of the liquidators.

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

***Committee of inspection***



**464. APPOINTMENT AND COMPOSITION OF COMMITTEE OF INSPECTION**

(1) (*a*)The 1[*Tribunal*] may, at the time of making an order for the winding up of a company or at any time thereafter, direct that there shall be appointed a committee of inspection to act with the liquidator.
(*b*) Where a direction is given by the 1[*Tribunal*] as aforesaid, the liquidator shall, within two months from the date of such direction, convene a meeting of the creditors of the company (as ascertained from its books and documents) for the purpose of determining who are to be members of the committee.
(2) The liquidator shall, within fourteen days from the date of the creditors' meeting or such further time as the 1[*Tribunal*] in its discretion may grant for the purpose ; convene a meeting of the contributories to consider the decision of the creditors' meeting with respect to the membership of the committee ; and it shall be open to the meeting of the contributories to accept the decision of the creditors' meeting with or without modifications or to reject it.
(3) Except in the case where the meeting of the contributories accepts the decision of the creditors' meeting in its entirety, it shall be the duty of the liquidator to apply to the 1[*Tribunal*] for directions as to what the composition of the committee shall be, and who shall be members thereof.

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

**465. CONSTITUTION AND PROCEEDINGS OF COMMITTEE OF INSPECTION**

(1) A committee of inspection appointed in pursuance of section 464 shall consist of not more than twelve members, being creditors and contri-butories of the company or persons holding general or special powers of attorney from creditors or contributories, in such proportions as may be agreed on by the meetings of creditors and contributories, or in case of difference of opinion between the meetings, as may be determined by the 1[*Tribunal*].

(2) The committee of inspection shall have the right to inspect the accounts of the liquidator at all reasonable times. (3) The committee shall meet at such times as it may from time to time appoint, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.
(4) The quorum for a meeting of the committee shall be one-third of the total number of the members, or two, whichever is higher.
(5) The committee may act by a majority of its members present at a meeting, but shall not act unless a quorum is present.
(6) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator. (7) If a member of the committee is adjudged an insolvent, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who, together with himself, represent the creditors or contributories, as the case may be, his office shall become vacant.
(8) A member of the committee may be removed at a meeting of creditors if he represents creditors, or at a meeting of contributories if he represents contributories, by an ordinary resolution of which seven days' notice has been given, stating the object of the meeting.

(9) On a vacancy occurring in the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy ; and the meeting may, by resolution, re-appoint the same, or appoint another, creditor or contributory to fill the vacancy :

***Provided*** that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled, he may apply to the [1][*Tribunal*] and the [1][*Tribunal*] may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.

(10) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

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

***General powers of*** [1]**[Tribunal]** ***in case of winding up by*** [1]**[Tribunal]**

**[2][466. POWER OF TRIBUNAL TO STAY WINDING UP**

(*1*) *The Tribunal may at any time after making a winding up order, on the application either of the Official Liquidator or of any creditor or contributory, and on proof to the satisfaction of the Tribunal that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Tribunal thinks fit.*

(*2*) *On any application under this section, the Tribunal may, before making an order, require the Official Liquidator to furnish to the Tribunal a report with respect to any facts or matters which are in his opinion relevant to the application.* (*3*) *A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company*.]

1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) 2. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) . Prior to its substitution section 466 read as under :

"466. Power of Court to stay winding up. - (1) The Court may at any time after making a winding up order, on the application either of the Official Liquidator or of any creditor or contributory, and on proof to the satisfaction of the Court that all

proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.



(2) On any application under this section, the Court may, before making an order, require the Official Liquidator to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company."

**467. SETTLEMENT OF LIST OF CONTRIBUTORIES AND APPLICATION OF ASSETS**

(1) As soon as may be after making a winding up order, the [1][*Tribunal*] shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities :

***Provided*** that, where it appears to the [1][*Tribunal*] that it will not be necessary to make calls on, or adjust the rights of, contributories, the [1][*Tribunal*] may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the [1][*Tribunal*] shall distinguish between those who are contributories in their own right and those who are contributories as being representatives of, or liable for the debts of, others.

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

**468. DELIVERY OF PROPERTY TO LIQUIDATOR**

The [1][*Tribunal*] may, at any time after making a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, officer or other employee of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the [1][*Tribunal*] directs, to the liquidator, any money, property or books and papers in his custody or under his control to which the company is *prima facie* entitled.

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

**469. PAYMENT OF DEBTS DUE BY CONTRIBUTORY AND EXTENT OF SET-OFF**

(1) The [1][*Tribunal*] may, at any time after making a winding up order, make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due to the company, from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The [1][*Tribunal*], in making such an order, may -

(*a*)in the case of an unlimited company, allow to the contributory, by way of set-off, any money due to him or to the estate which he represents, from the company, on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit ; and

(*b*)in the case of a limited company, make to any director [2][***] or manager whose liability is unlimited, or to his estate, the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors have been paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

*1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). 2. Words ", managing agent, secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*

**[1][470. POWER OF TRIBUNAL TO MAKE CALLS**

(*1*) *The Tribunal may, at any time after making winding up order, and either before or after it has ascertained the sufficiency of the assets of the company,-*

(a) *make calls on all or any of the contributories for the time being on the list of the contributories, to the extent of their liability, for payment of any money which the Tribunal considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves* ; *and*

(b) *make an order for payment of any calls so made.*

(*2*) *In making a call, the Tribunal may take into consideration the probability that some of the contributories may, partly or wholly, fail to pay the call.*]

*1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution, section 470 read as under :*

*"470. Power of Court to make calls. - (1) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, -*

*(a) make calls on all or any of the contributories for the time being on the list of the contributories, to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves ; and*

*(b) make an order for payment of any calls so made.*



*(2) In making a call, the Court may take into consideration the probability that some of the contributories may, partly or wholly, fail to pay the call."*

**471. PAYMENT INTO BANK OF MONEYS DUE TO COMPANY**

(1) The [1][*Tribunal*] may order any contributory, purchaser or other person from whom any money is due to the company to pay the money into the public account of India in the Reserve Bank of India instead of to the liquidator.

(2) Any such order may be enforced in the same manner as if the [1][*Tribunal*] had directed payment to the liquidator.

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

**[1][472. MONEYS AND SECURITIES PAID INTO BANK TO BE SUBJECT TO ORDER OF TRIBUNAL**

*All moneys, bills, hundis, notes and other securities paid or delivered into the Reserve Bank of India in the course of the winding up of a company by the Tribunal, shall be subject in all respects to the orders of the Tribunal.*]

*1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution, section 472 read as under :*

*"472. Moneys and securities paid into bank to be subject to order of Court. - All moneys, bills, hundis, notes and other securities paid or delivered into the Reserve Bank of India in the course of the winding up of a company by the Court, shall be subject in all respects to the orders of the Court."*

**473. ORDER ON CONTRIBUTORY TO BE CONCLUSIVE EVIDENCE**

(1) An order made by the [1][*Tribunal*] on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings whatsoever.

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

**474. POWER TO EXCLUDE CREDITORS NOT PROVING IN TIME**

The [1][*Tribunal*] may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts or claims are proved.

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

**475. ADJUSTMENT OF RIGHTS OF CONTRIBUTORIES**

The [1][*Tribunal*] shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

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

**476. POWER TO ORDER COSTS**

The 1[*Tribunal*] may, in the event of the assets being insufficient to satisfy the liabilities, make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up, in such order of priority *interse* as the 1[*Tribunal*] thinks just.

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

**477. POWER TO SUMMON PERSONS SUSPECTED OF HAVING PROPERTY OF COMPANY, ETC**

(1) The 1[*Tribunal*] may, at any time after the appointment of a provisional liquidator or the making of a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property or books or papers, of the company, or known or suspected to be indebted to the company, or any person whom the 1[*Tribunal*] deems capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company.

(2) The 1[*Tribunal*] may examine any officer or person so summoned on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories ; and may, in the former case, reduce his answers to writing and require him to sign them.

(3) The 1[*Tribunal*] may require any officer or person so summoned to produce any books and papers in his custody or power relating to the company; but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the 1[*Tribunal*] shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any officer or person so summoned, after being paid or tendered a reasonable sum for his expenses, fails to appear before the 1[*Tribunal*] at the time appointed, not having a lawful impediment (made known to the 1[*Tribunal*] at the time of its sitting and allowed by it), the 1[*Tribunal*] may cause him to be apprehended and brought before the 1[*Tribunal*] for examination.

(5) If, on his examination, any officer or person so summoned admits that he is indebted to the company, the 1[*Tribunal*] may order him to pay to the provisional liquidator or, as the case may be, the liquidator at such time and in



such manner as to the 1[*Tribunal*] may seem just, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the 1[*Tribunal*] thinks fit, with or without costs of the examination.

(6) If, on his examination, any such officer or person admits that he has in his possession any property belonging to the company, the 1[*Tribunal*] may order him to deliver to the provisional liquidator or, as the case may be, the liquidator, that property or any part thereof, at such time, in such manner and on such terms as to the 1[*Tribunal*] may seem just.

(7) Orders made under sub-sections (5) and (6) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure, 1908 (5 of 1908) respectively. (8) Any person making any payment or delivery in pursuance of an order made under sub-section (5) or sub-section (6) shall by such payment or delivery be, unless otherwise directed by such order, discharged from all liability whatsoever in respect of such debt or property.

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

**478. POWER TO ORDER PUBLIC EXAMINATION OF PROMOTERS, DIRECTORS, ETC**

(1) When an order has been made for winding up a company by the 1[*Tribunal*], and the Official Liquidator has made a report to the 1[*Tribunal*] under this Act, stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any officer of the company in relation to the company since its formation, the 1[*Tribunal*] may, after considering the report, direct that that person or officer shall attend before the 1[*Tribunal*] on a day appointed by it for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as an officer thereof.

(2) The Official Liquidator shall take part in the examination, and for that purpose may, if specially authorised by the 1[*Tribunal*] in that behalf, employ such legal assistance as may be sanctioned by the 1[*Tribunal*].

(3) Any creditor or contributory may also take part in the examination either personally or by any 2[*chartered accountants or company secretaries or cost accountants or legal practitioners entitled to appear before the Tribunal under section 10GD*].

(4) The 1[*Tribunal*] may put such questions to the person examined as it thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the 1[*Tribunal*] may put, or allow to be put, to him.

(6) A person ordered to be examined under this section -

(*a*) shall, before his examination, be furnished at his own cost with a copy of the Official Liquidator's report ; and (*b*)may at his own cost employ 2[*chartered accountants or company secretaries or cost accountants or legal practitioners entitled to appear before the Tribunal under section 10GD*], who shall be at liberty to put to him such questions as the 1[*Tribunal*] may deem just for the purpose of enabling him to explain or qualify any answers given by him.

(7) (*a*)If any such person applies to the [1][*Tribunal*] to be exculpated from any charges made or suggested against him, it shall be the duty of the official liquidator to appear on the hearing of the application and call the attention of the [1][*Tribunal*] to any matters which appear to the Official Liquidator to be relevant.

(*b*) If the [1][*Tribunal*], after hearing any evidence given or witnesses called by the Official Liquidator, grants the application, the [1][*Tribunal*] may allow the applicant such costs as it may think fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined ; and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) The [1][*Tribunal*] may, if it thinks fit, adjourn the examination from time to time.

[2][(*10*) *An examination under this section may, if the Tribunal so directs, be held before any person or authority authorised by the Tribunal*.]

(11) The powers of the [1][*Tribunal*] under this section as to the conduct of the examination, but not as to costs, may be exercised by the [3][*person or authority*] before whom the examination is held in pursuance of sub-section (10).

*1*. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). *2. Substituted for "an advocate, attorney or pleader entitled to appear before the Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).*

*2. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution, sub-section (10) read as under :*
*"(10) An examination under this section may, if the Court so directs and subject to any rules made in this behalf, be held before any District Judge, or before any officer of the High Court, being an Official Referee, Master, Registrar or Deputy Registrar."*
*3. Substituted for "Judge or Officer" by the Companies (Second Amendment) Act, 2002.*

**479. POWER TO ARREST ABSCONDING CONTRIBUTORY**

At any time either before or after making a winding up order, the [1][*Tribunal*] may, on proof of probable cause for believing that a contributory is about to quit India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, cause -

(*a*)the contributory to be arrested and safely kept until such time as the [1][*Tribunal*] may order ; and



(*b*)his books and papers and movable property to be seized and safely kept until such time as the [1][*Tribunal*] may order.

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

**[1][480. SAVING OF EXISTING POWERS OF TRIBUNAL**

*Any powers conferred on the Tribunal by this Act shall be in addition to, and not in derogation of, any existing powers of instituting proceedings*

1. *Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution, section 480 read as under :*
*"480. Saving of existing powers of Court. - Any powers conferred on the Court by this Act shall be in addition to, and not in derogation of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums."*

**481. DISSOLUTION OF COMPANY**

(1) When the affairs of a company have been completely wound up or when the [1][*Tribunal*] is of the opinion that the liquidator cannot proceed with the winding up of a company for want of funds and assets or for any other reason whatsoever and it is just and reasonable in the circumstances of the case that an order of dissolution of the company should be made, the [1][*Tribunal*] shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) A copy of the order shall, within thirty days from the date thereof, be forwarded by the liquidator to the Registrar who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in forwarding a copy as aforesaid, he shall be punishable with fine which may extend to [2][five hundred] rupees for every day during which the default continues.

*1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002. 2. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.*

***Enforcement of and appeal from orders***

**482. ORDER MADE IN ANY COURT TO BE ENFORCED BY OTHER COURTS**

Any order made by a Court for, or in the course of, winding up a company shall be enforceable at any place in India, other than that over which such Court has jurisdiction, by the Court which would have had jurisdiction in respect of the company if its registered office had been situate at such other place, and in the same manner in all respects as if the order had been made by that Court.

**483. APPEALS FROM ORDERS**

Appeals from any order made, or decision given[1][*before the commencement of the Companies* (*Second Amendment*) *Act, 2002*], in the matter of the winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction.

*1*. Inserted by the Companies (Second Amendment) Act, 2002.

## CHAPTER III: VOLUNTARY WINDING UP

***Resolutions for, and commencement of, voluntary winding up***

**484. CIRCUMSTANCES IN WHICH COMPANY MAY BE WOUND UP VOLUNTARILY**

(1) A company may be wound up voluntarily -

(*a*)when the period, if any, fixed for the duration of the company by the articles has expired, or the event, if any, has occurred, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting passes a resolution requiring the company to be wound up voluntarily ;

(*b*)if the company passes a special resolution that the company be wound up voluntarily.

(2) In this Act, the expression "a resolution for voluntary winding up" means a resolution passed under clause (*a*)or (*b*)of sub-section (1).

**485. PUBLICATION OF RESOLUTION TO WIND UP VOLUNTARILY**

(1) When a company has passed a resolution for voluntary winding up, it shall, within fourteen days of the passing of the resolution, give notice of the resolution by advertisement in the Official Gazette, and also in some newspaper circulating in the district where the registered office of the company is situate.

(2) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to [1][five hundred] rupees for every day during which the default continues.

For the purposes of this sub-section, a liquidator of the company shall be deemed to be an officer of the company.



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

**486. COMMENCEMENT OF VOLUNTARY WINDING UP**

A voluntary winding up shall be deemed to commence at the time when the resolution for voluntary winding up is passed.

***Consequences of voluntary winding up***

**487. EFFECT OF VOLUNTARY WINDING UP ON STATUS OF COMPANY**

In the case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up of such business :

***Provided*** that the corporate state and corporate powers of the company shall continue until it is dissolved.

***Declaration of solvency***

**488. DECLARATION OF SOLVENCY IN CASE OF PROPOSAL TO WIND UP VOLUNTARILY**

(1) Where it is proposed to wind up a company voluntarily, its directors, or in case the company has more than two directors, the majority of the directors, may, at a meeting of the Board, make a declaration verified by an affidavit, to the effect that they have made a full inquiry into the affairs of the company, and that, having done so, they have formed the opinion that the company has no debts, or that it will be able to pay its debts in full within such period not exceeding three years from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act, unless -

(*a*) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the Registrar for registration before that date ; and

(*b*)it is accompanied by a copy of the report of the auditors of the company (prepared, as far as circumstances admit, in accordance with the provisions of this Act) on the profit and loss account of the company for the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the declaration and the balance sheet of the company made out as on the last-mentioned date and also embodies a statement of the company's assets and liabilities as at that date.

(3) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to [1][fifty] thousand rupees, or with both.

(4) If the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period specified in the declaration, it shall be presumed, until the contrary is shown, that the director did not have reasonable grounds for his opinion.

(5) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as "a members' voluntary winding up" ; and a winding up in the case of which a declaration has not been so made and delivered is in this Act referred to as "a creditors' voluntary winding up".

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

***Provisions applicable to a members' voluntary winding up***

**489. PROVISIONS APPLICABLE TO A MEMBERS' VOLUNTARY WINDING UP**

The provisions contained in sections 490 to 498, both inclusive, shall subject to the provisions of section 498, apply in relation to a members' voluntary winding up.

**490. POWER OF COMPANY TO APPOINT AND FIX REMUNERATION OF LIQUIDATORS**

(1) The company in general meeting shall -

(*a*) appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company ; and

(*b*)fix the remuneration, if any, to be paid to the liquidator or liqui-dators.

(2) Any remuneration so fixed shall not be increased in any circumstances whatever, whether with or without the sanction of the 1[*Tribunal*].

(3) Before the remuneration of the liquidator or liquidators is fixed as aforesaid, the liquidator, or any of the liquidators, as the case may be, shall not take charge of his office.

1**.** Substituted for "Court" by the Companies (Second Amendment) Act, 2002.

**491. BOARD'S POWERS TO CEASE ON APPOINTMENT OF LIQUIDATOR**

On the appointment of a liquidator, all the powers of the Board of directors and of the managing or whole-time directors 1[***] and manager, if there be any of these, shall cease, except for the purpose of giving notice of such appointment to the Registrar in pursuance of section 493 or insofar as the company in general meeting or the liquidator may sanction the continuance thereof.



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

**492. POWER TO FILL VACANCY IN OFFICE OF LIQUIDATOR**

(1) If a vacancy occurs by death, resignation or otherwise in the office of any liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose, a general meeting may be convened by any contributory, or by the continuing liquidator or liquidators, if any.

(3) The meeting shall be held in the manner provided by this Act or by the articles, or in such other manner as the 1[*Tribunal*] may, on application by any contributory or by the continuing liquidator or liquidators, determine.

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

**493. NOTICE OF APPOINTMENT OF LIQUIDATOR TO BE GIVEN TO REGISTRAR**

(1) The company shall give notice to the Registrar of the appointment of a liquidator or liquidators made by it, under section 490, of every vacancy occurring in the office of liquidator, and of the name of the liquidator or liquidators appointed to fill every such vacancy under section 492.

(2) The notice aforesaid shall be given by the company within ten days of the event to which it relates.

(3) If default is made in complying with sub-section (1) or (2), the company, and every officer of the company (including every liquidator or continuing liquidator) who is in default, shall be punishable with fine which may extend to 1[one thousand] rupees for every day during which the default continues.

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

**494. POWER OF LIQUIDATOR TO ACCEPT SHARES, ETC., AS CONSIDERATION FOR SALE OF PROPERTY OF COMPANY**

(1) Where -

(*a*) a company (in this section called "the transferor-company") is proposed to be, or is in course of being, wound up altogether voluntarily ; and

(*b*)the whole or any part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called "the transferee-company") ;

the liquidator of the transferor-company may, with the sanction of a special resolution of that company conferring on the liquidator either a general authority or an authority in respect of any particular arrangement, -

(*i*) receive, by way of compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee-company, for distribution among the members of the transferor-company ; or

(*ii*)enter into any other arrangement whereby the members of the transferor-company may, *in lieu* of receiving cash, shares,

policies, or other like interests or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee-company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor-company. (3) If any member of the transferor-company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either -

(*a*)to abstain from carrying the resolution into effect ; or

(*b*)to purchase his interest at a price to be determined by agreement, or by arbitration in the manner provided by this section.

(4) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason only that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators ; but if an order is made within a year for winding up the company by [1][*the Tribunal*], the special resolution shall not be valid unless it is sanctioned by the[2][*Tribunal*].

(6) The provisions of the Arbitration Act, 1940 (10 of 1940), other than those restricting the application of that Act in respect of the subject- matter of the arbitration, shall apply to all arbitrations in pursuance of this section.

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

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

**495. DUTY OF LIQUIDATOR TO CALL CREDITORS' MEETING IN CASE OF INSOLVENCY**

(1) If, in the case of a winding up commenced after the commencement of this Act, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 488, or that period has expired without the debts having been paid in full, he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) If the liquidator fails to comply with sub-section (1), he shall be punishable with fine which may extend to [1][five thousand] rupees.



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

**496. DUTY OF LIQUIDATOR TO CALL GENERAL MEETING AT END OF EACH YEAR**

(1) Subject to the provisions of section 498, in the event of the winding up continuing for more than one year, the liquidator shall -

(*a*)call a general meeting of the company at the end of the first year from the commencement of the winding up, and at the end of each succeeding year, or as soon thereafter as may be convenient within three months from the end of the year or such longer period as the Central Government may allow ; and

(*b*)lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year, together with a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the liquidation.

(2) If the liquidator fails to comply with sub-section (1), he shall be punishable, in respect of each failure, with fine which may extend to [1][one thousand] rupees.

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

**497. FINAL MEETING AND DISSOLUTION**

(1) Subject to the provisions of section 498, as soon as the affairs of the company are fully wound up, the liquidator shall -

(*a*)make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of ; and

(*b*)call a general meeting of the company for the purpose of laying the account before it, and giving any explanation thereof.

(2) The meeting shall be called by advertisement -

(*a*)specifying the time, place and object of the meeting ; and

(*b*)published not less than one month before the meeting in the Official Gazette, and also in some newspaper circulating in the district where the registered office of the company is situate.

(3) Within one week after the meeting, the liquidator shall send to the Registrar and the Official Liquidator[1][*referred to in clause* (c) *of sub-section* (*1*) *of section 448*] a copy each of the account and shall make a return to each of them of the holding of the meeting and of the date thereof.

If the copy is not so sent or the return is not so made, the liquidator shall be punishable with fine which may extend to [2][five hundred] rupees for every day during which the default continues.

(4) If a quorum is not present at the meeting aforesaid, the liquidator shall, *in lieu* of the return referred to in sub-section (3), make a return that the meeting was duly called and that no quorum was present thereat.

Upon such a return being made within one week after the date fixed for the meeting, the provisions of sub-section (3) as to the making of the return shall be deemed to have been complied with.

(5) The Registrar, on receiving the account and either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall forthwith register them.

(6) The Official Liquidator[1][*referred to in clause* (c) *of sub-section* (*1*) *of section 448*] on receiving the account and either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall, as soon as may be, make, and the liquidator and all officers, past or present, of the company shall give the Official Liquidator[1][*referred to in clause* (c) *of sub-section* (*1*) *of section 448*] all reasonable facilities to make, a scrutiny of the books and papers of the company and if on such scrutiny the Official Liquidator[1][*referred to in clause* (c) *of sub-section* (*1*) *of section 448*] makes a report to the [2][*Tribunal*] that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest, then, from the date of the submission of the report to the [2][*Tribunal*] the company shall be deemed to be dissolved.

(6A) If on such scrutiny the Official Liquidator[1][*referred to in clause* (c) *of sub-section* (*1*) *of section 448*] makes a report to the [3][*Tribunal*] that the affairs of the company have been conducted in a manner prejudicial as aforesaid, the [3][*Tribunal*] shall by order direct the Official Liquidator[1][*referred to in clause* (c) *of sub-section* (*1*) *of section 448*] to make a further investigation of the affairs of the company and for that purpose shall invest him with all such powers as the [3][*Tribunal*] may deem fit.

(6B) On the receipt of the report of the Official Liquidator[1][*referred to in clause* (c) *of sub-section* (*1*) *of section 448*] on such further investigation the [3][*Tribunal*] may either make an order that the company shall stand dissolved with effect from the date to be specified by the [3][*Tribunal*] therein or make such other order as the circumstances of the case brought out in the report permit.

(7) If the liquidator fails to call a general meeting of the company as required by this section, he shall be punishable with fine which may extend to [4][five thousand] rupees.

1. Inserted 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.

**3.** Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). 4**.** Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

**498. ALTERNATIVE PROVISIONS AS TO ANNUAL AND FINAL MEETINGS IN CASE OF INSOLVENCY**



Where section 495 has effect, sections 508 and 509 shall apply to the winding up, to the exclusion of sections 496 and 497, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up :

***Provided*** that the liquidator shall not be required to call a meeting of creditors under section 508 at the end of the first year from the commencement of the winding up, unless the meeting held under section 495 has been held more than three months before the end of that year.

***Provisions applicable to a creditors' voluntary winding up***

**499. PROVISIONS APPLICABLE TO A CREDITORS' VOLUNTARY WINDING UP**

The provisions contained in sections 500 to 509, both inclusive, shall apply in relation to a creditors' voluntary winding up.

**500. MEETING OF CREDITORS**

(1) The company shall cause a meeting of the creditors of the company to be called for the day, or the day next following the day, on which there is to be held the general meeting of the company at which the resolution for voluntary winding up is to be proposed, and shall cause notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once at least in the Official Gazette and once at least in two newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The Board of directors of the company shall -

(*a*)cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid ; and (*b*) appoint one of their member to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of sub-section (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made -

(*a*)by the company, in complying with sub-sections (1) and (2) ;

(*b*)by its Board of directors, in complying with sub-section (3) ;

(*c*)by any director of the company, in complying with sub-section (4) ;

the company, each of the directors, or the director, as the case may be, shall be punishable with fine which may extend to [1][ten]

thousand rupees and, in the case of default by the company, every officer of the company who is in default, shall be liable to the like punishment.

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

**501. NOTICE OF RESOLUTIONS PASSED BY CREDITORS' MEETING TO BE GIVEN TO REGISTRAR**

(1) Notice of any resolution passed at a creditors' meeting in pursuance of section 500 shall be given by the company to the Registrar within ten days of the passing thereof.

(2) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to 1[five hundred] rupees for every day during which the default continues.

For the purposes of this section, a liquidator of the company shall be deemed to be an officer of the company.

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

**502. APPOINTMENT OF LIQUIDATOR**

(1) The creditors and the company at their respective meetings mentioned in section 500 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company.

(2) If the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator :

***Provided*** that any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the 1 [*Tribunal*] for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing the Official Liquidator or some other person to be liquidator instead of the person appointed by the creditors.

(3) If no person is nominated by the creditors, the person, if any, nominated by the company shall be liquidator. (4) If no person is nominated by the company, the person, if any, nominated by the creditors shall be liquidator.

**1.** Substituted for "Court" by the Companies (Second Amendment) Act, 2002.

**503. APPOINTMENT OF COMMITTEE OF INSPECTION**



(1) The creditors at the meeting to be held in pursuance of section 500 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons.

(2) If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any subsequent general meeting, appoint such number of persons (not exceeding five) as they think fit to act as members of the committee :

***Provided*** that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection.

(3) If the creditors so resolve, the persons mentioned in the resolution shall not, unless the 1[*Tribunal*] otherwise directs, be qualified to act as members of the committee.

(4) On any application to the 1[*Tribunal*] for a direction under sub-section (3), the 1[*Tribunal*] may, if it thinks fit, appoint other persons to act as members of the committee of inspection in the place of the persons mentioned in the creditors' resolution.

(5) Subject to the provisions of sub-sections (1) to (4) and to such rules as may be made by the Central Government, the provisions of section 465 [except sub-section (1) thereof] shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the 1[*Tribunal*].

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

**504. FIXING OF LIQUIDATORS' REMUNERATION**

(1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) Where the remuneration is not so fixed, it shall be determined by the 1[*Tribunal*].

(3) Any remuneration fixed under sub-section (1) or (2) shall not be increased in any circumstances whatever, whether with or without the sanction of the 1[*Tribunal*].

1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002

**505. BOARD'S POWERS TO CEASE ON APPOINTMENT OF LIQUIDATOR**

On the appointment of a liquidator, all the powers of the Board of directors shall cease, except insofar as the committee of inspection, or if there is no such committee, the creditors in general meeting, may sanction the continuance thereof.

**506. POWER TO FILL VACANCY IN OFFICE OF LIQUIDATOR**

If a vacancy occurs by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by, or by the direction of, the 1[*Tribunal*], the creditors in general meeting may fill the vacancy.

**1.** Substituted for "Court" by the Companies (Second Amendment) Act, 2002.

**507. APPLICATION OF SECTION 494 TO A CREDITORS' VOLUNTARY WINDING UP**

The provisions of section 494 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under that section shall not be exercised except with the sanction either of the [1][*Tribunal*] or of the committee of inspection.

**1.** Substituted for "Court" by the Companies (Second Amendment) Act, 2002.

**508. DUTY OF LIQUIDATOR TO CALL MEETINGS OF COMPANY AND OF CREDITORS AT END OF EACH YEAR**

(1) In the event of the winding up continuing for more than one year, the liquidator shall -

(*a*)call a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up and at the end of each succeeding year, or as soon thereafter as may be convenient within three months from the end of the year or such longer period as the Central Government may allow ; and

(*b*)lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year, together with a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the winding up.

(2) If the liquidator fails to comply with sub-section (1), he shall be punishable, in respect of each failure, with fine which may extend to [1][one thousand] rupees.

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

**509. FINAL MEETING AND DISSOLUTION**

(1) As soon as the affairs of the company are fully wound up, the liquidator shall -

(*a*) make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of ; and



(*b*)call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement -

(*a*) specifying the time, place and object thereof ; and

(*b*) published not less than one month before the meeting in the Official Gazette and also in some newspaper circulating in the district where the registered office of the company is situate.

(3) Within one week after the date of the meetings, or if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar and the Official Liquidator[1][*referred to in clause* (c) *of sub-section* (*1*) *of section 448*] a copy each of the account and shall make a return to each of them of the holding of the meetings and of the date or dates on which they were held.

If the copy is not so sent or the return is not so made, the liquidator shall be punishable with fine which may extend to [2][five hundred] rupees for every day during which the default continues.

(4) If a quorum (which for the purposes of this section shall be two persons) is not present at either of such meetings, the liquidator shall, *in lieu* of the return referred to in sub-section (3), make a return that the meeting was duly called and that no quorum was present thereat.

Upon such a return being made within one week after the date fixed for the meeting, the provisions of sub-section (3) as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(5) The Registrar, on receiving the account and also, in respect of each such meeting, either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall forthwith register them.

(6) The Official Liquidator[1][*referred to in clause* (c) *of sub-section* (*1*) *of section 448*] on receiving the account and either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall, as soon as may be, make, and the liquidator and all officers, past or present, of the company shall give the Official Liquidator[1][*referred to in clause* (c) *of sub-section* (*1*) *of section 448*] all reasonable facilities to make, a scrutiny of the books and papers of the company and if on such scrutiny the Official Liquidator[1][*referred to in clause* (c) *of sub-section* (*1*) *of section 448*] makes a report to the [2][*Tribunal*] that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest, then, from the date of the submission of the report to the [2][*Tribunal*] the company shall be deemed to be dissolved.

(6A) If on such scrutiny the Official Liquidator[1][*referred to in clause* (c) *of sub-section* (*1*) *of section 448*] makes a report to the [3][*Tribunal*] that the affairs of the company have been conducted in a manner prejudicial as aforesaid, the [3][*Tribunal*] shall by order direct the Official Liquidator[1][*referred to in clause* (c) *of sub-section* (*1*) *of section 448*] to make a further investigation of the affairs of the company and for that purpose shall invest him with all such powers as the [3][*Tribunal*] may deem fit.

(6B) On the receipt of the report of the Official Liquidator[1][*referred to in clause* (c) *of sub-section* (*1*) *of section 448*] on such further investigation the [3][*Tribunal*] may either make an order that the company shall stand dissolved with effect from the date to be specified by the [3][*Tribunal*] therein or make such other order as the circumstances of the case brought out in the report permit.

(7) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be punishable, in respect of each such failure, with fine which may extend to [4][five thousand] rupees.

**1.** Inserted by the Companies (Second Amendment) Act, 2002.

**2.** Substituted for "fifty" 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). 4. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

***Provisions applicable to every voluntary winding up***

**510. PROVISIONS APPLICABLE TO EVERY VOLUNTARY WINDING UP**

The provisions contained in sections 511 to 521, both inclusive, shall apply to every voluntary winding up, whether a members' or a creditors' winding up.

**511. DISTRIBUTION OF PROPERTY OF COMPANY**

Subject to the provisions of this Act as to preferential payments, the assets of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

**511A. APPLICATION OF SECTION 454 TO VOLUNTARY WINDING UP**

The provisions of section 454 shall, so far as may be, apply to every voluntary winding up as they apply to the winding up by the [1][*Tribunal*] except that references to -

(*a*)the [1][*Tribunal*] shall be omitted ;

(*b*)the official liquidator or the provisional liquidator shall be construed as references to the liquidator ; and

(*c*)the "relevant date" shall be construed as references to the date of commencement of the winding up.

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

**512. POWERS AND DUTIES OF LIQUIDATOR IN VOLUNTARY WINDING UP** (1) The liquidator may, -



(*a*)in the case of a members' voluntary winding up, with the sanction of a special resolution of the company, and in the case of a creditors' voluntary winding up, with the sanction of the [1][*Tribunal*] or, the committee of inspection or, if there is no such committee, of a meeting of the creditors, exercise any of the powers given by clauses (*a*)to(*d*)of sub-section (1) of section 457 to a liquidator in a winding up by the [1][*Tribunal*] ;

(*b*)without the sanction referred to in clause (*a*), exercise any of the other powers given by this Act to the liquidator in a winding up by the [1][*Tribunal*] ;

(*c*)exercise the power of the [1][*Tribunal*] under this Act of settling a list of contributories (which shall be *prima facie* evidence of the liability of the persons named therein to be contributories) ;

(*d*)exercise the power of the [1][*Tribunal*] of making calls ;

(*e*)call general meetings of the company for the purpose of obtaining the sanction of the company by ordinary or special resolution, as the case may require, or for any other purpose he may think fit.

(2) The exercise by the liquidator of the powers given by clause (*a*) of sub-section (1) shall be subject to the control of the [1][*Tribunal*] ; and any creditor or contributory may apply to the [1][*Tribunal*] with respect to any exercise or proposed exercise of any of the powers conferred by this section.

(3) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(4) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment or, in default of such determination, by any number of them not being less than two.

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

**513. BODY CORPORATE NOT TO BE APPOINTED AS LIQUIDATOR**

(1) A body corporate shall not be qualified for appointment as liquidator of a company in a voluntary winding up. (2) Any appointment made in contravention of sub-section (1) shall be void.

(3) Any body corporate which acts as liquidator of a company, and every director [1][***], or a manager thereof, shall be punishable with fine which may extend to [2][ten]thousand rupees.

[3][**Provided** *that, notwithstanding anything contained in any other law for the time being in force, a body corporate consisting of such professionals as may be approved by the Central Government from time to time, shall be qualified for appointment as Official Liquidator under section 448*.]

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

**514. CORRUPT INDUCEMENT AFFECTING APPOINTMENT AS LIQUIDATOR**

Any person who gives, or agrees or offers to give, to any member or creditor of a company any gratification whatever with a view to -

(*a*)securing his own appointment or nomination as the company's liquidator ; or

(*b*)securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator ;

shall be punishable with fine which may extend to [1][ten] thousand rupees.

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

**[1][515. POWER OF TRIBUNAL TO APPOINT AND REMOVE LIQUIDATOR IN VOLUNTARY WINDING UP** (*1*) *If from any cause whatever, there is no liquidator acting, the Tribunal may appoint the Official Liquidator or any other person as a liquidator.*

(*2*) *The Tribunal may, on cause shown, remove a liquidator and appoint the Official Liquidator or any other person as a liquidator in place of the removed liquidator.*

(*3*) *The Tribunal may also appoint or remove a liquidator on the application made by the Registrar in this behalf.* (*4*) *If the Official Liquidator is appointed as liquidator under the proviso to sub-section* (*2*) *of section 502 or under this section, the remuneration to be paid to him shall be fixed by the Tribunal and shall be credited to the Central Government.*]

1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution section 515 read as under :

"515. Power of Court to appoint and remove liquidator in voluntary winding up. - (1) If from any cause whatever, there is no liquidator acting, the Court may appoint the Official Liquidator or any other person as a liquidator. (2) The Court may, on cause shown, remove a liquidator and appoint the Official Liquidator or any other person as a liquidator in place of the removed liquidator.

(3) The Court may also appoint or remove a liquidator on the application made by the Registrar in this behalf. (4) If the Official Liquidator is appointed as liquidator under the proviso to sub-section (2) of section 502 or under this section, the remuneration to be paid to him shall be fixed by the Court and shall be credited to the Central Government."



**516. NOTICE BY LIQUIDATOR OF HIS APPOINTMENT**

(1) The liquidator shall, within thirty days after his appointment publish in the Official Gazette, and deliver to the Registrar for registration, a notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply with sub-section (1), he shall be punishable with fine which may extend to [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.

**517. ARRANGEMENT WHEN BINDING ON COMPANY AND CREDITORS**

(1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company and on the creditors if it is sanctioned by a special resolution of the company and acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the [1][*Tribunal*] against it and the [1][*Tribunal*] may thereupon, as it thinks just, amend, vary, confirm or set aside the arrangement.

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

**[1][518. POWER TO APPLY TO TRIBUNAL TO HAVE QUESTIONS DETERMINED OR POWERS EXERCISED** (*1*) *The liquidator or any contributory or creditor may apply to the Tribunal, -*

(a) *to determine any question arising in the winding up of a company*; *or*

(b) *to exercise, as respects the enforcing of calls, the staying of proceedings or any other matter, all or any of the powers which the Tribunal might exercise if the company were being wound up by the Tribunal.*

(*2*) *The liquidator or any creditor or contributory may apply to the Tribunal for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.*

(*3*) *The Tribunal, if satisfied on an application under sub-section* (*1*) *or sub-section* (*2*) *that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as itthinks fit, or may make such other order on the application as it thinks just.*

(*4*) *A copy of an order staying the proceedings in the winding up, made by virtue of this section, shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.*]

1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution, section 518 read as under :

"518. Power to apply to Court to have questions determined or powers exercised. - (1) The liquidator or any contributory or creditor may apply to that Court -

(a) to determine any question arising in the winding up or a company ; or

(b) to exercise, as respects the enforcing of calls, the staying of proceedings or any other matter, all or any of the powers which the Court might exercise if the company were being wound by the Court.

(2) The liquidator or any creditor or contributory may apply to the Court specified in sub-section (3) for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

(3) An application under sub-section (2) shall be made -

(a) if the attachment, distress or execution is levied or put into force by a High Court, to such High Court ; and

(b) if the attachment, distress or execution is levied or put into force by any other Court, to the Court having jurisdiction to wind the company.

(4) The Court, if satisfied on an application under sub-section (1) or (2) that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(5) A copy of an order staying the proceedings in the winding up, made by virtue of this section, shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company."

**1[519. APPLICATION OF LIQUIDATOR TO TRIBUNAL FOR PUBLIC EXAMINATION OF PROMOTERS, DIRECTORS, ETC**

(*1*) *The liquidator may make a report to the Tribunal stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation* ; *and the Tribunal may, after considering the report, direct that that person or officer shall attend before the Tribunal on a day appointed by it for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as officer thereof.*



(*2*) *The provisions of sub-sections* (*2*) *to* (*11*) *of section 478 shall apply in relation to any examination directed under sub-section* (*1*) *as they apply in relation to an examination directed under sub-section* (*1*) *of section 478 with references to the liquidator being substituted for references to the Official Liquidator in those provisions.*]

1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution section 519 read as under : "519. Application of liquidator to Court for public examination of promoters, directors, etc.-

(1) The liquidator may make a report to the Court stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation ; and the Court may, after considering the report, direct that that person or officer shall attend before the Court on a day appointed by it for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as officer thereof.

(2) The provisions of sub-sections (2) to (11) of section 478 shall apply in relation to any examination directed under sub-section (1) as they apply in relation to an examination directed under sub-section (1) of section 478 with references to the liquidator being substituted for references to the Official Liquidator in those provisions."

**520. COSTS OF VOLUNTARY WINDING UP**

All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall, subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

**521. SAVING OF RIGHT OF CREDITORS AND CONTRIBUTORIES TO APPLY FOR WINDING UP** [*Omitted by the Companies* (*Amendment*) *Act, 1960*.]

***CHAPTER IV: WINDING UP SUBJECT TO SUPERVISION OF COURT***

**522. POWER TO ORDER WINDING UP SUBJECT TO SUPERVISION**

[*Omitted by the Companies* (*Second Amendment*) *Act, 2002 (w.e.f. a date yet to be notified).* ]

**523. EFFECT OF PETITION FOR WINDING UP SUBJECT TO SUPERVISION**

[*Omitted by the Companies* (*Second Amendment*) *Act, 2002 (w.e.f. a date yet to be notified).* ]

**524. POWER OF COURT TO APPOINT OR REMOVE LIQUIDATORS**

[*Omitted by the Companies* (*Second Amendment*) *Act, 2002 (w.e.f. a date yet to be notified).* ]

**525. POWERS AND OBLIGATIONS OF LIQUIDATOR APPOINTED BY COURT**
[*Omitted by the Companies* (*Second Amendment*) *Act, 2002 (w.e.f. a date yet to be notified).* ]

**526. EFFECT OF SUPERVISION ORDER**
[*Omitted by the Companies* (*Second Amendment*) *Act, 2002 (w.e.f. a date yet to be notified).* ]

**527. APPOINTMENT IN CERTAIN CASES OF VOLUNTARY LIQUIDATORS TO OFFICE OF LIQUIDATORS** [*Omitted by the Companies* (*Second Amendment*) *Act, 2002 (w.e.f. a date yet to be notified).* ]

***CHAPTER V: PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP***

***Proof and ranking of claims***

**528. DEBTS OF ALL DESCRIPTIONS TO BE ADMITTED TO PROOF**
In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of insolvency), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency, or may sound only in damages, or for some other reason may not bear a certain value.

**529. APPLICATION OF INSOLVENCY RULES IN WINDING UP OF INSOLVENT COMPANIES**
(1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to - (*a*)debts provable ; (*b*)the valuation of annuities and future and contingent liabilities ; and (*c*)the respective rights of secured and unsecured creditors ;
as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent :



***Provided*** that the security of every secured creditor shall be deemed to be subject to a *pari passu* charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debt, opts to realise his security -
(*a*) the liquidator shall be entitled to represent the workmen and enforce such charge ;
(*b*)any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues ; and (*c*)so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less, shall rank *pari passu* with the workmen's dues for the purposes of section 529A.
(2) All persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section :
***Provided*** that if a secured creditor instead of relinquishing his security and proving for his debt proceeds to realise his security, he shall be liable to pay his portion of the expenses incurred by the liquidator (including a provisional liquidator, if any) for the preservation of the security before its realisation by the secured creditor.
*Explanation.* - For the purposes of this proviso, the portion of expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security.
(3) For the purposes of this section, section 529A and section 530, -
(*a*)"workmen", in relation to a company, means the employees of the company, being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947) ;
(*b*)"workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely :
(*i*)all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman, in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947) ;
(*ii*)all accrued holiday remuneration becoming payable to any workman, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution ; (*iii*) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (8 of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company ;
(*iv*)all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company ;
(*c*)"workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of -

(*i*) the amount of workmen's dues ; and
(*ii*)the amounts of the debts due to the secured creditors.

**Illustration**

The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs. 3,00,000. The aggregate of the amount of workmen's dues and of the amounts of debts due to secured creditors is Rs. 4,00,000.

The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is

**529A. OVERRIDING PREFERENTIAL PAYMENTS**

(1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company -
(*a*)workmen's dues ; and
(*b*)debts due to secured creditors to the extent such debts rank under clause (*c*) of the proviso to sub-section (1) of section 529 *pari passu* with such dues,
shall be paid in priority to all other debts.

(2) The debts payable under clause (*a*)and clause (*b*)of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

**530. PREFERENTIAL PAYMENTS**

(1) In a winding up, subject to the provisions of section 529A, there shall be paid in priority to all other debts - (*a*)all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (*c*) of sub-section (8), and having become due and payable within the twelve months next before that date ;
(*b*)all wages or salary (including wages payable for time or piece work and salary earned wholly or in part by way of commission) of any employee, in respect of services rendered to the company and due for a period not exceeding four months within the twelve months next before the relevant date, subject to the limit specified in sub-section (2) ;



(*c*)all accrued holiday remuneration becoming payable to any employee, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution ; (*d*) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due, in respect of contributions payable during the twelve months next before the relevant date, by the company as the employer of any persons, under the Employees' State Insurance Act, 1948 (34 of 1948), or any other law for the time being in force ;
(*e*) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (8 of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company ;
(*f*)all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees, maintained by the company ; and
(*g*) the expenses of any investigation held in pursuance of section 235 or 237, insofar as they are payable by the company.
(2) The sum to which priority is to be given under clause (*b*)of sub- section (1), shall not, in the case of any one claimant, [1][exceed such sum as may be notified by the Central Government in the Official Gazette.]
(3) Where any compensation under the Workmen's Compensation Act, 1923 (8 of 1923) is a weekly payment, the amount due in respect thereof shall, for the purposes of clause (*e*) of sub-section (1), be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.
(4) Where any payment has been made to any employee of a company, -
(*i*)on account of wages or salary ; or
(*ii*)to him, or in the case of his death, to any other person in his right, on account of accrued holiday remuneration, out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.
(5) The foregoing debts shall -
(*a*)rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions ; and
(*b*)so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given by clause (*d*)of sub-section (1), formal proof thereof shall not be required except insofar as may be otherwise prescribed.
(7) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof :
***Provided*** that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.
(8) For the purposes of this section -
(*a*)any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period ;
(*b*)the expression "accrued holiday remuneration" includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any enactment), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday ;
(*bb*)the expression "employee" does not include a workman ; and
(*c*) the expression "the relevant date" means -
(*i*) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound up voluntarily before that date ; and
(*ii*)in any case where sub-clause (*i*)does not apply, the date of the passing of the resolution for the voluntary winding up of the company.
(9) This section shall not apply in the case of a winding up where the date referred to in sub-section (5) of section 230 of the Indian Companies Act, 1913 (7 of 1913) occurred before the commencement of this Act, and in such a case, the provisions relating to preferential payments which would have applied if this Act had not been passed, shall be deemed to remain in full force.

**1.** Substituted for "exceed one thousand rupees" by the Companies (Amendment) Act, 1996 w.e.f. 1-3-1997.

***Effect of winding up on antecedent and other transactions***



**531. FRAUDULENT PREFERENCE**

(1) Any transfer of property, movable or immovable, delivery of goods, payment, execution or other act relating to property made, taken or done by or against a company within six months before the commencement of its winding up which, had it been made, taken or done by or against an individual within three months before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference, shall in the event of the company being wound up, be deemed a fraudulent preference of its creditors and be invalid accordingly :
***Provided*** that, in relation to things made, taken or done before the commencement of this Act, this sub-section shall have effect with the substitution, for the reference to six months, of a reference to three months.
(2) For the purposes of sub-section (1), the presentation of a petition for winding up in the case of a winding up by 1[*the Tribunal*], and the passing of a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond to the act of insolvency in the case of an individual.

**1.** Substituted for "or subject to the supervision of the Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

**531A. AVOIDANCE OF VOLUNTARY TRANSFER**

Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrancer in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by 1[*the Tribunal*] or the passing of a resolution for voluntary winding up of the company, shall be void against the liquidator.

**1.** Substituted for "or subject to the supervision of the Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

**532. TRANSFERS FOR BENEFIT OF ALL CREDITORS TO BE VOID**

Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

**533. LIABILITIES AND RIGHTS OF CERTAIN FRAUDULENTLY PREFERRED PERSONS**

(1) Where, in the case of a company which is being wound up, anything made, taken or done after the commencement of this Act is invalid under section 531 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision), the person preferred shall

be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt, to the extent of the mortgage or charge on the property or the value of his interest, whichever is less.

(2) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the mortgage or charge for the company's debt was then subject.

(3) On any application made to the 1[*Tribunal*] with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the 1[*Tribunal*] shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of a suit for the recovery of the sum paid.

This sub-section shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments of money.

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

**534. EFFECT OF FLOATING CHARGE**

Where a company is being wound up, a floating charge on the undertaking or property of the company created within the twelve months immediately preceding the commencement of the winding up, shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent per annum or such other rate as may for the time being be notified by the Central Government in this behalf in the Official Gazette :

***Provided*** that in relation to a charge created more than three months before the commencement of this Act, this section shall have effect with the substitution, for references to twelve months of references to three months.

**535. DISCLAIMER OF ONEROUS PROPERTY IN CASE OF A COMPANY WHICH IS BEING WOUND UP** (1) Where any part of the property of a company which is being wound up consists of -

(*a*)land of any tenure, burdened with onerous covenants ;

(*b*)shares or stock in companies ;

(*c*) any other property which is unsalable or is not readily saleable, by reason of its binding the possessor thereof either to the performance of any onerous act or to the payment of any sum of money; or

(*d*)unprofitable contracts ;



the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, or done anything in pursuance of the contract, may, with the leave of the 1[*Tribunal*] and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the 1[*Tribunal*], disclaim the property :

***Provided*** that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the 1[*Tribunal*].

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The 1[*Tribunal*], before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the 1[*Tribunal*] thinks just.

(4) The liquidator shall not be entitled to disclaim any property in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such extended period as may be allowed by the 1[*Tribunal*], given notice to the applicant that he intends to apply to the 1[*Tribunal*] for leave to disclaim ; and in case the property is a contract, if the liquidator, after such an application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5) The 1[*Tribunal*] may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the 1[*Tribunal*] thinks just ; and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The 1[*Tribunal*] may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property, and after hearing any such persons as it thinks fit, make an order for the vesting of the property in, or the delivery of the property to, any person entitled thereto or to whom it may

seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the [1][*Tribunal*] thinks just ; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose :

***Provided*** that, where the property disclaimed is of a leasehold nature, the [1][*Tribunal*] shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee or holder of a charge by way of demise, except upon the terms of making that person -

(*a*)subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up ; or

(*b*)if the [1][*Tribunal*] thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date ;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order ; and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the [1][*Tribunal*] shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the compensation or damages payable in respect of the injury, and may accordingly prove the amount as a debt in the winding up.

1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.

**536. AVOIDANCE OF TRANSFERS, ETC., AFTER COMMENCEMENT OF WINDING UP**

(1) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by [1][*the Tribunal*], any disposition of the property (including actionable claims) of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the [2][*Tribunal*] otherwise orders, be void.

**1.** Substituted for "or subject to the supervision of the Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

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

**[1][537. AVOIDANCE OF CERTAIN ATTACHMENTS, EXECUTIONS, ETC., IN WINDING UP BY TRIBUNAL**



(*1*) *Where any company is being wound up by the Tribunal* -

(a) *any attachment, distress or execution put in force, without leave of the Tribunal against the estate or effects of the company, after the commencement of the winding up* ; *or*

(b) *any sale held, without leave of the Tribunal of any of the properties or effects of the company after such commencement* ; *shall be void.*

(*2*) *Nothing in this section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government.*]

**1.** Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution, section 537 read as under :

"537. Avoidance of certain attachments, executions, etc., in winding up by, or subject to supervision of, Court. - (1) Where any company is being wound by or subject to the supervision of the Court-

(a) any attachment, distress or execution put in force, without leave of the Court, against the estate or effects of the company, after the commencement of the winding up ; or

(b) any sale held, without leave of the Court, of any of the properties or effects of the company after such commencement ;

shall be void.

(2) Nothing in this section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government."

***Offences antecedent to or in course of winding up***

**538. OFFENCES BY OFFICERS OF COMPANIES IN LIQUIDATION**

(1) If any person, being a past or present officer of a company which, at the time of the commission of the alleged offence, is being wound up, whether by [1][*the Tribunal*] or voluntarily, or which is subsequently ordered to be wound up by the [2][*Tribunal*] or which subsequently passes a resolution for voluntary winding up, -

(*a*)does not, to the best of his knowledge and belief, fully and truly discover to the liquidator all the property, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company ; (*b*)does not deliver up to the liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control, and which he is required by law to deliver up ;
(*c*)does not deliver up to the liquidator, or as he directs, all such books and papers of the company as are in his custody or under his control and which he is required by law to deliver up ;
(*d*)within the twelve months next before the commencement of the winding up or at any time thereafter, conceals any part of the property of the company to the value of one hundred rupees or upwards, or conceals any debt due to or from the company ;
(*e*) within the twelve months next before the commencement of the winding up or at any time thereafter, fraudulently removes any part of the property of the company to the value of one hundred rupees or upwards ;
(*f*)makes any material omission in any statement relating to the affairs of the company ;
(*g*) knowing or believing that a false debt has been proved by any person under the winding up, fails for a period of one month to inform the liquidator thereof ;
(*h*)after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the property or affairs of the company ;
(*i*) within the twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to, the property or affairs of the company ;
(*j*)within the twelve months next before the commencement of the winding up or at any time thereafter makes, or is privy to the making of, any false entry in any book or paper affecting or relating to the property or affairs of the company ;
(*k*)within the twelve months next before the commencement of the winding up or at any time thereafter, fraudulently partswith,alters or makes any omission in, or is privy to the fraudulent parting with, altering or making of any omission in, any book or paper affecting or relating to the property or affairs of the company ;
(*l*) after the commencement of the winding up or at any meeting of the creditors of the company within the twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses ;
(*m*) within the twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for ;
(*n*) within the twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for ;



(*o*) within the twelve months next before the commencement of the winding up or at any time thereafter, pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary course of the business of the company ; or
(*p*) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them, to an agreement with reference to the affairs of the company or to the winding up ; he shall be punishable, in the case of any of the offences mentioned in clauses (*m*), (*n*)and(*o*), with imprisonment for a term which may extend to five years, or with fine, or with both, and, in the case of any other offence, with imprisonment for a term which may extend to two years, or with fine, or with both :
***Provided*** that it shall be a good defence -
(*i*) to a charge under any of the clauses (*b*), (*c*), (*d*), (*f*), (*n*)and (*o*), if the accused proves that he had no intent to defraud ; and
(*ii*)to a charge under any of the clauses (*a*), (*h*), (*i*) and (*j*), if he proves that he had no intent to conceal the true state of affairs of the company or to defeat the law.
(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under clause (*o*) of sub- section (1), every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid, shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both. (3) For the purposes of this section, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

**1.** Substituted for "or subject to the supervision of the Court" by the Companies (Second Amendment) **Act**, 2002 (w.e.f. a date yet to be notified).

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

**539. PENALTY FOR FALSIFICATION OF BOOKS**

If with intent to defraud or deceive any person, any officer or contributory of a company which is being wound up - (*a*)destroys, mutilates, alters, falsifies or secrets, or is privy to the destruction, mutilation, alteration, falsification or secreting of, any books,

papers or securities ; or
(*b*)makes, or is privy to the making of, any false or fraudulent entry in any register, books of account or document belonging to the company ;
he shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

**540. PENALTY FOR FRAUDS BY OFFICERS**

If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the 1[*Tribunal*] or which subsequently passes a resolution for voluntary winding up, -
(*a*) has, by false pretences or by means of any other fraud induced any person to give credit to the company ; or (*b*)with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company ; or
(*c*) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company, or within two months before that date ;
he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.

**1.** Substituted for "Court" by the Companies (Second Amendment) Act, 2002.

**541. LIABILITY WHERE PROPER ACCOUNTS NOT KEPT**

(1) Where a company is being wound up, if it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, be punishable with imprisonment for a term which may extend to one year.

(2) For the purposes of sub-section (1), it shall be deemed that proper books of account have not been kept in the case of any company, if there have not been kept -
(*a*)such books or accounts as are necessary to exhibit and explain the transactions and financial position of the business of the company, including books containing entries made from day-to-day in sufficient detail of all cash received and all cash paid ; and
(*b*)where the business of the company has involved dealings in goods, statements of the annual stock takings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and the sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

**542. LIABILITY FOR FRAUDULENT CONDUCT OF BUSINESS**



(1) If in the course of the winding up of a company, it appears that any business of the company has been carried on, with intent to defraud creditors of the company or any other persons, or for any fraudulent purpose, the 1[*Tribunal*], on the application of the Official Liquidator, or the liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the 1[*Tribunal*] may direct.
On the hearing of an application under this sub-section, the Official Liquidator or the liquidator, as the case may be, may himself give evidence or call witnesses.
(2) (*a*)Where the 1[*Tribunal*] makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.
(*b*)In particular, the 1[*Tribunal*] may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf.
(*c*) The 1[*Tribunal*] may, from time to time, make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.
(*d*) For the purpose of this sub-section, the expression "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.
(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to 2[fifty] thousand rupees, or with both.

(4) This section shall apply, notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

**1.** Substituted for "Court" 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.

**1[543. POWER OF TRIBUNAL TO ASSESS DAMAGES AGAINST DELINQUENT DIRECTORS, ETC**

(*1*) *If in the course of winding up of a company, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, manager, liquidator or officer of the company -*

(a) *has misapplied, or retained, or become liable or accountable for, any money or property of the company* ; *or* (b) *has been guilty of any misfeasance or breach of trust in relation tothe company,*

*the Tribunal may, on the application of the Official Liquidator, or the liquidator, or of any creditor or contributory, made within the time specified in that behalf in sub-section* (*2*)*, examine into the conduct of the person, director, manager, liquidator or officer aforesaid, and compel him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Tribunal thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Tribunal thinks just.*

(*2*) *An application under sub-section* (*1*) *shall be made within five years from the date of the order for winding up, or of the first appointment of the liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust as the case may be, whichever is longer.*

(*3*) *This section shall apply notwithstanding that the matter is one for which the person concerned may be criminally liable.*]

1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution section 543 read as under :

"543. Power of Court to assess damages against delinquent directors, etc. - (1) If in the course of winding up a company, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, manager, liquidator or officer of the company -

(a) has misapplied, or retained, or become liable or accountable for, any money or property of the company ; or

(b) has been guilty of any misfeasance or breach of trust in relation to the company ;

the Court may, on the application of the Official Liquidator, or the liquidator, or of any creditor or contributory, made within the time specified in that behalf in sub-section (2), examine into the conduct of the person, director, manager, liquidator or officer aforesaid, and compel him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Court thinks just.

(2) An application under sub-section (1) shall be made within five years from the date of the order for winding up, or of the first appointment of the liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer.



(3) This section shall apply notwithstanding that the matter is one for which the person concerned may be criminally liable. "

**544. LIABILITY UNDER SECTIONS 542 AND 543 TO EXTEND TO PARTNERS OR DIRECTORS IN FIRM OR COMPANY**

Where a declaration under section 542 or an order under section 543 is or may be made in respect of a firm or body corporate, the 1[*Tribunal*] shall also have power to make a declaration under section 542, or pass an order under section 543, as the case may be, in respect of any person who was at the relevant time a partner in that firm or a director of that body corporate.

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

**545. PROSECUTION OF DELINQUENT OFFICERS AND MEMBERS OF COMPANY**

(1) If it appears to the Court in the course of a winding up by, 2[*the Tribunal*], that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, the 1[*Tribunal*] may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the Registrar.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any books and papers, being information or books and papers in the possession or under the control of the liquidator and relating to the matter in question, as the Registrar may require.

(3) Where any report is made under sub-section (2) to the Registrar, he may, if he thinks fit, refer the matter to the Central Government for further inquiry.

The Central Government shall thereupon investigate the matter and may, if it thinks it expedient, apply to the [1][*Tribunal*] for an order conferring on any person designated by the Central Government for the purpose, with respect to the company concerned, all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the [1][*Tribunal*].

(4) If on any report to the Registrar under sub-section (2), it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the [1][*Tribunal*], the liquidator may himself take proceedings against the offender.

(5) If it appears to the [1][*Tribunal*] in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Registrar under sub-section (2), the [1][*Tribunal*] may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of sub-section (2).

(6) If, where any matter is reported or referred to the Registrar under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall report the matter to the Central Government ; and that Government may, after taking such legal advice as it thinks fit, direct the Registrar to institute proceedings : ***Provided*** that no report shall be made by the Registrar under this sub-section without first giving the accused person an opportunity of making a statement in writing to the Registrar and of being heard thereon.

(7) When any proceedings are instituted under this section, it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this sub-section, the expression "agent", in relation to a company, shall be deemed to include any banker or legal adviser of the company and any person employed by the company as auditor.

(8) If any person fails or neglects to give assistance in the manner required by sub-section (7), the [1][*Tribunal*] may, on the application of the Registrar, direct that person to comply with the requirements of that sub-section.

(9) Where any such application is made with respect to a liquidator, the [1][*Tribunal*] may, unless it appears that the failure or neglect was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). **2.** Substituted for ", or subject to the supervision of, the Court" by the Companies (Second Amendment) Act 2002.

***Miscellaneous provisions***

**546. LIQUIDATOR TO EXERCISE CERTAIN POWERS SUBJECT TO SANCTION**

(1) The liquidator may -

(*a*)with the sanction of the [1][*Tribunal*], when the company is being wound up by [2][the *Tribunal*] ; and (*b*)with the sanction of a special resolution of the company, in the case of a voluntary winding up, - (*i*) pay any classes of creditors in full ;



(*ii*) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable ; or

(*iii*) compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(1A) Notwithstanding anything contained in sub-section (1), in the case of a winding up by the[1][*Tribunal*], the Supreme Court may make rules under section 643 providing that the liquidator may, under such circumstances, if any, and subject to such conditions, restrictions and limitations, if any, as may be specified in the rules, exercise any of the powers referred to in sub-clause (*ii*) or sub-clause (*iii*)of sub-section (1) without the sanction of the [1][*Tribunal*]. (2) In the case of a voluntary winding up, the exercise by the liquidator of the powers conferred by sub-section (1) shall be subject to the control of the [1][*Tribunal*].

(3) Any creditor or contributory may apply to the [1][*Tribunal*] with respect to any exercise or proposed exercise of any such power.

**1.** Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). **2.** Substituted for "or subject to the supervision of the Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

**547. NOTIFICATION THAT A COMPANY IS IN LIQUIDATION**

(1) Where a company is being wound up, whether by [1][*the Tribunal*] or voluntarily, every invoice, order for goods or business

letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company, and every one of the following persons who wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be punishable with fine which may extend to [2][five thousand] rupees.

1. Substituted for "or under the supervision of the 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. 13-12-2000.

**548. BOOKS AND PAPERS OF COMPANY TO BE EVIDENCE**

Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

**549. INSPECTION OF BOOKS AND PAPERS BY CREDITORS AND CONTRIBUTORIES**

(1) At any time after the making of an order for the winding up of a company by [1][*the Tribunal*], any creditor or contributory of the company may, if the Supreme Court, by rules prescribed so permit and in accordance with and subject to such rules but not further or otherwise, inspect the books and papers of the company.

(2) Nothing in sub-section (1) shall be taken as excluding or restricting any rights conferred by any law for the time being in force -

(*a*)on the Central or a State Government ; or

(*b*)on any authority or officer thereof ; or

(*c*) on any person acting under the authority of any such Government or of any such authority or officer.

1. Substituted for "or subject to the supervision of the Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). * Also refer section 643(3).

**550. DISPOSAL OF BOOKS AND PAPERS OF COMPANY**

(1) When the affairs of a company have been completely wound up and it is about to be dissolved, its books and papers and those of the liquidator may be disposed of as follows, that is to say :

[1][(a) *in the case of a winding up by the Tribunal, in such manner as the Tribunal directs* ;]

(*b*)in the case of a members' voluntary winding up, in such manner as the company by special resolution directs ; and (*c*) in the case of a creditors' voluntary winding up, in such manner as the committee of inspection or, if there is no such committee, as the creditors of the company may direct.

(2) After the expiry of five years from the dissolution of the company, no responsibility shall rest on the company, the liquidator, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) The Central Government may, by rules, -

(*a*)prevent for such period (not exceeding five years from the dissolution of the company) as the Central Government thinks proper, the destruction of the books and papers of a company which has been wound up and of its liquidator ; and



(*b*)enable any creditor or contributory of the company to make representations to the Central Government in respect of the matters specified in clause (*a*) and to appeal to the[2][*Tribunal*] from any direction which may be given by the Central Government in the matter.

(4) If any person acts in contravention of any such rules or of any direction of the Central Government thereunder, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to [3][fifty] thousand rupees, or with both.

**1.** Substituted for following clause (*a*) by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to substitution clause (a) read as under:

"(*a*)in the case of a winding up by or subject to the supervision of the Court, in such manner as the Court directs ;"

**2.** Substituted for "Court" by the Companies (Second Amendment) Act, 2002.

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

**551. INFORMATION AS TO PENDING LIQUIDATIONS**

(1) If the winding up of a company is not concluded within one year after its commencement, the liquidator shall, unless he is exempted from so doing either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in the prescribed form and containing the prescribed particulars duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation, -

[1][(*a*) *in the case of a winding up by the Tribunal, in Tribunal* ; *and*]

(*b*)in the case of a voluntary winding up, with the Registrar :

***Provided*** that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 462 apply.

(2) When the statement is filed in [2][*Tribunal*] under clause (*a*)of sub-section (1), a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

[3][(2A) Where a statement referred to in sub-section (2) relates to a Government company in liquidation, the liquidator shall forward a copy thereof, -

(*a*)to the Central Government, if that Government is a member of the Government company ; or

(*b*)to any State Government, if that Government is a member of the Government company ; or

(*c*)to the Central Government and any State Government, if both the Governments are members of the Government company.]

(3) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or an extract therefrom.

(4) Any person untruthfully stating himself to be a creditor or contributory for the above purpose shall be deemed to be guilty of an offence under section 182of the Indian Penal Code (45 of 1860), and shall, on the application of the liquidator, be punishable accordingly.

(5) If a liquidator fails to comply with any of requirements of this section, he shall be punishable with fine which may extend to [4][five thousand] rupees for every day during which the failure continues :

***Provided*** that if the liquidator makes wilful default in causing the statement referred to in sub-section (1) to be audited by a person qualified to act as auditor of the company, the liquidator shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to [5][ten] thousand rupees, or with both.

**1.** Substituted for following clause (*a*) by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). "(*a*)in the case of a winding-up by or subject to the supervision of the Court, in Court ; and " **2.** Substituted for "Court" by the Companies (Second Amendment) Act 2002.

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

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

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

**552. OFFICIAL LIQUIDATOR TO MAKE PAYMENTS INTO THE PUBLIC ACCOUNT OF INDIA**

Every Official Liquidator shall, in such manner and at such times as may be prescribed, pay the moneys received by him as liquidator of any company, into the public account of India in the Reserve Bank of India.

**553. VOLUNTARY LIQUIDATOR TO MAKE PAYMENTS INTO SCHEDULED BANK**

(1) Every liquidator of a company, not being an Official Liquidator, shall, in such manner and at such times as may be prescribed, pay the moneys received by him in his capacity as such into a Scheduled Bank to the credit of a special banking account opened by him in that behalf, and called

Company Limited

"the Liquidation Account of.....Company Private Limited":

Company

***Provided*** that if the [1][*Tribunal*] is satisfied that for the purpose of carrying on the business of the company or of obtaining advances or for any other reason, it is to the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the [1][*Tribunal*] may authorise the liquidator to make his payments into or



out of such other bank as the [1][*Tribunal*] may select; and thereupon those payments shall be made in the prescribed manner and at the prescribed times into or out of such other bank.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding five hundred rupees or such other amount as the [1][*Tribunal*] may, on the application of the liquidator, authorise him to retain, then, unless he explains the retention to the satisfaction of the [1][*Tribunal*], he shall -

(*a*)pay interest on the amount so retained in excess, at the rate of twelve per cent per annum and also pay such penalty as may be determined by the Registrar ;

(*b*)be liable to pay any expenses occasioned by reason of his default; and

(*c*) also be liable to have all or such part of his remuneration as the [1][*Tribunal*] may think just disallowed, and to be removed from his office by the [1][*Tribunal*].

**1.** Substituted for "Court" by the Companies (Second Amendment) Act 2002.

**554. LIQUIDATOR NOT TO PAY MONEYS INTO PRIVATE BANKING ACCOUNT**

Neither the Official Liquidator nor any other liquidator of a company shall pay any moneys received by him in his capacity as such into any private banking account.

**555. UNPAID DIVIDENDS AND UNDISTRIBUTED ASSETS TO BE PAID INTO THE COMPANIES LIQUIDATION ACCOUNT**

(1) Where any company is being wound up, if the liquidator has in his hands or under his control any money representing -

(*a*) dividends payable to any creditor which had remained unpaid for six months after the date on which they were declared, or

(*b*)assets refundable to any contributory which have remained undistributed for six months after the date on which they became refundable,

the liquidator shall forthwith pay the said money into the public account of India in the Reserve Bank of India in a separate account to be known as the Companies Liquidation Account.

(2) The liquidator shall, on the dissolution of the company, similarly pay into the said account any money representing unpaid dividends or undistributed assets in his hands at the date of dissolution.

(3) The liquidator shall, when making any payment referred to in sub-sections (1) and (2), furnish to such officer, as the Central Government may appoint in this behalf, a statement in the prescribed form, setting forth, in respect of all sums included in such payment, the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed.

(4) The liquidator shall be entitled to a receipt from the Reserve Bank of India for any money paid to it under sub-sections (1) and (2), and such receipt shall be an effectual discharge of the liquidator in respect thereof.

(5) Where the company is being wound up by the [1][*Tribunal*], the liquidator shall make the payments referred to in sub-sections (1) and (2) by transfer from the account referred to in section 552.

(6) Where the company is being wound up voluntarily *[by] [2][*the Tribunal*], the liquidator shall, when filing a statement in pursuance of sub-section (1) of section 551, indicate the sum of money which is payable to the Reserve Bank of India under sub-sections (1) and (2) of this section which he has had in his hands or under his control during the six months preceding the date to which the said statement is brought down, and shall, within fourteen days of the date of filing the said statement, pay that sum into the Companies Liquidation Account.

(7) (*a*)Any person claiming to be entitled to any money paid into the Companies Liquidation Account (whether paid in pursuance of this section or under the provisions of any previous companies law) may apply to the [1][*Tribunal*] for an order for payment thereof, and the [1][*Tribunal*], if satisfied that the person claiming is entitled, may make an order for the payment to that person of the sum due :

***Provided*** that before making such an order, the [1][*Tribunal*] shall cause a notice to be served on such officer as the Central Government may appoint in this behalf, calling on the officer to show cause within one month from the date of the service of the notice why the order should not be made.

(*b*) Any person claiming as aforesaid may, instead of applying to the [1][*Tribunal*], apply to the Central Government for an order for payment of the money claimed ; and the Central Government may, if satisfied whether on a certificate by the liquidator or the Official Liquidator or otherwise, that such person is entitled to the whole or any part of the money claimed and that no application made in pursuance of clause (*a*)is pending in the [1][*Tribunal*], make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.

(8) Any money paid into the Companies Liquidation Account in pursuance of this section, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Central Government ; but a claim to any money so transferred may be preferred under sub-section (7) and shall be dealt with as if such transfer had not been made, the order, if any, for payment on the claim being treated as an order for refund of revenue.

(9) Any liquidator retaining any money which should have been paid by him into the Companies Liquidation Account under this section shall -

(*a*)pay interest on the amount retained at the rate of twelve per cent per annum, and also pay such penalty as may be determined by the Registrar :

***Provided*** that the Central Government may in any proper case remit either in part or in whole the amount of interest which the liquidator is required to pay under this clause ;



(*b*)be liable to pay any expenses occasioned by reason of his default; and

(*c*)where the winding up is by, [1][*the Tribunal*], also be liable to have all or such part of his remuneration as the [2][*Tribunal*] may think just to be disallowed, and to be removed from his office by this [2][*Tribunal*].

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

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

**556. ENFORCEMENT OF DUTY OF LIQUIDATOR TO MAKE RETURNS, ETC**

(1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the [1][*Tribunal*] may, on an application made to the [1][*Tribunal*] by

any contributory or creditor of the company or by the Registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator. (3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

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

***Supplementary powers of* [1][*Tribunal*]**

**557. MEETINGS TO ASCERTAIN WISHES OF CREDITORS OR CONTRIBUTORIES**

(1) In all matters relating to the winding up of a company, the [1][*Tribunal*] may -

(*a*) have regard to the wishes of creditors or contributories of the company, as proved to it by any sufficient evidence ; (*b*)if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the [1][*Tribunal*] directs ; and

(*c*) appoint a person to act as chairman of any such meeting and to report the result thereof to the [1][*Tribunal*]. (2) When ascertaining the wishes of creditors, regard shall be had to the value of each creditor's debt.

(3) When ascertaining the wishes of contributories, regard shall be had to the number of votes which may be cast by each contributory.

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

**558. COURT OR PERSON BEFORE WHOM AFFIDAVIT MAY BE SWORN**

(1) Any affidavit required to be sworn under the provisions, or for the purposes, of this Part may be sworn -

(*a*)in India, before any Court [1][*or Tribunal*], Judge or person lawfully authorised to take and receive affidavits ; and (*b*)in any other country, either before any Court, Judge or person lawfully authorised to take and receive affidavits in that country or before an Indian Consul or Vice-Consul.

*Explanation.* - [*Omitted by the J &K* (*Extension of Laws*) *Act,* 1956, *with effect from 1-11-1956*].

(2) All Courts, [1][*,Tribunal*], Judges, Justices, Commissioners and persons acting judicially in India shall take judicial notice of the seal, stamp or signature, as the case may be, of any such such Court, [1][*Tribunal,*] Judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Part.

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

***Provisions as to dissolution***

**559. POWER OF [1][*TRIBUNAL*] TO DECLARE DISSOLUTION OF COMPANY VOID**

(1) Where a company has been dissolved, whether in pursuance of this Part or of section 394 or otherwise, the [1][*Tribunal*] may at any time within two years of the date of the dissolution, on application by the liquidator of the company or by any other person who appears to the [1][*Tribunal*] to be interested, make an order, upon such terms as the [1][*Tribunal*] thinks fit, declaring the dissolution to have been void ; and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within thirty days after the making of the order or such further time as the [1][*Tribunal*] may allow, to file a certified copy of the order with the Registrar who shall register the same ; and if such person fails so to do, he shall be punishable with fine which may extend to [2][five hundred] rupees for every day during which the default continues.

1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002. 2. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

**560. POWER OF REGISTRAR TO STRIKE DEFUNCT COMPANY OFF REGISTER**

(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.



(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiry of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Official Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Official Gazette, and send to the company by registered post, a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company have been completely wound up, and any returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Official Gazette and send to the company or the liquidator, if any, a like notice as is provided in sub-section (3). (5) At the expiry of the time mentioned in the notice referred to in sub-section (3) or (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette ; and on the publication in the Official Gazette of this notice, the company shall stand dissolved :

***Provided*** that **-**

(*a*)the liability, if any, of every director, [1][***] manager or other officer who was exercising any power or management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved ; and

(*b*)nothing in this sub-section shall affect the power of the [2][*Tribunal*] to wind up a company the name of which has been struck off the register.

(6) If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the [2][*Tribunal*], on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register ; and the [2][*Tribunal*] may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) Upon a certified copy of the order under sub-section (6) being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off.

(8) A letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or if no office has been registered, to the care of some director, [1][***] manager or other officer of the company, or if there is no director, [1][***] manager or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at

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

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

## PART VIII: APPLICATION OF ACT TO COMPANIES FORMED OR REGISTERED UNDER PREVIOUS COMPANIES LAWS

### 561. APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER PREVIOUS COMPANIES LAWS

This Act shall apply to existing companies as follows :

(*a*)in the case of a limited company other than a company limited by guarantee, this Act shall apply in the same manner as if the company had been formed and registered under this Act as a company limited by shares ; (*b*)in the case of a company limited by guarantee, this Act shall apply in the same manner as if the company had been formed and registered under this Act as a company limited by guarantee ; and

(*c*)in the case of a company other than a limited company, this Act, shall apply in the same manner as if the company had been formed and registered under this Act as an unlimited company :

***Provided*** that **-**

(*i*)nothing in Table A in Schedule I shall apply to a company formed and registered under Act 19 of 1857 and Act 7 of 1860, or either of them, or under the Indian Companies Act, 1866 (10 of 1866), or the Indian Companies Act, 1882 (6 of 1882) ;

(*ii*)reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the previous companies law concerned.

### 562. APPLICATION OF ACT TO COMPANIES REGISTERED BUT NOT FORMED UNDER PREVIOUS COMPANIES LAWS

This Act shall apply to every company registered but not formed under any previous companies law in the same manner as it is in Part IX of this Act declared to apply to companies registered but not formed under this Act :



***Provided*** that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the previous companies law concerned.

### 563. APPLICATION OF ACT TO UNLIMITED COMPANIES REGISTERED UNDER PREVIOUS COMPANIES LAWS

This Act shall apply to every unlimited company registered as a limited company in pursuance of any previous companies law, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company :

***Provided*** that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the previous companies law concerned.

**564. MODE OF TRANSFERRING SHARES IN THE CASE OF COMPANIES REGISTERED UNDER ACTS 19 OF 1857 AND 7 OF 1860**

A company registered under Act 19 of 1857 and Act 7 of 1860 or either of them may cause its shares to be transferred in the manner hitherto in use, or in such other manner as the company may direct.

## COMPANIES ACT, 1956

**[Act No. 1 OF 1956]**

## PART IX : COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT

**565. COMPANIES CAPABLE OF BEING REGISTERED**

(1) With the exceptions and subject to the provisions contained in this section, -

(*a*)any company consisting of seven or more members, which was in existence on the first day of May, 1882, including any company registered under Act No. 19 of 1857 and Act No. 7 of 1860 or either of them or under any laws or law in force in a Part BState, corresponding to those Acts or either of them ; and

(*b*) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other Indian law (including a law in force in a Part B State), or of any Act of Parliament of the United Kingdom or Letters Patent in force in India, or being otherwise duly constituted according to law, and consisting of seven or more members ;

may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee ; and the registration shall not be invalid by reason only that it has taken place with a view to the company's being wound up :

***Provided*** that -

(*i*) a company registered under the Indian Companies Act, 1882 (6 of 1882) or under the Indian Companies Act, 1913 (7 of 1913), shall not register in pursuance of this section ;

(*ii*) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other Indian law (including a law in force in a Part B State), or by any Act of Parliament of the United Kingdom or Letters Patent in force in India, and not being a joint-stock company as defined in section 566, shall not register in pursuance of this section ;

(*iii*) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other Indian law (including a law in force in a Part B State), or any Act of Parliament of the United Kingdom or Letters Patent in force in India, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee ;

(*iv*)a company that is not a joint-stock company as defined in section 566 shall not register in pursuance of this section as a company limited by shares ;

(*v*)a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose ; (*vi*)where a company not having the liability of its members limited by any Act of Parliament or any other Indian law (including a law in force in a Part BState) or by any Act of Parliament of the United Kingdom or Letters Patent in force in India, is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting ; (*vii*)where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(2) In computing any majority required for the purposes of sub- section (1) when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

(3) Nothing in this section shall be deemed to apply to any company the registered office whereof at the commencement of this Act is in Burma, Aden or Pakistan.

**566. DEFINITION OF "JOINT-STOCK COMPANY"**

(1) For the purposes of this Part, so far as it relates to the registration of companies as companies limited by shares, a joint-stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and



partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons.

(2) Such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

**567. REQUIREMENTS FOR REGISTRATION OF JOINT-STOCK COMPANIES**
Before the registration in pursuance of this Part of a joint-stock company, there shall be delivered to the Registrar the following documents : -
(*a*)a list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;
(*b*)a copy of any Act of Parliament or other Indian law, Act of Parliament of the United Kingdom, Royal Charter, Letters Patent, deed of settlement, deed of partnership or other instrument constituting or regulating the company ; and
(*c*)if the company is intended to be registered as limited company, a statement specifying the following particulars: - (*i*)the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists ;
(*ii*)the number of shares taken and the amount paid on each share ;
(*iii*)the name of the company, with the addition of the word "Limited" or "Private Limited" as the case may require, as the last word or words thereof ; and
(*iv*)in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

**568. REQUIREMENTS FOR REGISTRATION OF COMPANIES NOT BEING JOINT-STOCK COMPANIES** Before the registration in pursuance of this Part of any company not being a joint-stock company, there shall be delivered to the Registrar the following documents : -
(*a*)a list showing the names, addresses and occupations of the directors, [1][***] and the manager, if any, of the company ;
(*b*)a copy of any Act of Parliament or other Indian law, Act of Parliament of the United Kingdom, Letters Patent, deed of settlement, deed of partnership or other instrument constituting or regulating the company ; and
(*c*) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

**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.

**569. AUTHENTICATION OF STATEMENTS OF EXISTING COMPANIES**
The lists of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be duly verified by the declaration of any two or more directors or other principal officers of the company.

**570. POWER OF REGISTRAR TO REQUIRE EVIDENCE AS TO NATURE OF COMPANY**
The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint-stock company as defined in section 566.

**571. NOTICE TO CUSTOMERS ON REGISTRATION OF BANKING COMPANY WITH LIMITED LIABILITY** (1) Where a banking company which was in existence on the first day of May, 1882, proposes to register as a limited company under this Part, it shall, at least thirty days before so registering, give notice of its intention so to register, to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(2) If the banking company omits to give the notice required by sub-section (1), then, as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

**572. CHANGE OF NAME FOR PURPOSES OF REGISTRATION**
Where the name of a company seeking registration under this Part is one which in the opinion of the Central Government is undesirable, the company may, with the approval of the Central Government signified in writing, change its name with effect from the date of its registration under this Part :
***Provided*** that the like assent of the members of the company shall be required to the change of name as is required by section 565 to the registration of the company under this Part.

**573. ADDITION OF "LIMITED" OR "PRIVATE LIMITED" TO NAME**
When a company registers in pursuance of this Part with limited liability, the word "Limited" or the words "Private Limited", as the case may be, shall form, and be registered as, the last word or words of its name :



***Provided*** that this section shall not be deemed to exclude the operation of section 25.

**574. CERTIFICATE OF REGISTRATION OF EXISTING COMPANIES**
On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under Schedule X, the Registrar shall certify under his hand that the company applying for registration is incorporated

as a company under this Act, and in the case of a limited company that it is limited and thereupon the company shall be so incorporated.

**575. VESTING OF PROPERTY ON REGISTRATION**

All property, movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein. company. As the vesting of property is under statutory provisions, no instrument of transfer is necessary therefor.

If the constitution of the partnership firm is changed into that of a company by registering it under Part IX of this Act, there shall be statutory vesting of the title of all the property of the previous firm in the newly incorporated company without any need for a separate conveyance - *Vali Pattabhirama Rao* v. *Sri Ramanuja Ginning & Rice Factory* (*P*) *Ltd*. (1986) 60 Comp. Cas. 568 (AP).

**576. SAVING FOR EXISTING LIABILITIES**

The registration of a company in pursuance of this Part shall not affect its rights or liabilities in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

**577. CONTINUATION OF PENDING LEGAL PROCEEDINGS**

All suits and other legal proceedings taken by or against the company, or any public officer or member thereof, which are pending at the time of the registration of a company in pursuance of this Part, may be continued in the same manner as if the registration had not taken place :

***Provided*** that execution shall not issue against the property or person of any individual member of the company on any decree or order obtained in any such suit or proceeding ; but, in the event of the property of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

**578. EFFECT OF REGISTRATION UNDER PART**

(1) When a company is registered in pursuance of this Part, sub-sections (2) to (7) shall apply.

(2) All provisions contained in any Act of Parliament or other Indian law, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows :

(*a*)Table A in Schedule Ishall not apply unless and except insofar as it is adopted by special resolution ;

(*b*)the provisions of this Act relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered ;

(*c*)subject to the provisions of this section, the company shall not have power to alter any provision contained in any Act of Parliament or other Indian law relating to the company;

(*d*)subject to the provisions of this section, the company shall not have power, without the sanction of the Central Government, to alter any provision contained in any Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, relating to the company ;

(*e*)the company shall not have power to alter any provision contained in any Act of Parliament or other Indian law or in any Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, with respect to the objects of the company ;

(*f*)in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid ;

(*g*) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid ; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

(4) The provisions of this Act with respect to -

(*a*)the registration of an unlimited as a limited company ;



(*b*)the powers of an unlimited company on registration as a limited company, to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up ;

(*c*) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except

in the event of winding up ;
shall apply, notwithstanding any provisions contained in any Act of Parliament or other Indian law, or other instrument constituting or regulating the company.
(5) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.
(6) None of the provisions of this Act (apart from those of section 404) shall derogate from any power of altering its constitution or regulations which may be vested in the company, by virtue of any Act of Parliament or other Indian law, or other instrument constituting or regulating the company.
(7) In this section, the expression "instrument" includes deed of settlement, deed of partnership, Act of Parliament of the United Kingdom, Royal Charter and Letters Patent.

**579. POWER TO SUBSTITUTE MEMORANDUM AND ARTICLES FOR DEED OF SETTLEMENT**

(1) Subject to the provisions of this section, a company registered in pursuance of this Part may, by special resolution, alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of sections 17 to 19 with respect to an alteration of the objects of a company shall, so far as applicable, apply to any alteration under this section, with the following modifications :
(*a*) there shall be substituted for the printed copy of the altered memorandum required to be filed with the Registrar a printed copy of the substituted memorandum and articles ; and
(*b*) on the registration of the alteration being certified by the Registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.
(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.
(4) In this section, the expression "deed of settlement" includes any deed of partnership, Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, or other instrument constituting or regulating the company, not being an Act of Parliament or other Indian law.

**580. POWER OF COURT TO STAY OR RESTRAIN PROCEEDINGS**

The provisions of this Act with respect to staying and restraining suits and other legal proceedings against a company at any time after the presentation of a petition for a winding up and before the making of a winding up order, shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and other legal proceedings against any contributory of the company.

**581. SUITS STAYED ON WINDING UP ORDER**

Where an order has been made for winding up, or a provisional liquidator has been appointed for, a company registered in pursuance of this Part, no suit or other legal proceeding shall be proceeded with or commenced against the company or any contributory of the company in respect of any debt of the company, except by leave of the [1][*Tribunal*] and except on such terms as the [1][*Tribunal*] may impose.

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

## [1][PART IXA]

**1.** Part IXA consisting of sections 581A to 581ZT, inserted by the Companies (Amendment) Act, 2002 w.e.f. 6-2-2003.

### *CHAPTER I: PRODUCER COMPANIES*

**581A. DEFINITIONS**

*In this Part, unless the context otherwise requires, -*
(a) *"active Member" means a member who fulfils the quantum and period of patronage of the Producer Company as may be required by the articles* ;
(b) *"Chief Executive" means an individual appointed as such under sub-section* (*1*) *of section 581W* ;
(c) *"limited return" means the maximum dividend as may be specified by the articles* ;
(d) *"Member" means a person or Producer institution* (*whether incorporated or not*) *admitted as a Member of a Producer Company and who retains the qualifications necessary for continuance as such* ;
(e) *"inter-State co-operative society" means a multi-State co-operative society as defined in clause* (k) *of section 3 of the Multi-State Co-operative Societies Act, 1984* (*51 of 1984*) *and includes any co-operative society registered under any other law for the time being in force, which has, subsequent to its formation, extended any of its objects to more than one State by enlisting the participation of persons or by extending any of its activities outside the State, whether directly or indirectly or through an institution of which it is a constituent* ;

(f) *"mutual assistance principles" means the principles set out in sub-section* (*2*) *of section 581G* ;
(g) *"officer" includes any director or Chief Executive or Secretary or any person in accordance with whose directions or instructionspart or whole of the business of the Producer Company is carried on* ;
(h) *"patronage" means the use of services offered by the Producer Company to its Members by participation in its business activities* ;
(i) *"patronage bonus" means payments made by a Producer Company out of its surplus income to the Members in proportion to their respective patronage* ;
(j) *"primary produce" means -*
(i) *produce of farmers, arising from agriculture* (*including animal husbandry, horticulture, floriculture, pisciculture, viticulture, forestry, forest products, re-vegetation, bee raising and farming plantation products*), *or from any other primary activity or service which promotes the interest of the farmers or consumers* ; *or*
(ii) *produce of persons engaged in handloom, handicraft and other cottage industries* ;
(iii) *any product resulting from any of the above activities, including by-products of such products* ;
(iv) *any product resulting from an ancillary activity that would assist or promote any of the aforesaid activities or anything ancillary thereto* ;
(v) *any activity which is intended to increase the production of anything referred to in sub-clauses* (i) *to* (iv) *or improve the quality thereof* ;
(k) *"producer" means any person engaged in any activity connected with or relatable to any primary produce* ; (l) *"Producer Company" means a body corporate having objects or activities specified in section 581B and registered as Producer Company under this Act* ;
(m) *"Producer institution" means a Producer Company or any other institution having only producer or producers or Producer Company or Producer Companies as its member whether incorporated or not having any of the objects referred to in section 581B and which agrees to make use of the services of the Producer Company or Producer Companies as provided in its articles.*
(n) *"withheld price" means part of the price due and payable for goods supplied by any Member to the Producer Company* ; *and as withheld by the Producer Company for payment on a subsequent date.*

## *CHAPTER II: INCORPORATION OF PRODUCER COMPANIES AND OTHER MATTERS*

### 581B. OBJECTS OF PRODUCER COMPANY

(*1*) *The objects of the Producer Company shall relate to all or any of the following matters, namely* : -
(a) *production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit*:
**Provided***that the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution* ;
(b) *processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members* ;
(c) *manufacture, sale or supply of machinery, equipment or consumables mainly to its Members* ;
(d) *providing education on the mutual assistance principles to its Members and others* ;
(e) *rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members* ;
(f) *generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce* ;
(g) *insurance of producers or their primary produce* ;
(h) *promoting techniques of mutuality and mutual assistance* ;
(i) *welfare measures or facilities for the benefit of Members as may be decided by the Board* ;
(j) *any other activity, ancillary or incidental to any of the activities referred to in clauses* (a) *to* (i) *or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner* ; (k) *financing of procurement, processing, marketing or other activities specified in clauses* (a) *to* (j) *which include extending of credit facilities or any other financial services to its Members.*

(*2*) *Every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in this section.*

### 581C. FORMATION OF PRODUCER COMPANY AND ITS REGISTRATION

(*1*) *Any ten or more individuals, each of them being a producer or any two or more Producer institutions, or a combination of ten or more individuals and Producer institutions, desirous of forming a Producer Company having its objects specified in section 581B and otherwise complying with the requirements of this Part and the provisions of this Act in respect of registration, may form an incorporated Company as a Producer Company under this Act.*

(*2*) *If the Registrar is satisfied that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, he shall, within thirty days of the receipt of the documents required for registration, register the memorandum, the articles and other documents, if any, and issue a certificate of incorporation under this Act.*

(*3*) *A Producer Company so formed shall have the liability of its Members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them and be termed a company limited by shares.*



(*4*) *The Producer Company may reimburse to its promoters all other direct costs associated with the promotion and registration of the company including registration, legal fees, printing of a memorandum and articles and the payment thereof shall be subject to the approval at its first general meeting of the Members.*

(*5*) *On registration under sub-section* (*1*)*, the Producer Company shall become a body corporate as if it is a private limited company to which the provisions contained in this Part apply, without, however, any limit to the number of Members thereof, and the Producer Company shall not, under any circumstance, whatsoever, become or be deemed to become a public limited company under this Act.*

**581D. MEMBERSHIP AND VOTING RIGHTS OF MEMBERS OF PRODUCER COMPANY**

(*1*)(a) *In a case where the membership consists solely of individual members, the voting rights shall be based on a single vote for every Member, irrespective of his shareholding or patronage of the Producer Company.*

(b) *In a case where the membership consists of Producer institutions only, the voting rights of such Producer institutions shall be determined on the basis of their participation in the business of the Producer Company in the previous year, as may be specified by articles* :

**Provided** *that during the first year of registration of a Producer Company, the voting rights shall be determined on the basis of the shareholding by such Producer institutions.*

(c) *In a case where the membership consists of individuals and Producer institutions, the voting rights shall be computed on the basis of a single vote for every Member.*

(*2*) *The articles of any Producer Company may provide for the conditions, subject to which a Member may continue to retain his membership, and the manner in which voting rights shall be exercised by the Members.*

(*3*) *Notwithstanding anything contained in sub-section* (*7*) *or sub-section*(*2*)*, any Producer Company may, if so authorised by its articles, restrict the voting rights to active Members, in any special or general meeting.*

(*4*) *No person, who has any business interest which is in conflict with business of the Producer Company, shall become a Member of that Company.*

(*5*) *A Member, who acquires any business interest which is in conflict with the business of the Producer Company, shall cease to be a Member of that Company and be removed as a Member in accordance with articles.*

**581E. BENEFITS TO MEMBERS**

(*1*) *Subject to provisions made in articles, every Member shall initially receive only such value for the produce or products pooled and supplied as the Board of Producer Company may determine, and the withheld price may be disbursed later in cash or in kind or by allotment of equity shares, in proportion to the produce supplied to the Producer Company during the financial year to such extent and in such manner and subject to such conditions as may be decided by the Board.*

(*2*) *Every Member shall, on the share capital contributed, receive only a limited return* :

**Provided** *that every such Member may be allotted bonus shares in accordance with the provisions contained in section 581ZJ.*

(*3*) *The surplus if any, remaining after making provision for payment of limited return and reserves referred to in section 581ZI, may be disbursed as patronage bonus, amongst the Members, in proportion to their participation in the business of the Producer Company, either in cash or by way of allotment of equity shares, or both, as may be decided by the Members at the general meeting.*

**581F. MEMORANDUM OF PRODUCER COMPANY**

*The memorandum of association of every Producer Company shall state* : -

(a) *the name of the company with "Producer Company Limited" as the last words of the name of such Company* ; (b) *the State in which the registered office of the Producer Company is to situate* ;

(c) *the main objects of the Producer Company shall be one or more of the objects specified in section 581B* ; (d) *the names and addresses of the persons who have subscribed to the memorandum* ;

(e) *the amount of share capital with which the Producer Company is to be registered and division thereof into shares of a fixed amount* ;

(f) *the names, addresses and occupations of the subscribers being producers, who shall act as the first directors in accordance with sub-section* (*2*) *of section 581J* ;

(g) *that the liability of its members is limited* ;

(h) *opposite to the subscriber's name the number of shares each subscriber takes* :

**Provided** *that no subscriber shall take less than one share* ;

(i) *in case the objects of the Producer Company are not confined to one State, the States to whose territories the objects extend.*

**581G. ARTICLES OF ASSOCIATION**

(*1*) *There shall be presented, for registration to the Registrar of the State to which the registered office of the Producer Company is, stated by the memorandum of association, to be situate* : -

(a) *memorandum of the Producer Company* ;
(b) *its articles duly signed by the subscribers to the memorandum.*

(*2*) *The articles shall contain the following mutual assistance principles, namely* : -



(a) *the membership shall be voluntary and available, to all eligible persons who, can participate or avail of the facilities or services of the Producer Company, and are willing to accept the duties of membership* ;
(b) *each Member shall, save as otherwise provided in this Part, have only a single vote irrespective of the share holding* ;
(c) *the Producer Company shall be administered by a Board consisting of persons elected or appointed as directors in the manner consis-tent with the provisions of this Part and the Board shall be accountable to the Members*; (d) *save as provided in this Part, there shall be limited return on share capital* ;
(e) *the surplus arising out of the operations of the Producer Company shall be distributed in an equitable manner by* : -(i) *providing for the development of the business of the Producer Company* ;
(ii) *providing for common facilities* ; *and*
(iii) *distributing amongst the Members, as may be admissible in proportion to their respective participation in the business* ;
(f) *provision shall be made for the education of Members, employees and others, on the principles of mutuality and techniques of mutual assistance* ;
(g) *the Producer Company shall actively co-operate with other Producer Companies* (*and other organisations following similar principles*) *at local, national or international level so as to best serve the interest of their Members and the communities it purports to serve.*
(*3*) *Without prejudice to the generality of the foregoing provisions ofsub-sections* (1) *and* (2)*, the articles shall contain the following provisions, namely* : -
(a) *the qualifications for membership, the conditions for continuance or cancellation of membership and the terms, conditions and procedure for transfer of shares* ;
(b) *the manner of ascertaining the patronage and voting right based on patronage* ;
(c) *subject to the provisions contained in sub-section* (1) *of section 581N, the manner of constitution of the Board, its powers and duties, the minimum and maximum number of directors, manner of election and appointment of directors and retirement by rotation, qualifications for being elected or continuance as such and the terms of office of the said directors, their powers and duties,conditions for election or co-option of directors, method of removal of directors and the filling up of vacancies on the Board, and the manner and the terms of appointment of the Chief Executive* ; (d) *the election of the Chairman, term of office of directors and the Chairman, manner of voting at the general or special meetings of Members, procedure for voting, by directors at meetings of the Board, powers of the Chairman and the circumstances under which the Chairman may exercise a casting vote* ;
(e) *the circumstances under which, and the manner in which, the withheld price is to be determined and distributed* ; (f) *the manner of disbursement of patronage bonus in cash or by issue of equity shares, or both* ;
(g) *the contribution to be shared and related matters referred to in subsection* (*2*) *of section 581ZI* ;
(h) *the matters relating to issue of bonus shares out of general reserves as set out in section 581ZJ* ;
(i) *the basis and manner of allotment of equity shares of the Producer Company* in lieu *of the whole or part of the sale proceeds of produce or products supplied by the Members* ;
(j) *the amount of reserves, sources from which funds may be raised, limitation on raising of funds, restriction on the use of such funds and the extent of debt that may be contracted and the conditions thereof* ;
(k) *the credit, loans or advances which may be granted to a Member and the conditions for the grant of the same* ; (l) *the right of any Member to obtain information relating to general business of the company* ;
(m) *the basis and manner of distribution and disposal of funds availableafter meeting liabilities in the event of dissolution or liquidation of the Producer Company* ;
(n) *the authorisation for division, amalgamation, merger, creation of subsidiaries and the entering into joint ventures and other matters connected therewith* ;
(o) *laying of the memorandum and articles of the Producer Company before a special general meeting to be held within ninety days of its registration* ;
(p) *any other provision, which the Members may, by special resolution recommend to be included in articles.*

**581H. AMENDMENT OF MEMORANDUM**

(*1*) *A Producer Company shall not alter the conditions contained in its memorandum except in the cases, by the mode and to the extent for which express provision is made in this Act.*

(*2*) *A Producer Company may, by special resolution, not inconsistent with section 581B, alter its objects specified in its memorandum.*
(*3*) *A copy of the amended memorandum, together with a copy of the special resolution duly certified by two directors, shall be filed with the Registrar within thirty days from the date of adoption of any resolution referred to in sub-section* (*2*) :
***Provided*** *that in the case of transfer of the registered office of a Producer Company from the jurisdiction of one Registrar to*

*another, certified copies of the special resolution certified by two directors shall be filed with both the Registrars within thirty days, and each Registrar shall record the same, and thereupon the Registrar from whose jurisdiction the office is transferred, shall forthwith forward to the other Registrar all documents relating to the Producer Company.*

(*4*) *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* [1]*Company Law Board on petition.*

1. To be read as `National Company Law Tribunal'.



**581-I. AMENDMENT OF ARTICLES**

(*1*) *Any amendment of the articles shall be proposed by not less than two-third of the elected directors or by not less than one-third of the Members of the Producer Company, and adopted by the Members by a special resolution.* (*2*) *A copy of the amended articles together with the copy of the special resolution, both duly certified by two directors, shall be filed with the Registrar within thirty days from the date of its adoption.*

**581J. OPTION TO INTER-STATE CO-OPERATIVE SOCIETIES TO BECOME PRODUCER COMPANIES** (*1*) *Notwithstanding anything contained in sub-section* (*1*) *of section 581C, any inter-State co-operative society with objects not confined to one State may make an application to the Registrar for registration as Producer Company under this Part.*

(*2*) *Every application under sub-section* (*1*) *shall be accompanied by -*

(a) *a copy of the special resolution, of not less than two-third of total members of inter-State co-operative society, for its incorporation as a Producer Company under this Act* ;

(b) *a statement showing -*

(i) *names and addresses or the occupation of the directors and Chief Executive, if any, by whatever name called, of such co-operative* ; *and*

(ii) *list of members of such inter-State co-operative society* ;

(c) *a statement indicating that the inter-State co-operative society is engaged in any one or more of the objects specified in section 58IB*;

(d) *a declaration by two or more directors of the inter-State co-operative society certifying that particulars given in clauses* (a) *to* (c) *are correct.*

(*3*) *When an inter-State co-operative society is registered as a Producer Company, the words "Producer Company Limited" shall form part of its name with any word or expression to show its identity preceding it.*

(*4*) *On compliance with the requirements of sub-sections* (*1*) *to* (*3*)*, the Registrar shall, within a period of thirty days of the receipt of application, certify under his hand that the inter-State co-operative society applying for registration is registered and thereby incorporated as a Producer Company under this Part.*

(*5*) *A co-operative society formed by producers, by Federation or Union of co-operative societies of producers or co-operatives of producers, registered under any law for the time being in force which has extended its objects outside the State, either directly or through a union or federation of co-operatives of which it is a constituent, as the case may be, and any Federation or Unions of such co-operatives, which has so extended any of its objects or activities outside the State, shall be eligible to make an application under sub-section* (*1*) *and to obtain registration as a Producer Company under this Part.*

(*6*) *The inter-State co-operative society shall, upon registration under sub-section* (*1*)*, stand transformed into a Producer Company, and there-after shall be governed by the provisions of this Part to the exclusion of the lawby which it was earlier governed, save insofar as anything done or omitted to be done before its registration as a Producer Company, and notwithstanding anything contained in any other law for the time being in force, no person shall have any claim against the co-operative institution or the company by reason of such conversion or transformation.*

(*7*) *Upon registration as a Producer Company, the Registrar of Companies who registers the company shall forthwith intimate the Registrar with whom the erstwhile inter-State co-operative society was earlier registered for appropriate deletion of thesociety from its register.*

**581K. EFFECT OF INCORPORATION OF PRODUCER COMPANY**

*Every shareholder of the inter-State co-operative society immediately before the date of registration of Producer Company* (*hereafter referred toas the transformation date*) *shall be deemed to be registered on and from that date as a shareholder of the Producer Company to the extent of the face value of the shares held by such shareholder.*

**581L. VESTING OF UNDERTAKING IN PRODUCER COMPANY**

(*1*) *All properties and assets, movable and immovable, of, or belonging to, the inter-State co-operative society as on the transformation date, shall vest in the Producer Company.*

(*2*) *All the rights, debts, liabilities, interests, privileges and obligations of the inter-State co-operative society as on the transformation date shall stand transferred to, and be the rights, debts, liabilities, interests, privileges and obligations of, the Producer Company.*

(*3*) *Without prejudice to the provisions contained in sub-section* (*2*)*, all debts, liabilities and obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for, the society as on the transformation date for or in*

*connection with their purposes, shall be deemed to have been incurred, entered into, or engaged to be done by, with or for, the Producer Company.*

(*4*) *All sums of money due to the inter-State co-operative society immediately before the transformation date, shall be deemed to be due to the Producer Company.*

(*5*) *Every organisation, which was being managed immediately before the transformation date by the inter-State co-operative society shall be mana-ged by the Producer Company for such period, to such extent and in such manner as the circumstances may require.*

(*6*) *Every organisation which was getting financial, managerial or technical assistance from the inter-State co-operative society, immediately before the transformation date, may continue to be given financial, managerial or technical assistance, as the case may be, by the Producer Company, for such period, to such extent and in such manner as that company may deem fit.*



(*7*) *The amount representing the capital of the erstwhile inter-State co-operative society shall form part of the capital of the Producer Company.*

(*8*) *Any reference to the inter-State co-operative society in any law other than this Act or in any contract or other instrument, shall be deemed to be reference to the Producer Company.*

(*9*) *If, on the transformation date, there is pending any suit, arbitration, appeal or other legal proceeding of whatever nature by or against the inter-State co-operative society, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the incorporation of the Producer Company under section 581C or transformation of the inter-Stateco-operative society as a Producer Company under section 581J, as the case may be, but the suit, arbitration, appeal or other proceeding, may be continued, prosecuted and enforced by or against the Producer Company in the same manner and to the same extent as it would have, or may have been continued, prosecuted and enforced by or against the inter-State co-operative society as if the provisions contained in this Part had not come into force.*

**581M. CONCESSION, ETC., TO BE DEEMED TO HAVE BEEN GRANTED TO PRODUCER COMPANY**

*With effect from the transformation date, all fiscal and other concessions, licences, benefits, privileges and exemptions granted to the inter-State co-operative society in connection with the affairs and business of the inter-State co-operative society under any law for the time being in force shall be deemed to have been granted to the Producer Company.*

**581N. PROVISIONS IN RESPECT OF OFFICERS AND OTHER EMPLOYEES OF INTER-STATE CO-OPERATIVE SOCIETY**

*(1) Notwithstanding anything contained in section 581-O, all the directors in the inter-State co-operative society before the incorporation of the Producer Company shall continue in office for a period of one year from the transformation date and in accordance with the provisions of this Act.*

(*2*) *Every officer or other employee of the inter-State co-operative society* (*except a director of the Board, Chairman or Managing Director*) *serving in its employment immediately before the transformation date shall, insofar as such officer or other employee is employed in connection with the inter-State co-operative society which has vested in the Producer Company by virtue of this Act, become, as from the transformation date, an officer or, as the case may be, other employee of the Producer Company and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as to leave, leave travel concession, welfare scheme, medical benefit scheme, insurance, provident fund, other funds, retirement, voluntary retirement, gratuity and other benefits as he would have held under the erstwhile inter-State co-operative society if its undertaking had not vested in the Producer Company and shall continue to do so as an officer or, as the case may be, other employee of the Producer Company.*

(*3*) *Where an officer or other employee of the inter-State co-operative society opts under sub-section* (*2*) *not to be in employment or service of the Producer Company, such officer or other employee shall be deemed to have resigned.* (*4*) *Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the transfer of the services of any officer or other employee of the inter-State co-operative society to the Producer Company 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 or other authority.* (*5*) *The officers and other employees who have retired before the transformation date from the service of the inter-State co-operative society and are entitled to any benefits, rights or privileges, shall be entitled to receive the same benefits, rights or privileges from the Producer Company.*

(*6*) *The trusts of the provident fund or the gratuity fund of the inter-State cooperative society and any other bodies created for the welfare of officers or employees shall continue to discharge functions in the Producer Company as was being done hitherto in the inter-State co-operative society and any tax exemption granted to the provident fund or the gratuity fund would continue to be applied to the Producer Company.*

(*7*) *Notwithstanding anything contained in this Act or in any other law for the time being in force or in the regulations of the inter-State co-operative society, no director of the Board, Chairman, Managing Director or any other person entitled to manage the whole or substantial part of the business and affairs of the inter-State co-operative society shall be entitled to any compensation against the inter-State co-operative society or the Producer Company for the loss of office or for the premature termination of any contract of management entered into by him with the inter-State co-operative society.*

## *CHAPTER III: MANAGEMENT OF PRODUCER COMPANY*

### 581-O. NUMBER OF DIRECTORS

*Every Producer Company shall have at least five and not more than fifteen directors* :

**Provided** *that in the case of an inter-State co-operative society incorporated as a Producer Company, such company may have more than fifteen directors for a period of one year from the date of its incorporation as a Producer Company.*

### 581P. APPOINTMENT OF DIRECTORS

(*1*) *Save as provided in section 581N, the Members who sign the memorandum and the articles may designate therein the Board of directors* (*not lessthan five*) *who shall govern the affairs of the Producer Company until the directors are elected in accordance with the provisions of this section.*



(*2*) *The election of directors shall be conducted within a period of ninety days of the registration of the Producer Company* :

**Provided** *that in the case of an inter-State co-operative society which has been registered as a Producer Company under sub-section* (*4*) *of section 581J in which at least five directors* [*including the directors continuing in office under sub-section* (*1*) *of section 581N*] *hold office as such on the date of registration of such company, the provisions of this sub-section shall have effect as if for the words "ninety days", the words "three hundred and sixty five days" had been substituted.*

(*3*) *Every person shall hold office of a director for a period not less than one year but not exceeding five years as may be specified in the articles.*

(*4*) *Every director, who retires in accordance with the articles, shall be eligible for re-appointment as a director.* (*5*) *Save as provided in sub-section* (*2*), *the directors of the Board shall be elected or appointed by the Members in the annual general meeting.*

(*6*) *The Board may co-opt one or more expert directors or an additional director not exceeding one-fifth of the total number of directors or appoint any other person as additional director for such period as the Board may deem fit* : **Provided** *that the expert directors shall not have the right to vote in the election of the Chairman but shall be eligible to be elected as Chairman, if so provided by its articles* :

**Provided further** *that the maximum period, for which the expert director or the additional director holds office, shall not exceed such period as may be specified in the articles.*

### 581Q. VACATION OF OFFICE BY DIRECTORS

(*1*) *The office of the director of a Producer Company shall become vacant if-*

(a) *he is convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months* ;

(b) *the Producer Company, in which he is a director, has made a default in repayment of any advances or loans taken from any company or institution or any other person and such default continues for ninety days* ;

(c) *he has made a default in repayment of any advances or loans taken from the Producer Company in which he is a director* ;

(d) *the Producer Company, in which he is a director -*

(i) *has not filed the annual accounts and annual return for any continuous three financial years commencing on or after the 1st day of April, 2002* ; *or*

(ii) *has failed to, repay its deposit or withheld price or patronage bonus or interest thereon on due date, or pay dividend and such failure continues for one year or more* ;

(e) *default is made in holding election for the office of director, in the Producer Company in which he is a director, in accordance with the provisions of this Act and articles* ;

(f) *the annual general meeting or extraordinary general meeting of the Producer Company, in which he is a director, is not called in accordance with the provisions of this Act except due to natural calamity or such other reason.*

(*2*) *The provisions of sub-section* (*1*) *shall, as far as may be, apply to the director of a Producer institution which is a member of a Producer Company.*

### 581R. POWERS AND FUNCTIONS OF BOARD

(*1*) *Subject to the provisions of this Act and articles, the Board of directors of a Producer Company shall exercise all such powers and to do all such acts and things, as that company is authorised so to do.*

(*2*) *In particular and without prejudice to the generality of the foregoing powers, such powers may include all or any of the following matters, namely*: -

(a) *determination of the dividend payable* ;

(b) *determination of the quantum of withheld price and recommend patronage to be approved at general meeting* ; (c) *admission of new Members* ;

(d) *pursue and formulate the organisational policy, objectives, establish specific long-term and annual objectives, and approve corporate strategies and financial plans* ;

(e) *appointment of a Chief Executive and such other officers of the Producer Company, as may be specified in the articles* ;

(f) *exercise superintendence, direction and control over Chief Executive and other officers appointed by it* ;

(g) *cause proper books of account to be maintained* ; *prepare annual accounts to be placed before the annual general meeting with the auditor's report and the replies on qualifications, if any, made by the auditors* ;
(h) *acquisition or disposal of property of the Producer Company in its ordinary course of business* ;
(i) *investment of the funds of the Producer Company in the ordinary course of its business* ;
(j) *sanction any loan or advance, in connection with the business activities of the Producer Company to any Member, not being a director or his relative* ;
(k) *take such other measures or do such other acts as may be required in the discharge of its functions or exercise of its powers*.
(*3*) *All the powers specified in sub-sections* (*1*) *and* (*2*) *shall be exercised by the Board, by means of resolution passed at its meeting on behalf of the Producer Company.*
Explanation. - *For the removal of doubts, it is hereby declared that a director or a group of directors, who do not constitute the Board, shall not exercise any of the powers exercisable by it.*

**581S. MATTERS TO BE TRANSACTED AT GENERAL MEETING**



(*1*) *The Board of directors of a Producer Company shall exercise the following powers on behalf of that company, and it shall do so only by means of resolutions passed at the annual general meeting of its Members, namely* : - (a) *approval of budget and adoption of annual accounts of the Producer Company* ;
(b) *approval of patronage bonus* ;
(c) *issue of bonus shares* ;
(d) *declaration of limited return and decision on the distribution of patronage* ;
(e) *specify the conditions and limits of loans that may be given by the Board to any director* ; *and*
(f) *approval of any transaction of the nature as is to be reserved in the articles for approval by the Members.*

**581T. LIABILITY OF DIRECTORS**

(*1*) *When the directors vote for a resolution, or approve by any other means, anything done in contravention of the provisions of this Act or any other law for the time being in force or articles, they shall be jointly and severally liable to make good any loss or damage suffered by the Producer Company.*

(*2*) *Without prejudice to the provisions contained in sub-section* (*1*)*, the Producer Company shall have the right to recover from its director -*
(a) *where such director has made any profit as a result of the contravention specified in sub-section* (*1*)*, an amount equal to the profit so made* ;
(b) *where the Producer Company incurred a loss or damage as a result of the contravention specified in sub-section* (*1*)*, an amount equal to that loss or damage* ;
(*3*) *The liability imposed under this section shall be in addition to and not in derogation of a liability imposed on a director under this Act or any other law for the time being in force.*

**581U. COMMITTEE OF DIRECTORS**

(*1*) *The Board may constitute such number of committees as it may deem fit for the purpose of assisting the Board in the efficient discharge of its functions* :
**Provided** *that the Board shall not delegate any of its powers or assign the powers of the Chief Executive, to any committee.*

(*2*) *A committee constituted under sub-section* (*1*) *may, with the approval of the Board, co-opt such number of persons as it deems fit as members of the committee* :
**Provided** *that the Chief Executive appointed under section 581W or a director of the Producer Company shall be a member of such committee.*
(*3*) *Every such committee shall function under the general superintendence, direction and control of the Board, for such duration, and in such manner as the Board may direct.*
(*4*) *The fee and allowances to be paid to the members of the committee shall be such as may be determined by the Board.*
(*5*) *The minutes of each meeting of the committee shall be placed before the Board at its next meeting.*

**581V. MEETINGS OF BOARD AND QUORUM**

(*1*) *A meeting of the Board shall be held not less than once in every three months and at least four such meetings shall be held in every year.*

(*2*) *Notice of every meeting of the Board of directors 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.*
(*3*) *The Chief Executive shall give notice as aforesaid not less than seven days prior to the date of the meeting of the Board and if he fails to do so, he shall be punishable with fine which may extend to one thousand rupees* :
**Provided** *that a meeting of the Board may be called at shorter notice and the reasons thereof shall be recorded in writing by the Board.*
(*4*) *The quorum for a meeting of the Board shall be one-third of the total strength of directors, subject to a minimum of three.*

(*5*) *Save as provided in the articles, directors including the co-opted director, may be paid such fees and allowances for attendance at the meetings of the Board, as may be decided by the Members in the general meeting.*

**581W. CHIEF EXECUTIVE AND HIS FUNCTIONS**

(*1*) *Every Producer Company shall have a full time Chief Executive, by whatever name called, to be appointed by the Board from amongst persons other than Members.*

(*2*) *The Chief Executive shall be ex officio director of the Board and such director shall not retire by rotation.* (*3*) *Save as otherwise provided in articles, the qualifications, experience and the terms and conditions of service of the Chief Executive shall be such as may be determined by the Board.*

(*4*) *The Chief Executive shall be entrusted with substantial powers of mana-gement as the Board may determine.* (*5*) *Without prejudice to the generality of sub-section* (*4*)*, the Chief Executive may exercise the powers and discharge the functions, namely* :-

(a) *do administrative acts of a routine nature including managing the day-to-day affairs of the Producer Company* ; (b) *operate bank accounts or authorise any person, subject to the gene-ral or special approval of the Board in this behalf, to operate the bank account* ;

(c) *make arrangements for safe custody of cash and other assets of the Producer Company* ;

(d) *sign such documents as may be authorised by the Board, for and on behalf of the company* ;



(e) *maintain proper books of account* ; *prepare annual accounts and audit thereof* ; *place the audited accounts before the Board and in the annual general meeting of the Members* ;

(f) *furnish Members with periodic information to appraise them of the operation and functions of the Producer Company* ;

(g) *make appointments to posts in accordance with the powers dele-gated to him by the Board* ;

(h) *assist the Board in the formulation of goals, objectives, strategies, plans and policies* ;

(i) *advise the Board with respect to legal and regulatory matters concerning the proposed and on going activities and take necessary action in respect thereof* ;

(j) *exercise the powers as may be necessary in the ordinary course of business* ;

(k) *discharge such other functions, and exercise such other powers, as may be delegated by the Board.*

(*6*) *The Chief Executive shall manage the affairs of the Producer Company under the general superintendence, direction and control of the Board and be accountable for the performance of the Producer Company.*

**581X. SECRETARY OF PRODUCER COMPANY**

(*1*) *Every Producer Company having an average annual turnover exceeding five crore rupees in each of three consecutive financial years shall have a whole-time secretary.*

(*2*) *No individual shall be appointed as whole-time secretary unless he possesses membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980.*

(*3*) *If a Producer Company fails to comply with the provisions 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 five hundred rupees for every day during which the default continues* :

**Provided** *that in any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of sub-section* (*1*) *were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole-time secretary.*

**581Y. QUORUM**

*Unless the articles require a larger number, one-fourth of the total membership shall constitute the quorum at a general meeting.*

**581Z. VOTING RIGHTS**

*Save as otherwise provided in sub-sections* (*1*) *and* (*3*) *of section 58ID, every Member shall have one vote and in the case of equality of votes, the Chairman or the person presiding shall have a casting vote except in the case of election of the Chairman.*

***CHAPTER IV: GENERAL MEETINGS***

**581ZA. ANNUAL GENERAL MEETINGS**

(*1*) *Every Producer Company shall in each year, hold, in addition to anyother 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 Producer Company and that of the next* : **Provided** *that the Registrar may, for any special reason, permit extension of the time for holding any annual general meeting* (*not being the first annual general meeting*) *by a period not exceeding three months.*

(*2*) *A Producer Company shall hold its first annual general meeting within a period of ninety days from the date of its incorporation.*

(*3*) *The Members shall adopt the articles of the Producer Company and appoint directors of its Board in the annual general meeting.*
(*4*) *The notice calling the annual general meeting shall be accompanied by the following documents, namely* :- (a) *the agenda of the annual general meeting* ;
(b) *the minutes of the previous annual general meeting or the extraordinary general meeting* ;
(c) *the names of candidates for election, if any, to the office of director including a statement of qualifications in respect of each candidate*;
(d) *the audited balance-sheet and profit and loss accounts of the Producer Company and its subsidiary, if any, together with a report of the Board of directors of such Company with respect to -*
(i) *the state of affairs of the Producer Company* ;
(ii) *the amount proposed to be carried to reserve* ;
(iii) *the amount to be paid as limited return on share capital* ;
(iv) *the amount proposed to be disbursed as patronage bonus* ;
(v) *the material changes and commitments, if any, affecting the financial position of the Producer Company and its subsidiary, which have occurred in between the date of the annual accounts of the Producer Company to which the balance sheet relates and the date of the report of the Board* ;
(vi) *any other matter of importance relating to energy conservation, environmental protection, expenditure or earnings in foreign exchanges* ;
(vii) *any other matter which is required to be, or may be, specified by the Board* ;
(e) *the text of the draft resolution for appointment of auditors* ;



(f) *the text of any draft resolution proposing amendment to the memorandum or articles to be considered at the general meeting, along with the recommendations of the Board.*
(*4*) *The Board of directors shall, on the requisition made in writing, duly signed and setting out the matters for the consideration, made by one-third of the Members entitled to vote in any general meeting, proceed to call an extraordinary general meeting in accordance with the provisions contained in sections 169 to 186 of this Act.* (*5*) *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 at the registered office of the Producer Company or at some other place within the city, town or village in which the registered office of the Company is situate.*
(*6*) *A general meeting of the Producer Company shall be called by giving not less than fourteen days prior notice in writing.*
(*7*) *The notice of the general meeting indicating the date, time and place of the meeting shall be sent to every Member and auditor of the Producer Company.*
(*8*) *Unless the articles of the Producer Company provide for a larger number, one-fourth of the total number of members of the Producer Company shall be the quorum for its annual general meeting.*
(*9*) *The proceedings of every annual general meeting along with the Directors' Report, the audited balance sheet and the profit and loss account shall be filed with the Registrar within sixty days of the date on which the annual general meeting is held, with an annual return along with the filing fees as applicable under the Act.*
(*10*) *In the case where a Producer Company is formed by Producer institutions, such institutions shall be represented in the general body through the Chairman or the Chief Executive thereof who shall be competent to act on its behalf* : **Provided** *that a Producer institution shall not be represented if such institution makes a default or failure referred to in clauses* (d) *to* (f) *of sub-section* (*1*) *of section 581Q.*

## *CHAPTER V: SHARE CAPITAL AND MEMBERS RIGHTS*

### 581ZB. SHARE CAPITAL

(*1*) *The share capital of a Producer Company shall consist of equity shares only.*

(*2*) *The shares held by a Member in a Producer Company, shall as far as may be, be in proportion to the patronage of that company.*

### 581ZC. SPECIAL USER RIGHTS

(*1*) *The producers, who are active Members may, if so provided in the articles, have special rights and the Producer Company may issue appropriate instruments to them in respect of such special rights.*

(*2*) *The instruments of the Producer Company issued under sub-section* (*1*) *shall, after obtaining approval of the Board in that behalf, be transferable to any other active Member of that Producer Company.*
Explanation. - *For the purposes of this section, the expression "special right" means any right relating to supply of additional produce by the active Member or any other right relating to his produce which may be conferred upon him by the Board.*

### 581ZD. TRANSFERABILITY OF SHARES AND ATTENDANT RIGHTS

(*1*) *Save as otherwise provided in sub-sections* (*2*) *to* (*4*), *the shares of a Member of a Producer Company shall not be transferable.*

(*2*) *A Member of a Producer Company may, after obtaining the previous approval of the Board, transfer the whole or part of his shares along with any special rights, to an active Member at par value.*

(*3*) *Every Member shall, within three months of his becoming a Member in the Producer Company, nominate, in the manner specified in articles, a person to whom his shares in the Producer Company shall vest in the event of his death.*

(*4*) *The nominee shall, on the death of the Member, become entitled to all the rights in the shares of the Producer Company and the Board of that Company shall transfer the shares of the deceased Member to his nominee*: **Provided** *that in a case where such nominee is not a producer, the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board.*

(*5*) *Where the Board of a Producer Company is satisfied that -*

(a) *any Member has ceased to be a primary producer* ; *or*

(b) *any Member has failed to retain his qualifications to be a Member as specified in articles,*

*the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board* :

**Provided** *that the Board shall not direct such surrender of shares unless the Member has been served with a written notice and given an opportunity of being heard.*

## *CHAPTER VI: FINANCE, ACCOUNTS AND AUDIT*

### 581ZE. BOOKS OF ACCOUNT

(*1*) *Every Producer Company shall keep at its registered office proper books of account with respect to -*



(a) *all sums of money received and expended by the Producer Company and the matters in respect of which the receipts and expenditure take place* ;

(b) *all sales and purchase of goods by the Producer Company* ;

(c) *the instruments of liability executed by or on behalf of the Producer Company* ;

(d) *the assets and liabilities of the Producer Company* ;

(e) *in case of a Producer Company engaged in production, processing and manufacturing, the particulars relating to utilisation of materials or labour or other items of costs.*

(*2*) *The balance sheet and profit and loss accounts of the Producer Company shall be prepared, as far as may be, in accordance with the provisions contained in section 211.*

### 581ZF. INTERNAL AUDIT

*Every Producer Company shall have internal audit of its accounts carried out, at such interval and in such manner as may be specified in articles, by a chartered accountant as defined in clause* (b) *of sub-section* (*1*) *of section 2 of the Institute of Chartered Accountants Act, 1949* (*38 of 1949*).

### 581ZG. DUTIES OF AUDITOR UNDER THIS PART

*Without prejudice to the provisions contained in section 227, the auditor shall report on the following additional matters relating to the Producer Company, namely* : -

(a) *the amount of debts due along with particulars of bad debts if any* :

(b) *the verification of cash balance and securities* ;

(c) *the details of assets and liabilities* ;

(d) *all transactions which appear to be contrary to the provisions of this Part* ;

(e) *the loans given by the Producer Company to the directors* ;

(f) *the donations or subscriptions given by the Producer Company* ;

(g) *any other matter as may be considered necessary by the auditor.*

### 581ZH. DONATIONS OR SUBSCRIPTION BY PRODUCER COMPANY

*A Producer Company may, by special resolution, make donation or subscription to any institution or individual for the purposes of -*

(a) *promoting the social and economic welfare of Producer Members or producers or general public* ; *or*

(b) *promoting the mutual assistance principles* :

**Provided** *that the aggregate amount of all such donation and subscriptionin any financial year shall not exceed three per cent of the net profit of the Producer Company in the financial year immediately preceding the financial year in which the donation or subscription was made*:

**Provided further***that no Producer Company shall make directly or indirectly to any political party or for any political purpose to any person any contribution or subscription or make available any facilities including personnel or material.*

### 581ZI. GENERAL AND OTHER RESERVES

(*1*) *Every Producer Company shall maintain a general reserve in every financial year, in addition to any reserve maintained by it as may be specified in articles.*

(*2*) *In a case where the Producer Company does not have sufficient funds in any financial year for transfer to maintain the reserves as may be specified in articles, the contribution to the reserve shall be shared amongst the Members in proportion to their patronage in the business of that company in that year.*

**581ZJ. ISSUE OF BONUS SHARES**

*Any Producer Company may, upon recommendation of the Board and passing of resolution in the general meeting, issue bonus shares by capitalisation of amounts from general reserves referred to in section 581ZI in proportion to the shares held by the Members on the date of the issue of such shares.*

***CHAPTER VII: LOANS TO MEMBERS AND INVESTMENTS***

**581ZK. LOAN, ETC., TO MEMBERS**

*The Board may, subject to the provisions made in articles, provide financial assistance to the Members of the Producer Company by way of -*

(a) *credit facility, to any Member, in connection with the business of the Producer Company, for a period not exceeding six months* ;

(b) *loans and advances, against security specified in articles to any Member, repayable within a period exceeding three months but not exceeding seven years from the date of disbursement of such loan or advances* :

**Provided** *that any loan or advance to any director or his relative shall be granted only after the approval by the Members in general meeting.*

**581ZL. INVESTMENT IN OTHER COMPANIES, FORMATION OF SUBSIDIARIES, ETC**

(*1*) *The general reserves of any Producer Company shall be invested to secure the highest returns available from approved securities, fixed deposits, units, bonds issued by the Government or co-operative or scheduled bank or in such other mode as may be prescribed.*

(*2*) *Any Producer Company may, for promotion of its objectives acquire the shares of another Producer Company.*



(*3*) *Any Producer Company may subscribe to the share capital of, or enter into any agreement or other arrangement, whether by way of formation of its subsidiary company, joint venture or in any other manner with any body corporate, for the purpose of promoting the objects of the Producer Company by special resolution in this behalf.*

(*4*) *Any Producer Company, either by itself or together with its subsidiaries, may invest, by way of subscription, purchase or otherwise, shares in any other company, other than a Producer Company, specified under sub-section* (*2*)*, or subscription of capital under sub-section* (*3*)*, for an amount not exceeding thirty per cent of the aggregate of its paid-up capital and free reserves* :

**Provided** *that a Producer Company may, by special resolution passed in its general meeting and with prior approval of the Central Government, invest in excess of the limits specified in this section.*

(*5*) *All investments by a Producer Company may be made if such investments are consistent with the objects of the Producer Company.*

(*6*) *The Board of a Producer Company may, with the previous approval of Members by a special resolution, dispose of any of its investments referred to in sub-sections* (*3*) *and* (*4*)*.*

(*7*) *Every Producer Company shall maintain a register containing particulars of all the investments, showing the names of the companies in which shares have been acquired, number and value of shares* ; *the date of acquisition* ; *and the manner and price at which any of the shares have been subsequently disposed of.*

(*8*) *The register referred to in sub-section* (*7*) *shall be kept at the registered office of the Producer Company and the same shall be open to inspection by any Member who may take extracts therefrom.*

***CHAPTER VIII: PENALTIES***

**581ZM. PENALTY FOR CONTRAVENTION**

(*1*) *If any person, other than a Producer Company registered under this Part, carries on business under any name which contains the words "Producer Company Limited", he shall be punishable with fine which may extend to ten thousand rupees for every day during which such name has been used by him.*

(*2*) *If a director or an officer of a Producer Company, who wilfully fails to furnish any information relating to the affairs of the Producer Company required by a Member or a person duly authorised in this behalf, he shall be liable to imprisonment for a term which may extend to six months and with fine equivalent to five per cent of the turnover of that company during preceding financial year.*

(*3*) *If a director or officer of a Producer Company -*

(a) *makes a default in handing over the custody of books of account and other documents or property in his custody to the Producer Company of which he is a director or officer* ; *or*

(b) *fails to convene annual general meeting or other general meetings,*

*he shall be punishable with fine which may extend to one lakh rupees, and in the case of a continuing default or failure, with an additional fine which may extend to ten thousand rupees for every day during which such default or failure continues.*

## *CHAPTER IX: AMALGAMATION, MERGER OR DIVISION*

### 581ZN. AMALGAMATION, MERGER OR DIVISION, ETC., TO FORM NEW PRODUCER COMPANIES

(*1*) *A Producer Company may, by a resolution passed at its general meeting,-*

(a) *decide to transfer its assets and liabilities, in whole or in part, to any other producer Company, which agrees to such transfer by a resolution passed at its general meeting, for any of the objects specified in section 581B* ; (b) *divide itself into two or more new Producer Companies.*

(*2*) *Any two or more Producer Companies may, by a resolution passed at any general or special meetings of its Members, decide to -*

(a) *amalgamate and form a new Producer Company* ; *or*

(b) *merge one Producer Company* (*hereafter referred to as "merging company"*) *with another Producer Company* (*hereafter referred to as "merged company"*).

(*3*) *Every resolution of a Producer Company under this section shall be passed at its general meeting by a majority of total Members, with right of vote not less than two-thirds of its Members present and voting and such resolution shall contain all particulars of the transfer of assets and liabilities, or division, amalgamation, or merger, as the case may be.*

(*4*) *Before passing a resolution under this section, the Producer Company shall give notice thereof in writing together with a copy of the proposed resolution to all the Members and creditors who may give their consent.*

(*5*) *Notwithstanding anything contained in articles or in any contract to the contrary, any Member, or any creditor not consenting to the resolution shall, during the period of one month of the date of service of the notice on him, have the option, -*

(a) *in the case of any such Member, to transfer his shares with the approval of the Board to any active Member thereby ceasing to continue as a Member of that company* ; *or*

(b) *in the case of a creditor, to withdraw his deposit or loan or advance, as the case may be.*

(*6*) *Any Member or creditor, who does not exercise his option within the period specified in sub-section* (*5*)*, shall be deemed to have consented to the resolution.*

(*7*) *A resolution passed by a Producer Company under this section shall not take effect until the expiry of one month or until the assent thereto of all the Members and creditors has been obtained, whichever is earlier.*



(*8*) *The resolution referred to in this section shall provide for -*

(a) *the regulation of conduct of the Producer Company's affairs in the future* ;

(b) *the purchase of shares or interest of any Members of the Producer Company by other Members or by the Producer Company* ;

(c) *in the case of purchase of shares of one Producer Company by another Producer Company, the consequent reduction of its share capital* ;

(d) *termination, setting aside or modification of any agreement, howsoever arrived between the company on the one hand and the directors, secretaries and manager on the other hand, apart from such terms and conditions as may, in the opinion of the majority of shareholders, be just and equitable in the circumstances of the case*;

(e) *termination, setting aside or modification of any agreement between the Producer Company and any person not referred to in clause* (d):

**Provided** *that no such agreement shall be terminated, set aside or modified except after giving due notice to the party concerned* :

**Provided further** *that no such agreement shall be modified except after obtaining the consent of the party concerned*; (f) *the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property, made or done by or against the Producer Company within three months before the date of passing of the resolution, which would if made or done against any individual, be deemed in his insolvency to be a fraudulent preference* ;

(g) *the transfer to the merged company of the whole or any part of the undertaking, property or liability of the Producer Company* ;

(h) *the allotment or appropriation by the merged company of any shares, debentures, policies, or other like interests in the merged company*;

(i) *the continuation by or against the merged company of any legal proceedings pending by or against any Producer Company* ;

(j) *the dissolution, without winding up, of any Producer Company* ;

(k) *the provision to be made for the Members or creditors who make dissent* ;

(l) *the taxes if any, to be paid by the Producer Company* ;

(m) *such incidental, consequential and supplemental matters as are necessary to secure that the division, amalgamation or merger shall be fully and effectively carried out.*

(*9*) *When a resolution passed by a Producer Company under this section takes effect, the resolution shall be a sufficient conveyance to vest the assets and liabilities in the transferee.*

(*10*) *The Producer Company shall make arrangements for meeting in full or otherwise satisfying all claims of the Members and the creditors who exercise the option, within the period specified in sub-section* (*4*)*, not to continue as the Member or creditor, as the case may be.*

(*11*) *Where the whole of the assets and liabilities of a Producer Company are transferred to another Producer Company in accordance with the provisions of sub-section* (*9*)*, or where there is merger under sub-section* (*2*)*, the registration of the first mentioned Company or the merging company, as the case may be, shall stand cancelled and that Company shall be deemed to have been dissolved and shall cease to exist forthwith as a corporate body.* (*12*) *Where two or more Producer Companies are amalgamated into a new Producer Company in accordance with the provisions of sub-section* (*2*) *and the Producer Company so formed is duly registered by the Registrar, the registration of each of the amalgamating companies shall stand cancelled forthwith on such registration and each of the Companies shall thereupon cease to exist as a corporate body.*

(*13*) *Where a Producer Company divides itself into two or more Producer Companies in accordance with the provisions of clause* (b) *of sub-section* (*1*) *and the new Producer Companies are registered in accordance with the provisions of sub-section* (*8*)*, the registration of the erstwhile Producer Company shall stand cancelled forthwith and that Company shall be deemed to have been dissolved and cease to exist as a corporate body.*

(*14*) *The amalgamation, merger or division of companies under the foregoing sub-sections shall not in any manner whatsoever affect the pre-existing rights or obligations and any legal proceedings that might have been continued or commenced by or against any erstwhile company before the amalgamation, merger or division, may be continued or commenced by, oragainst, the concerned resulting company, or merged company, as the case may be.*

(*15*) *The Registrar shall strike off the names of every Producer Company deemed to have been dissolved under sub-sections* (*11*) *to* (*14*)*.*

(*16*) *Any member or creditor or employee aggrieved by the transfer of assets, division, amalgamation or merger may, within thirty days of the passing of the resolution, prefer an appeal to the High Court.*

(*17*) *The High Court shall, after giving a reasonable opportunity to the person concerned, pass such orders thereon as it may deem fit.*

(*18*) *Where an appeal has been filed under sub-section* (*16*)*, the transfer of assets, division, amalgamation or merger of the Producer Company shall be subject to the decision of the High Court.*

## *CHAPTER X: RESOLUTION OF DISPUTES*

### 581ZO. DISPUTES

(*1*) *Where any dispute relating to the formation, management or business of a Producer Company arises -*

(a) *amongst Members, former Members or persons claiming to be Members or nominees of deceased Members* ; *or* (b) *between a Member, former Member or a person claiming to be a Member, or nominee of deceased Member and the Producer Company, its Board of directors, office-bearers, or liquidator, past or present* ; *or*



(c) *between the Producer Company or its Board, and any director, office bearer or any former director, or the nominee, heir or legal representative of any deceased director of the Producer Company,*

*such dispute shall be settled by conciliation or by arbitration as provided under the Arbitration and Conciliation Act, 1996* (*26 of 1996*) *as if the parties to the dispute have consented in writing for determination of such disputes by conciliation or by arbitration and the provisions of the said Act shall apply accordingly.*

Explanation. - *For the purposes of this section, a dispute shall include -*

(a) *a claim for any debt or other amount due* ;

(b) *a claim by surety against the principal debtor, where the Producer Company has recovered from the surety amount in respect of any debtor or other amount due to it from the principal debtor as a result of the default of the principal debtor whether such debt or amount due be admitted or not* ;

(c) *a claim by Producer Company against a Member for failure to supply produce as required of him* ;

(d) *a claim by a Member against the Producer Company for not taking goods supplied by him.*

(*2*) *If any question arises whether the dispute relates to formation, management or business of the Producer Company, the question shall be referred to the arbitrator, whose decision thereon shall be final.*

## *CHAPTER XI: MISCELLANEOUS PROVISIONS*

### 581ZP. STRIKE OFF NAME OF PRODUCER COMPANY

(*1*) *Where a Producer Company fails to commence business within one year of its registration or ceases to transact business with the Members or if the Registrar is satisfied, after making such inquiry as he thinks fit, that the Producer Company is no longer carrying on any of its objects specified in section 581B, he shall make an order striking off the name of the Producer Company, which shall thereupon cease to exist forthwith* :

**Provided** *that no such order cancelling the registration as aforesaid shall be passed until a notice to show cause has been given by the Registrar to the Producer Company with a copy to all its directors on the proposed action and reasonable opportunity to represent its case has been given.*

(*2*) *Where the Registrar has reasonable cause to believe that a Producer Company is not maintaining any of the mutual assistance principles specified, he shall strike its name off the register in accordance with the provisions contained in section 560 of this Act.*

(*3*) *Any Member of a Producer Company, who is aggrieved by an order made under sub-section* (*1*)*, may appeal to the* [1]*Company Law Board within sixty days of the order.*

(*4*) *Where an appeal is filed under sub-section* (*3*)*, the order striking off the name shall not take effect until the appeal is disposed of.*

1. To be read as `National Company Law Tribunal'.

**581ZQ. PROVISIONS OF THIS PART TO OVERRIDE OTHER LAWS**

*The provisions of this Part shall have effect notwithstanding anything inconsistent therewith contained in this Act or any other law for the timebeing in force or any instrument having effect by virtue of any such law* ; *but the provisions of any such Act or law or instrument insofar as the same are not varied by, or are inconsistent with, the provisions of this Part shall apply to the Producer Company.*

**581ZR. APPLICATION OF PROVISIONS RELATING TO PRIVATE COMPANIES**

*All the limitations, restrictions and provisions of this Act, other than those specified in this Part, applicable to a private company, shall, as far as may be, apply to a Producer Company, as if it is a private limited company under this Act insofar as they are not in conflict with the provisions of this Part.*

***CHAPTER XII: RECONVERSION OF PRODUCER COMPANY TO INTER-STATE CO-OPERATIVE SOCIETY***

**581ZS. RECONVERSION OF PRODUCER COMPANY TO INTER-STATE CO-OPERATIVE SOCIETY**

(*1*) *Any Producer Company, being an erstwhile inter-State co-operative society, formed and registered under this Part, may make an application -*

(a) *after passing a resolution in the general meeting by not less than two-third of its Members present and voting* ; *or* (b) *on request by its creditors representing three-fourth value of its total creditors,*

*to the High Court for its re-conversion to the inter-State co-operative society.*

(*2*) *The High Court shall, on the application made under sub-section* (*1*)*, direct holding meeting of its Members or such creditors, as the case may be, to be conducted in such manner as it may direct.*

(*3*) *If a majority in number representing three-fourths in value of the creditors, or Members, as the case may be, present and voting in person at the meeting conducted in pursuance of the directions of the High Court under sub-section* (*2*)*, agree for re-conversion, if sanctioned by the High Court, be binding on all the Members and all the creditors, as the case may be, and also on the company which is being converted*:

**Provided** *that no order sanctioning re-conversion shall be made by the Court unless the Court is satisfied that the company or any other person by whom an application has been made under sub-section* (*1*) *has disclosed to the Court, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like.*

(*4*) *An order made by the Court under sub-section* (*3*) *shall have no effect until a certified copy of the order has been filed with the Registrar.*



(*5*) *A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.*

(*6*) *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 one hundred rupees, for each copy in respect of which default is made.*

(*7*) *The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the company on such terms as the Court thinks fit, until the application is finally disposed of.*

(*8*) *Every Producer Company which has been sanctioned reconversion by the High Court, shall make an application, under the Multi-State Co-operative Societies Act, 1984* (*51 of 1984*) *or any other law for the time being in force for its registration as multi-State co-operative society or co-operative society, as the case may be, within six months of sanction by the High Court and file a report thereof to the High Court and the Registrar of companies and to the Registrar of the co-operative societies under which it has been registered as a multi-State co-operative society or co-operative society, as the case may be.*

**581ZT. POWER TO MODIFY ACT IN ITS APPLICATION TO PRODUCER COMPANIES**

(*1*) *The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act* (*other than those contained in this Part*) *specified in the said notification -*

(a) *shall not apply to the Producer Companies or any class or category thereof* ; *or*

(b) *shall apply to the Producer Companies or any class or category thereof with such exception or adaptation as may be specified in the notification.*

(*2*) *A copy of every notification proposed to be issued under sub-section* (*1*)*, 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, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.*]

## PART X: WINDING UP OF UNREGISTERED COMPANIES

### 582. MEANING OF "UNREGISTERED COMPANY"

For the purposes of this Part, the expression "unregistered company" -

(*a*)shall not include -

(*i*) a railway company incorporated by any Act of Parliament or other Indian law or any Act of Parliament of the United Kingdom ;

(*ii*)a company registered under this Act ; or

(*iii*) a company registered under any previous companies law and not being a company the registered office whereof was in Burma, Aden or Pakistan immediately before the separation of that country from India ; and

(*b*)save as aforesaid, shall include any partnership, association or company consisting of more than seven members at the time when the petition for winding up the partnership, association or company, as the case may be, is presented before the 1[*Tribunal*].

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

### 583. WINDING UP OF UNREGISTERED COMPANIES

(1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in sub-sections 1[(3)] to (5).

(2) 2[* * * ]

(3) No unregistered company shall be wound up under this Act voluntarily 3[*by the Tribunal*].

(4) The circumstances in which an unregistered company may be wound up are as follows :

(*a*)if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs ;

(*b*)if the company is unable to pay its debts ;

(*c*) if the 4[*Tribunal*] is of opinion that it is just and equitable that the company should be wound up.

(5) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts -

(*a*) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, 5[***] manager or principal officer of the company, or by otherwise serving in such manner as the 3[*Tribunal*] may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has, for three weeks after the service of the demand, neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor ;



(*b*)if any suit or other legal proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, 6[***] manager or principal officer of the company or by otherwise serving the same in such manner as the 7[*Tribunal*] may approve or direct, the company has not, within ten days after service of the notice, -

(*i*)paid, secured or compounded for the debt or demand ; or

(*ii*)procured the suit or other legal proceeding to be stayed ; or

(*iii*)indemnified the defendant to his satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same ;

(*c*)if execution or other process issued on a decree or order of any court8[*orTribunal*] in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied in whole or in part ;

(*d*)if it is otherwise proved to the satisfaction of the 7[*Tribunal*] that the company is unable to pay its debts.

**1.** Substituted for "(2)" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) 2**.** Omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) Prior to its omission, sub-section (2) read as under :

"(2) For the purpose of determining the Court having jurisdiction in the matter of the winding up, an unregistered

company shall be deemed to be registered in the State where its principal place of business is situate or, if it has a principal place of business situate in more than one State, then, in each State where it has a principal place of business ; and the principal place of business situate in that State in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company." 3. Substituted for "or subject to the supervision of the court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)
4. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) 5. Words "managing agent, secretaries and treasurers," 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.
7. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) 8. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

**584. POWER TO WIND UP FOREIGN COMPANIES, ALTHOUGH DISSOLVED**

Where a body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under this Part, notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it was incorporated.

**585. CONTRIBUTORIES IN WINDING UP OF UNREGISTERED COMPANY**

(1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory, who is liable to pay, or contribute to the payment of, -
(*a*)any debt or liability of the company ; or
(*b*)any sum for the adjustment of the rights of the members among themselves ; or
(*c*)the costs, charges and expenses of winding up the company.

(2) Every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any liability to pay or contribute as aforesaid.
(3) In the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

**586. POWER TO STAY OR RESTRAIN PROCEEDINGS**

The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order, shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

**587. SUITS, ETC., STAYED ON WINDING UP ORDER**

Where an order has been made for winding up an unregistered company, no suit or other legal proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the 1[*Tribunal*] and except on such terms as the 1[*Tribunal*] may impose.

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

**588. DIRECTIONS AS TO PROPERTY IN CERTAIN CASES**



(1) If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the 1[*Tribunal*] may, by the winding up order or by any subsequent order, direct that all or any part of the property, movable or immovable (including actionable claims), belonging to the company or held by trustees on its behalf, shall vest in the Official Liquidator by his official name ; and thereupon the property or the part thereof specified in the order shall vest accordingly.
(2) The Official Liquidator may, after giving such indemnity, if any, as the 1[*Tribunal*] may direct, bring or defend in his official name any suit or legal proceeding relating to that property, or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

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

**589. PROVISIONS OF PART CUMULATIVE**

(1) The provisions of this Part with respect to unregistered companies shall be in addition to and not in derogation of, any provisions hereinbefore in this Act contained with respect to the winding up of companies by the 1[*Tribunal*]. (2) The 1[*Tribunal*] or Official Liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by the 1[*Tribunal*] or Official Liquidator in winding up companies formed and registered under this Act : ***Provided*** that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

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

**590. SAVING AND CONSTRUCTION OF ENACTMENTS CONFERRING POWER TO WIND UP PARTNERSHIP, ASSOCIATION OR COMPANY IN CERTAIN CASES**

Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under the Indian Companies Act, 1913 (7 of 1913) or any Act repealed by that Act :

***Provided*** that references in any such enactment to any provision contained in the Indian Companies Act, 1913 (7 of 1913) or in any Act repealed by that Act shall be read as references to the corresponding provision, if any contained in this Act.

## PART XI: COMPANIES INCORPORATED OUTSIDE INDIA

***Provisions as to establishment of places of business in India***

**591. APPLICATION OF SECTIONS 592 TO 602 TO FOREIGN COMPANIES**

(1) Sections 592 to 602, both inclusive, shall apply to all foreign companies, that is to say, companies falling under the following two classes, namely : -

(*a*)companies incorporated outside India which, after the commencement of this Act, establish a place of business within India ; and

(*b*)companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act.

(2) Notwithstanding anything contained in sub-section (1), where not less than fifty per cent, of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and having an established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more citizens of India and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India.

**592. DOCUMENTS, ETC., TO BE DELIVERED TO REGISTRAR BY FOREIGN COMPANIES CARRYING ON BUSINESS IN INDIA**

(1) Foreign companies which, after the commencement of this Act, establish a place of business within India shall, within thirty days of the establishment of the place of business, deliver to the Registrar for registration -

(*a*)a certified copy of the charter, statutes, or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company ; and, if the instrument is not in the English language, a certified translation thereof;

(*b*)the full address of the registered or principal office of the company ;

(*c*)a list of the directors and secretary of the company, containing the particulars mentioned in sub-section (2) ; (*d*)the name and address or the names and addresses of some one or more persons resident in India, authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company ; and

(*e*)the full address of the office of the company in India which is to be deemed its principal place of business in India.

(2) The list referred to in clause (*c*)of sub-section (1) shall contain the following particulars, that is to say :



(*a*) with respect to each director, -

(*i*) in the case of an individual, his present name and surname in full, any former name or names and surname or surnames in full, his usual residential address, his nationality, and if that nationality is not the nationality of origin, his nationality of origin, and his business occupation, if any, or if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships ; and

(*ii*)in the case of a body corporate, its corporate name and registered or principal office ; and the full name, address, nationality, and nationality of origin, if different from that nationality, of each of its directors ;

(*b*)with respect to the secretary, or where there are joint secretaries, with respect to each of them -

(*i*)in the case of an individual, his present name and surname, any former name or names and surname or surnames, and his usual residential address ; and

(*ii*)in the case of a body corporate, its corporate name and registered or principal office :

***Provided*** that, where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in clause (*b*)of this sub-section.

(3) Clauses (*2*) and (*3*) of the *Explanation* to sub-section (1) of section 303 shall apply for the purpose of the construction of references in sub- section (2) to present and former names and surnames as they apply for the purposes of the construction of such references in sub-section (1) of section 303.

(4) Foreign companies, other than those mentioned in sub-section (1), shall, if they have not delivered to the Registrar before the commencement of this Act the documents and particulars specified in sub-section (1) of section 277 of the Indian Companies Act, 1913 (7 of 1913), continue to be subject to the obligation to deliver those documents and particulars in accordance with that Act.

**593. RETURN TO BE DELIVERED TO REGISTRAR BY FOREIGN COMPANY WHERE DOCUMENTS, ETC., ALTERED**

If any alteration is made or occurs in -

(*a*)the charter, statutes, or memorandum and articles of a foreign company or other instrument constituting or defining the constitution of a foreign company ; or

(*b*)the registered or principal office of a foreign company ; or

(*c*)the directors or secretary of a foreign company ; or

(*d*)the name or address of any of the persons authorised to accept service on behalf of a foreign company ; or (*e*) the principal place of business of the company in India ;

the company shall, within the prescribed time, deliver to the Registrar for registration a return containing the prescribed particulars of the alteration.

**594. ACCOUNTS OF FOREIGN COMPANY**

(1) Every foreign company shall, in every calendar year, -

(*a*) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having annexed or attached thereto such documents (including, in particular documents relating to every subsidiary of the foreign company) as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting ; and

(*b*)deliver [1][a copy] of those documents to the Registrar :

***Provided*** that the Central Government may, by notification in the Official Gazette, direct that, in the case of any foreign company or class of foreign company the requirements of clause (*a*) shall not apply, or shall apply, subject to such exceptions and modifications as may be specified in the notification.

(2) If any such document as is mentioned in sub-section (1) is not in the English language, there shall be annexed to it a certified translation thereof.

(3) Every foreign company shall send to the Registrar with the documents required to be delivered to him under sub-section (1), [1][a copy] of a list in the prescribed form of all places of business established

**595. OBLIGATION TO STATE NAME OF FOREIGN COMPANY, WHETHER LIMITED, AND COUNTRY WHERE INCORPORATED**

Every foreign company shall -

(*a*)in every prospectus inviting subscriptions in India for its shares or debentures, state the country in which the company is incorporated ;

(*b*)conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate ; (*c*)cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill-heads and letter paper, and in all notices, and other official publications of the company ; and

(*d*)if the liability of the members of the company is limited, cause notice of that fact -

(*i*)to be stated in every such prospectus as aforesaid and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters ; and

(*ii*) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.



**596. SERVICE ON FOREIGN COMPANY**

Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name has been delivered to the Registrar under the foregoing provisions of this Part and left at, or sent by post to, the address which has been so delivered :

***Provided*** that -

(*a*)where any such company makes default in delivering to the Registrar the name and address of a person resident in India who is authorised to accept on behalf of the company service of process, notices or other documents ; or (*b*)if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason, cannot be served ;

a document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in India.

**597. OFFICE WHERE DOCUMENTS TO BE DELIVERED**

(1) Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi, and references to the Registrar in this Part [except in sub-section (2)] shall be construed accordingly.

(2) Any such document as is referred to in sub-section (1) shall also be delivered to the Registrar of the State in which the principal place of business of the company is situate.

(3) If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.

**598. PENALTIES**

If any foreign company fails to comply with any of the foregoing provisions of this Part, the company, and every officer or agent of the company who is in default, shall be punishable with fine which may extend to [1][ten] thousand rupees, and in the case of a continuing offence, with an additional fine which may extend to [2][one thousand] rupees for every day during which the default continues.

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

**599. COMPANY'S FAILURE TO COMPLY WITH PART NOT TO AFFECT ITS LIABILITY UNDER CONTRACTS, ETC**

Any failure by a foreign company to comply with any of the foregoing provisions of this Part shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof ; but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until it has complied with the provisions of this Part.

**600. REGISTRATION OF CHARGES, APPOINTMENT OF RECEIVER AND BOOKS OF ACCOUNT**

(1) The provisions of Part V (sections 124 to 145) shall apply *mutatismutandis* to -

(*a*)charges on properties in India which are created by a foreign company after the 15th day of January, 1937 ; and (*b*)charges on property in India which is acquired by any foreign company after the day aforesaid :

***Provided*** that where a charge is created, or the completion of the acquisition of the property takes place, outside India, sub-section (5) of section 125 and the proviso to sub-section (1) of section 127 shall have effect as if the property, wherever situated, were situated outside India.

(2) The provisions of section 118 shall apply *mutatis mutandis* to a foreign company.

(3) (*a*) The provisions of section 209 shall apply to a foreign company to the extent of requiring it to keep at its principal place of business in India the books of account referred to in that section, with respect to moneys received and expended, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India.

(*b*) On and from the commencement of the Companies (Amendment) Act, 1974, -

(*i*) the provisions of section 159 shall, subject to such modifications or adaptations as may be made therein by the rules made under this Act, apply to a foreign company having an established place of business in India, as they apply to a company incorporated in India ;

(*ii*)the provisions of sections 209, 209A, 233A and 233B and sections 234 to 246 (both inclusive) shall, so far as may be, apply only to the Indian business of a foreign company having an established place of business in India, as they apply to a company incorporated in India.

(4) In applying the sections referred to in sub-sections (1), (2) and (3) to a foreign company as aforesaid, references in those sections to the Registrar shall be deemed to be references to the Registrar having jurisdiction over New Delhi, and references to the registered office of the foreign company shall be deemed to be references to its principal place of business in India.

**601. FEES FOR REGISTRATION OF DOCUMENTS UNDER PART**

There shall be paid to the Registrar for registering any document required by the foregoing provisions of this Part to be registered by him, such fees as may be prescribed.



**602. INTERPRETATION OF FOREGOING SECTIONS OF PART**

For the purposes of the foregoing provisions of this Part -

(*a*) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation ; (*b*)the expression "director", in relation to a company, includes any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act ;

(*c*) the expression "place of business" includes a share transfer or share registration office ;

(*d*)the expression "prospectus" has the same meaning as when used in relation to a company incorporated under this Act ; and

(*e*)the expression "secretary" includes any person occupying the position of secretary, by whatever name called.

***Prospectuses***

**603. DATING OF PROSPECTUS AND PARTICULARS TO BE CONTAINED THEREIN**

(1) No person shall issue, circulate or distribute in India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless the prospectus is dated ; and (*a*) contains particulars with respect to the

following matters : -
(*i*) the instrument constituting or defining the constitution of the company ;
(*ii*) the enactments or provisions having the force of enactments, by or under which the incorporation of the company was effected ;
(*iii*) an address in India where the said instrument, enactments, or provision, or copies thereof, and if the same are not in English, a translation thereof certified in the prescribed manner, can be inspected ;
(*iv*)the date on which and the country in which the company was incorporated ;
(*v*)whether the company has established a place of business in India, and, if so, the address of its principal office in India ; and
(*b*)subject to the provisions of this section, states the matters specified in Part I of Schedule II and sets out the reports specified in Part II of that Schedule, subject always to the provisions contained in Part III of that Schedule :
***Provided*** that sub-clauses (*i*), (*ii*) and *(iii*) of clause (*a*) shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business ; and in the application of Part I of Schedule II for the purposes of this sub-section, clause (*a*) thereof shall have effect with the substitution, for references to the articles, of references to the constitution of a company.

(2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of clause (*a*) or (*b*) of sub-section (1), or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.
(3) No person shall issue to any person in India a form of application for shares in or debentures of such a company or intended company as is mentioned in sub-section (1), unless the form is issued with a prospectus which complies with the provisions of this part and the issue whereof in India does not contravene the provisions of section 604 : ***Provided*** that this sub-section shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect of the shares or debentures. (4) In the event of non-compliance with or contravention of any of the requirements imposed by clauses (*a*) and (*b*) of sub-section (1), a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if -
(*a*)as regards any matter not disclosed, he proves that he had no knowledge thereof ; or
(*b*)he proves that the non-compliance or contravention arose from an honest mistake of fact on his part ; or (*c*) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial, or was otherwise such as ought in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused :
***Provided*** that, in the event of failure to include in a prospectus a statement with respect to the matters contained in clause 18 of Schedule II, no director or other person shall incur any liability in respect of the failure, unless it be proved that he had knowledge of the matters not disclosed.
(5) This section -
(*a*)shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons ; and
(*b*)except insofar as it requires a prospectus to be dated, shall not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange ;
but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.
(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or under this Act apart from this section.

**604. PROVISIONSAS TO EXPERT'S CONSENT AND ALLOTMENT**



(1) No person shall issue, circulate or distribute in India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India -
(*a*) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid ; or
(*b*)if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions (other than penal provisions) of sections 72, 73and 74, so far as applicable.
(2) In this section, the expression "expert" includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him ; and for the purposes of this section a statement shall be deemed to be included in a

prospectus if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

**605. REGISTRATION OF PROSPECTUS**

(1) No person shall issue, circulate or distribute in India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairman and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so deli-vered, and there is endorsed on or attached to the copy -

(*a*)any consent to the issue of the prospectus required by section 604;

(*b*)a copy of any contract required by clause 16 of Schedule II to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(*c*)where the persons making any report required by Part II of Schedule II have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) The references in clause (*b*) of sub-section (1) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English, be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts which are not in English, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

**[1][605A. OFFER OF INDIAN DEPOSITORY RECEIPTS**

Notwithstanding anything contained in any other law for the time being in force, the Central Government may make rules applicable for—

*(a)* the offer of Indian Depository Receipts;

*(b)* the requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts; *(c)* the manner in which the Indian Depository Receipts shall be dealt in a depository mode and by custodian and underwriters;

*(d)* the manner of sale, transfer or transmission of Indian Depository Receipts,

by a company incorporated, or to be incorporated outside India, whether the company has or has not been established or, will or will not establish any place of business in India.]

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

**606. PENALTY FOR CONTRAVENTION OF SECTIONS 603, 604 AND 605**

Any person who is knowingly responsible -

(*a*)for the issue, circulation or distribution of a prospectus ; or

(*b*)for the issue of a form of [2][application for shares, debentures or Indian Depository Receipt] ;

in contravention of any of the provisions of sections 603, 604 [1][,605 and 605A], shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to [2][fifty] thousand rupees, or with both.

1. Substituted for "application for shares or debentures" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
2. Substituted for "and 605" 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.

**607. CIVIL LIABILITY FOR MIS-STATEMENTS IN PROSPECTUS**

Section 62 shall extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, with the substitution for references in section 62 to section 60 of this Act, of references to section 604 thereof.



**608. INTERPRETATION OF PROVISIONS AS TO PROSPECTUSES**

(1) Where any document by which any shares in, or debentures of, a company incorporated outside India are offered for sale to the public, would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 64, to be a prospectus issued by the company, that document shall be deemed, for the purposes of this Part, to be a prospectus issued by the company offering such shares or debentures for subscription. (2) An offer of shares or debentures for subscription or sale to any person whose ordinary business it is to buy or sell shares or debentures, whether as principal or as agent, shall not be deemed to be an offer to the public for the purposes of this Part.

(3) In this Part, the expressions "prospectus", "shares" and "debentures" have the same meanings as when used in relation to a company incorporated under this Act.

1. Substituted for the words “three copies” by SO 70(E) dated 3rd February 2009 w.e.f. 03-02-2009.

**PART XII: REGISTRATION OFFICES AND OFFICERS AND FEES**

**609. REGISTRATION OFFICES**

(1) For the purposes of the registration of companies under this Act, there shall be offices at such places as the Central Government thinks fit.

(2) The Central Government may appoint such Registrars, and such Additional, Joint, Deputy and Assistant Registrars as it thinks necessary for the registration of companies under this Act, and may make regulations with respect to their duties.

(3) The salaries of the persons appointed under this section shall be fixed by the Central Government.

(4) The Central Government may direct a seal or seals to be prepared for the authentication of documents required for, or connected with, the registration of companies.

(5) Whenever any act is by this Act directed to be done to or by the Registrar, it shall, until the Central Government otherwise directs, be done to or by the existing Registrar of Companies or joint-stock companies, or in his absence, to or by such person as the Central Government may for the time being authorise :

***Provided*** that in the event of the Central Government altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place, with reference to the local situation of the registered offices of the companies concerned, as the Central Government may appoint.

**610. INSPECTION, PRODUCTION AND EVIDENCE OF DOCUMENTS KEPT BY REGISTRAR**

(1) Save as otherwise provided elsewhere in this Act, any person may -

(*a*)inspect any documents kept by the Registrar, in accordance with the rules made under the Destruction of Records Act, 1917 (5 of 1917) being documents filed or registered by him in pursuance of this Act, or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection of [1][such fees as may be prescribed] ;

(*b*)require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment of [2][such fees as may be prescribed] :

***Provided***that the rights conferred by this sub-section shall be exercisable -

(*i*) in relation to documents delivered to the Registrar with a pros-pectus in pursuance of sub-clause (*i*) of clause (*b*) of sub-section (1) of section 60, only during the fourteen days beginning with the date of publication of the prospectus ; and at other times, only with the permission of the Central Government ; and

(*ii*) in relation to documents so delivered in pursuance of clause (*b*) of sub-section (1) of section 605, only during the fourteen days beginning with the date of the prospectus ; and at other times, only with the permission of the Central Government.

(2)No process for compelling the production of any document kept by the Registrar shall issue from any Court [3][or the [4][*Tribunal*]] except with the leave of that Court [3][or the [4][*Tribunal*] ; and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the Court [1][or the [2][*Tribunal*].

(3) Acopy of, or extract from, any document kept and registered at any of the offices for the registration of companies under this Act, certified to be a true copy under the hand of the Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as ofequal validity with the original document.

(4) [*Omitted by the Companies* (*Amendment*) *Act, 1960.*]

**1.** Substituted for ``a fee of one rupee'' by the Companies (Amendment) Act, 1988 w.e.f. 15-7-1988.

**2.** Substituted for following by the Companies (Amendment) Act, 1988 w.e.f. 15-7-1988 :

``a fee of five rupees in the case of a certificate of incorporation, and of one rupee for every one hundred words or fractional part thereof required to be copied in the case of a certified copy of extract''.

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

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



**[1][610A. ADMISSIBILITY OF MICRO FILMS, FACSIMILE COPIES OF DOCUMENTS, COMPUTER PRINTOUTS AND DOCUMENTS ON COMPUTER MEDIA ASDOCUMENTS AND AS EVIDENCE**

(1) Notwithstanding anything contained in any other law for the time being in force, -

(*a*) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not) ; or

(*b*) a facsimile copy of a document ; or

(*c*) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer printout"), if the conditions mentioned in sub-section (2) are satisfied,

shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence should be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer printout shall be the following namely : - (*a*) the information contained in the statement reproduces or is derived from returns and document filed by the company on paper or on

computer network, floppy, diskette, magnetic cartridge tape, CD-rom or any other computer readable media ;
(*b*) while receiving returns or documents on computer media, neces sary checks by scanning the documents filed on computer media will be carried out and media will be duly authenticated by the Registrar ; and
(*c*) the Registrar shall also take due care to preserve the computer media by duplicating, transferring, mastering or storage without loss of data.]

**[2][610B. PROVISIONS RELATING TO FILING OF APPLICATIONS, DOCUMENTS INSPECTION, ETC. THROUGH ELECTRONIC FORM.**

(1) Notwithstanding anything contained in this Act, and without prejudice to the provisions contained in section 6 of the Information Technology Act, 2000 (21 of 2000), the Central Government may, by notification in the Official Gazette, make rules so as to require from such date as may be specified in the rules, that
(a) such applications, balance sheet, prospectus, return, declaration, memorandum of association, articles of association, particulars of charges, or any other particulars or document as may be required to be filed or delivered under this Act or rules made thereunder, shall be filed, through the electronic form and authenticated in such manner as may be specified in the rules;
(b) such document, notice, any communication or intimation, required to be served or delivered under this Act, shall be served or delivered under this Act through the electronic form and authenticated in such manner as may be specified in the rules;
(c) such applications, balance sheet, prospectus, return, register, memorandum of association, articles of association, particulars of charges, or any other document and return filed under this Act or rules made thereunder shall be maintained by the Registrar in the electronic form and registered or authenticated, as the case may be, in such manner as may be specified in the rules;
(d) such inspections of the memorandum of association, articles of association, register, index, balance sheet, return or any other document maintained in the electronic form, which is otherwise available for such inspection under this Act or rules made thereunder, may be made by any person through the electronic form as may be specified in the rules;
(e) such fees, charges or other sums payable under this Act or rules made thereunder shall be paid through the electronic form and in such manner as may be specified in the rules;
(f) the Registrar shall, register change of registered office, alteration of memorandum of association or articles of association, prospectus, issue certificate of incorporation or certificate of commencement of business, register such document, issue such certificate, record notice, receive such communication as may be required to be registered or issued or recorded or received, as the case may be, under this Act or rules made thereunder or perform duties or discharge functions or exercise powers under this Act or rules made thereunder or do any act which is by this Act directed to be performed or discharged or exercised or done by the Registrar, by the electronic form, in such manner as may be specified in the rules.
(2) The Central Government may, by notification in the Official Gazette, frame a scheme to carry out the provisions specified under sub-section (1) through the electronic form:
Provided that the Central Government may appoint different dates in respect of different Registrar of Companies or Regional Directors from which such scheme shall come into force.

**610C. POWER TO MODIFY ACT IN RELATION TO ELECTRONIC RECORDS (INCLUDING THE MANNER AND**

**FORM IN WHICH ELECTRONIC RECORDS SHALL BE FILED).**

(1) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act, so far as it is required for the purpose of electronic record specified under section 610B in the electronic form,
(a) shall not apply, in relation to the matters specified under clauses (a) to (f) of sub-section (1) of section 610B, as may be specified in the notification; or
(b) shall apply, in relation to the matters specified under clauses (a) to (f) of sub-section (1) of section 610B only with such consequential exceptions, modifications or adoptions as may be specified in the notification :
**Provided** that no such notification which relates to imposition of fines or other pecuniary penalties or demand or payment of fees or contravention of any of the provisions of this Act or offence shall be issued under this sub-section. (2) A copy of every notification proposed to be issued under sub-section (1), 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, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

**610D. PROVIDING OF VALUE ADDED SERVICES THROUGH ELECTRONIC FORM**

The Central Government may provide such value added services through the electronic form and levy such fees as may be prescribed.

**610E. APPLICATION OF PROVISION OF ACT 21 OF 2000.**

All the provisions of the Information Technology Act, 2000 relating to the electronic records (including the manner and format in which the electronic records shall be filed), in so far as they are not inconsistent with this Act, shall apply, or in relation, to the records in electronic form under section 610B.]

**1.** Inserted by the Companies (Amendment) Act, 1996 w.e.f. 1-3-1997.

2. Inserted by the Companies (Amendment) Act, 2006, w.e.f. **16-9-2006**. See also Companies (Electronic Filing and Authentication of Documents) Rules, 2006

**611. FEES IN SCHEDULE X TO BE PAID**

(1) In respect of the several matters mentioned in Schedule X, there shall, subject to the limitations imposed by that Schedule, be paid to the Registrar the several fees therein specified :
***Provided*** that no fees shall be charged in respect of the registration in pursuance of Part IX of a company, if it is not registered as a limited company, or if, before its registration as a limited company, the liability of the shareholders was limited by some other Act of Parliament of any other Indian law or by an Act of Parliament of the United Kingdom, Royal Charter or Letters Patent in force in India :
***Provided further*** that in the case of resolutions to which section 192 applies, not more than one fee shall be required for the filing of more resolutions than one passed in the same meeting if such resolutions are filed with the Registrar at the same time.

(2) Any document required or authorised by this Act to be filed or registered, or any fact required or authorised by this Act to be registered, with the Registrar on payment of the fee specified therefor in Schedule X, may, without prejudice to any other liability, be filed or registered after the time, if any, specified in this Act for its filing or registration on payment of such additional fee not exceeding ten times the amount of the fee so specified as the Registrar may determine.

**612. FEES, ETC., PAID TO REGISTRAR AND OTHER OFFICERS TO BE ACCOUNTED FOR TO CENTRAL GOVERNMENT**

All fees, charges, and other sums paid to any Registrar, any Additional, Joint, Deputy, or Assistant Registrar, or any other officer of the Central Government in pursuance of this Act shall be paid into the public account of India in the Reserve Bank of India.

**613. POWER OF CENTRAL GOVERNMENT TO REDUCE FEES, CHARGES, ETC**

(1) The Central Government may, by order notified in the Official Gazette, reduce the amount of any fee, charge or other sum specified in any provision contained in this Act, as payable in respect of any matter, either to the Central Government or to any Registrar, any Additional, Joint, Deputy, or Assistant Registrar or any other officer of the Central Government ; and thereupon such provision shall, during the period for which the order is in force, have effect as if the reduced fee had been substituted for the fee specified in such provision.

(2) Any order notified under sub-section (1) may, by a like order, be cancelled or varied at any time by the Central Government.
(3) Nothing in this section shall be deemed to affect the power of the Central Government under section 641 to alter any of the fees specified in Schedule X.

**614. ENFORCEMENT OF DUTY OF COMPANY TO MAKE RETURNS, ETC., TO REGISTRAR**

(1) If a company, having made default in complying with any provision of this Act which requires it to file or register with, or

deliver or send to, the Registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the 1[*Tribunal*] may, on an application made to it by any member or creditor of the company or by the Registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any provisions in this or any other Act imposing penalties on a company or its officers in respect of any such default as aforesaid.

1. Substituted for ``Company Law Board'' by the Companies (Second Amendment) Act, 2002.



**614A. POWER OF COURT TRYING OFFENCES UNDER THE ACT TO DIRECT THE FILING OF DOCUMENTS WITH REGISTRAR**

(1) Any Court trying an offence for a default in compliance with any provision of this Act which requires a company or its officers to file or register with, or deliver or send to, the Registrar, any return, account or other document, may at the time of sentencing, acquitting or discharging the accused, direct by order, if it thinks fit to do so, any officer or other employee of the company to file or register with, deliver or send to, the Registrar on payment of the fee including the additional fee required to be paid under section 611,such return, account or other document within such time as may be specified in the order.

(2) Any officer or other employee of the company who fails to comply with an order of the Court under sub-section (1) shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

## PART XIII - GENERAL

***Collection of information and statistics from companies***

**615. POWER OF CENTRAL GOVERNMENT TO DIRECT COMPANIES TO FURNISH INFORMATION OR STATISTICS**

(1) The Central Government may, by order, require companies generally, or any class of companies, or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order.

(2) (*a*) Every order under sub-section (1) addressed to companies generally or to any class of companies, shall be published in the Official Gazette and in such other manner, if any, as the Central Government may think fit. (*b*) The date of publication of the order in the Official Gazette shall be deemed to be the date on which the demand for information or statistics is made on such companies or class of companies, as the case may be.

(3) Every order under sub-section (1) addressed to an individual company shall be served on it in the manner laid down in section 51.

(4) For the purpose of satisfying itself that any information or statistics furnished by a company in pursuance of any order under sub-section (1) is correct and complete, the Central Government may require such company -

(*a*) to produce such records or documents in its possession or under its control for inspection, before such officer and at such time as may be specified by the Central Government ; or

(*b*) to furnish such further information as may be specified by the Central Government and within such time as may be fixed by it.

(5) The Central Government may also, by order, direct an inquiry to be made by any person or persons named in the order -

(*a*) for the purpose of obtaining any information or statistics which a company has failed to furnish as required of it by an order under sub-section (1) ; or

(*b*) for the purpose of satisfying itself that any information or statistics furnished by a company in pursuance of an order made under sub-section (1) is correct and complete ; and insofar as such information or statistics may be found to be incorrect or incomplete, for the purpose of obtaining such information or statistics as may be necessary to make the information or statistics furnished correct and complete ; and a person or persons so appointed shall, for the purposes of such inquiry, have such powers as may be prescribed.

(6) If any company fails to comply with an order made under sub-section (1) or (4), or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company, and every officer thereof who is in default, shall be punishable with imprisonment which may extend to three months, or with fine which may extend to 1[ten] thousand rupees, or with both.

(7) An order requiring any information or statistics to be furnished by a company may also be addressed to any person who is, or has at any time been, an officer or employee of the company, and all the provisions of this section, so far as may be, shall apply in relation to such person as they apply in relation to the company :

***Provided*** that no such person shall be punishable under sub-section (6), unless the Court is satisfied that he was in a position to comply with the order and made wilful default in doing so.

(8) Where a body corporate incorporated outside India and having established an office within India, carries on business in India, all references to a company in this section shall be deemed to include references to the body corporate in relation, and only in relation, to such business.

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

***Application of Act to companies governed by special Acts***

**616. APPLICATION OF ACT TO INSURANCE, BANKING, ELECTRICITY SUPPLY AND OTHER COMPANIES GOVERNED BY SPECIAL ACTS**

The provisions of this Act shall apply -

(*a*)to insurance companies, except insofar as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 (4 of 1938) ;

(*b*)to banking companies, except insofar as the said provisions are inconsistent with the provisions of the †Banking Companies Act, 1949 (10 of 1949) ;



(*c*) to companies engaged in the generation or supply of electricity, except insofar as the said provisions are inconsistent with the provisions of the Indian Electricity Act, 1910 (9 of 1910), or the Electricity Supply Act, 1948 (54 of 1948) ;

(*d*)to any other company governed by any special Act for the time being in force, except insofar as the said provisions are inconsistent with the provisions of such special Act ;

(*e*) to such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification in the Official Gazette, specify in this behalf, subject to such exceptions, modifications or adaptations, as may be specified in the notifications.

***Application of Act to Government companies***

**617. DEFINITION OF "GOVERNMENT COMPANY"**

For the purposes of this Act, Government company means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government company as thus defined.

**618. GOVERNMENT COMPANIES NOT TO HAVE MANAGING AGENTS** [*Omitted by the Companies* (*Amendment*) *Act, 2000, w.e.f. 13-12-2000.*]

**619. APPLICATION OF SECTIONS 224 TO 233 TO GOVERNMENT COMPANIES**

(1) In the case of a Government company, the following provisions shall apply, notwithstanding anything contained in sections 224 to 233.

(2) The auditor of a Government company shall be appointed or re-appointed by [1][***] the Comptroller and Auditor-General of India :

***Provided*** that the limits specified in sub-sections (1B) and (1C) of section 224 shall apply in relation to the appointment or re-appointment of an auditor under this sub-section.

(3) The Comptroller and Auditor-General of India shall have power -

(*a*)to direct the manner in which the company's accounts shall be audited by the auditor appointed in pursuance of sub-section (2) and to give such auditor instructions in regard to any matter relating to the performance of his functions as such ;

(*b*) to conduct a supplementary or test audit of the company's accounts by such person or persons as he may authorise in this behalf ; and for the purposes of such audit, to require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor- General may, by general or special order, direct.

(4) The auditor aforesaid shall submit a copy of his audit report to the Comptroller and Auditor-General of India who shall have the right to comment upon, or supplement, the audit report in such manner as he may think fit.

(5) Any such comments upon, or supplement to, the audit report shall be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

**1.Words** "the Central Government on the advice of" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

**619A. ANNUAL REPORTS ON GOVERNMENT COMPANIES**

(1) Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be -

(*a*)prepared within three months of its annual general meeting before which the audit report is placed under sub-section (5) of section 619 ; and

(*b*)as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and any comments upon, or supplement to, the audit report, made by the Comptroller and Auditor-General of India.

(2) Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared under sub-section (1) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments or supplement referred to in sub-section (1).

(3) Where the Central Government is not a member of a Government company, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be-

(*a*)prepared within the time specified in sub-section (1) ; and

(*b*)as soon as may be after such preparation,laid before the House or both Houses of the State Legislature with a copy of the audit report and comments or supplement referred to in sub-section (1).

1[(4) The provisions of this section shall, so far as may be, apply to a Government company in liquidation as they apply to any other Government company.]

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



**619B. PROVISIONS OF SECTION 619 TO APPLY TO CERTAIN COMPANIES**

The provisions of section 619 shall apply to a company in which not less than fifty-one per cent of the paid-up share capital is held by one or more of the following or any combination thereof, as if it were a Government company, namely : -

(*a*) the Central Government and one or more Government companies ;

(*b*) any State Government or Governments and one or more Government companies ;

(*c*) the Central Government, one or more State Governments and one or more Government companies ;

(*d*) the Central Government and one or more corporations owned or controlled by the Central Government ; (*e*) the Central Government, one or more State Governments and one or more corporations owned or controlled by the Central Government ;

(*f*)one or more corporations owned or controlled by the Central Government or the State Government ;

(*g*) more than one Government company.

**620. POWER TO MODIFY ACT IN RELATION TO GOVERNMENT COMPANIES**

(1) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act (other than sections 618, 619 and 619A) specified in the notification : -

(*a*)shall not apply to any Government company ; or

(*b*)shall apply to any Government company, only with such exceptions, modifications and adaptations, as may be specified in the notification.

(2) A copy of every notification proposed to be issued under sub- section (1), 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, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

***Modification of Act in its application to Nidhis and Mutual Benefit Societies***

**620A. POWER TO MODIFY ACT IN ITS APPLICATION TO NIDHIS, ETC**

(1) In this section, "*Nidhi*" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a *Nidhi* or Mutual Benefit Society, as the case may be.

(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification -

(*a*) shall not apply to any *Nidhi* or Mutual Benefit Society ; or (*b*)shall apply to any *Nidhi* or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification issued under sub-section (1) shall be laid as soon as may be after it is issued, before each House of Parliament.

**620B.SPECIAL PROVISIONS AS TO COMPANIES IN GOA, DAMAN AND DIU**

The Central Government may, by notification in the Official Gazette, direct that for such period or periods with effect from the 26th January, 1963 or any subsequent date, any of the provisions of this Act specified in the notification shall not apply or shall apply only with such exceptions, and modifications or adaptations as may be specified in the notification, to, -

(*a*) any existing company in the Union Territories of Goa, Daman and Diu ;

(*b*)any company registered in the said Union Territory under this Act on or after the 26th January, 1963.

***Special provisions as to companies in Jammu and Kashmir***

**620C. SPECIAL PROVISIONS AS TO COMPANIES IN JAMMU AND KASHMIR**

The Central Government may, by notification in the Official Gazette, direct that with effect from the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968 (5 of 1968), or any subsequent date, any of the provisions of this Act specified in the notification shall not apply, or shall apply only with such exceptions and modifications or adaptations as may be specified in the notification, to -

(*a*) any existing company in the State of Jammu and Kashmir ;

(*b*) any company registered in that State under this Act after the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968 (5 of 1968).

***Offences***

**621. OFFENCES AGAINST ACT TO BE COGNISABLE ONLY ON COMPLAINT BY REGISTRAR,SHAREHOLDER OR GOVERNMENT**

(1) No Court shall take cognisance of any offence against this Act [1][***], which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, or of a shareholder of the company, or of a person authorised by the Central Government in that behalf :

***Provided*** that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.



[2][***Provided further*** that the court may take cognisance of offence relating to issue and transfer of securities and non-payment of dividend on a complaint in writing by a person authorised by the Securities Exchange Board of India.] (1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), where the complainant under sub-section (1) is the Registrar or a person authorised by the Central Government, the personal attendance of the complainant before the Court trying the offence shall not be necessary unless the Court for reasons to be recorded in writing requires his personal attendance at the trial.

(2) Sub-section (1) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters included in Part VII (sections 425 to 560) or in any other provisions of this Act relating to the winding up of companies.

(3) Aliquidator of a company shall not be deemed to be an officer of the company, within the meaning of sub-section (1).

1. Words "(other than an offence with respect to which proceedings are instituted under section 545)" omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

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

**[1][621A. COMPOSITION OF CERTAIN OFFENCES**

(*1*) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973* (*2 of 1974*)*, any offence punishable under this Act* (*whether committed by a company or any officer thereof*) *not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compoundedby the Central Government on payment or credit, by the company or the officer, as the case may be, to the Central Government of such sums as that Government may prescribe* :

**Provided** *that the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded*:

**Provided further** *that in prescribing the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section* (*2*) *of section 611 shall be taken into account.*

(*2*) *Nothing in sub-section* (*1*) *shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.*

Explanation. - *For the purposes of this section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.*

(*3*)(a) *Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon to the Central Government.*

(b) *Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.*

(c) *Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.*

(d) *Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the Registrar in writing, to the notice of the Court in which the prosecution is pending and on such notice of the composition of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.*

(*4*) *The Central Government while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any*

*return, account or other document, may, direct, by order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee,and the additional fee, required to be paid under section 611, such return, account or other document within such time as may be specified in the order.*

(*5*) *Any officer or other employee of the company who fails to comply with any order made by the Central Government under sub-section* (*4*) *shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding* (*fifty thousand rupees or with both.*

(*6*) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973* (*2 of 1974*) -

(a) *any offence which is punishable under this act with imprisonment or with fine, or with both, shall be compoundable with the permission of the Court, in accordance with the procedure laid down in that Act for compounding of offences* ; (b) *any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.*

(*7*) *No offence specified in this section shall be compounded except under and in accordance with the provisions of this section*.]

**622. JURISDICTION TO TRY OFFENCES**

No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.

**623. CERTAIN OFFENCES TRIABLE SUMMARILY IN PRESIDENCY TOWNS**



If any offence against this Act which is punishable with fine only is committed by any person within a Presidency town, such person may be tried summarily and punished by any Presidency Magistrate of that Presidency town.

**624. OFFENCES TO BE NON-COGNISABLE**

Notwithstanding anything in the Code of Criminal Procedure, 1898 (5 of 1898), every offence against this Act shall be deemed to be non-cognisable within the meaning of the said Code.

**624A.POWER OF CENTRAL GOVERNMENT TO APPOINT COMPANY PROSECUTORS**

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), the Central Government may appoint generally, or in any case, or for any specified class of cases in any local area, one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act ; and the persons so appointed as company prosecutors shall have all the powers and privileges conferred by that Code on public prosecutors, appointed by a State Government under section 492 of that Code.

**624B. APPEAL AGAINST ACQUITTAL**

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), the Central Government may, in any case arising out of this Act, direct any company prosecutor or authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any Court other than a High Court and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate Court.

**625. PAYMENT OF COMPENSATION IN CASES OF FRIVOLOUS OR VEXATIOUS PROSECUTION**

(1) In respect of any case instituted upon the complaint of a shareholder against the company or any officer thereof in pursuance of section 621, the provisions of section 250 of the Code of Criminal Procedure, 1898 (5 of 1898), shall not apply ; and the following provisions shall apply instead.

(2) If the Magistrate by whom any such case is heard discharges or acquits all or any of the accused and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal,if the shareholder upon whose complaint the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused, or to each or any of such accused when there is more than one, or if such shareholder is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(3) The Magistrate shall record and consider any cause which such shareholder may show ; and if the Magistrate is satisfied that the accusation was false and either frivolous or vexatious, he may, for reasons to be recorded, direct that compensation to such amount as he may determine be paid by such shareholder to the accused or to each or any of them, not exceeding one thousand rupees in all.

(4) The Magistrate may, by the order directing payment of the compensation under sub-section (3), further order that, in default of payment, the shareholder ordered to pay such compensation shall suffer simple imprisonment for a term notexceeding two months.

(5) When any person is imprisoned under sub-section (4), the provisions of sections 68 and 69 of the Indian Penal Code(45 of 1860) shall, so far as may be, apply**.**

(6) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made by him :

***Provided*** that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(7) A complainant who has been ordered to pay compensation under sub-section (3) by a Magistrate may appeal from the order, insofar as it relates to the payment of compensation, as if such complainant had been convicted on a trial held by such Magistrate.

(8) Where an order for payment of compensation to an accused person is made, the compensation shall not be paid to him before the period allowed for the presentation of the appeal under sub-section (7) has elapsed ; or, if an appeal is presented, before the appeal has been decided.

**626. APPLICATION OF FINES**

The Court[1][*or Tribunal*] imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information or at whose instance the fine is recovered.

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

**627. PRODUCTION AND INSPECTION OF BOOKS WHERE OFFENCE SUSPECTED**

(1) If, on an application made to a Judge of a High Court in chambers [1][*or Tribunal, as the case may be*] by the Public Prosecutor of the State or by the Central Government, or by a company prosecutor appointed under section 624A, it is shown that there is reasonable cause to believe that any person has, while he was an officer of a company, committed an offence in connection with the management of the company's affairs, and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made- (*i*)authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating, and obtaining evidence of the commission of, the offence ; or



(*ii*)requiring the [2][***] manager of the company or such other officer thereof as may be named in the order, to produce the said books or papers or any of them to a person, and at a place and time, named in the order.

(2) Sub-section (1) shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in clause (*ii*) thereof shall be made by virtue of this sub-section. (3) No appeal shall lie from the decision of a Judge of the High Court [3][*or Tribunal*] under this section.

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

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

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

**628. PENALTY FOR FALSE STATEMENTS**

If in any return, report, certificate, balance sheet, prospectus, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement -

(*a*)which is false in any material particular, knowing it to be false ; or

(*b*)which omits any material fact, knowing it to be material ;

he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine.

**629. PENALTY FOR FALSE EVIDENCE**

If any person intentionally gives false evidence -

(*a*)upon any examination upon oath or solemn affirmation, authorised under this Act ; or

(*b*)in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act ;

he shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

**629A. PENALTY WHERE NO SPECIFIC PENALTY IS PROVIDED ELSEWHERE IN THE ACT**

If a company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to [1][five thousand] rupees, and where the contravention is a continuing one, with a further fine which may extend to [2][five hundred] rupees for every day after the first during which the contravention continues. fine which may extend to Rs.

500 for everyday during which the contravention continues. Any offence covered by this section is compoundable.

**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.

**630. PENALTY FOR WRONGFUL WITHHOLDING OF PROPERTY**

(1) If any officer or employee of a company -

(*a*)wrongfully obtains possession of any property of a company ; or

(*b*)having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by this Act ;

he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to [1][ten] thousand rupees.

(2) The Court trying the offence may also order such officer or employee to deliver up or refund, within a time to be fixed by the Court, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term which may extend to two years.

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

**631. PENALTY FOR IMPROPER USE OF WORDS "LIMITED" AND "PRIVATE LIMITED"**

If any person or persons trade or carry on business under any name or title of which the word "Limited" or the words "Private Limited", or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with
limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine which may extend to [1][five hundred] rupees for every day upon which that name or title has been used.

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

***Legal proceedings***

**632. POWER TO REQUIRE LIMITED COMPANY TO GIVE SECURITY FOR COSTS**

Where a limited company is plaintiff or petitioner in any suit or other legal proceeding, any Court [1][*or Tribunal*] having jurisdiction in the matter may, if there is reason to believe that the company will be unable to pay the costs of



defendant if he is successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

**1.** Inserted by the Companies (Second Amendment) Act, 2002 w.e.f. 13-12-2002.

**633. POWER OF COURT TO GRANT RELIEF IN CERTAIN CASES**

(1) If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the Court hearing the case that he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the Court may relieve him, either wholly or partly, from his liability on such terms as it may think fit :
***Provided*** that in a criminal proceeding under this sub-section, the Court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

(2) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a Court before which a proceeding against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (1).

(3) No Court shall grant any relief to any officer under sub-section (1) or sub-section (2) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted.

**634. ENFORCEMENT OF ORDERS OF COURTS**

Any order made by a Court under this Act may be enforced in the same manner as a decree made by the Court in a suit pending therein.

**634A. ENFORCEMENT OF ORDERS OF COMPANY LAW BOARD**

Any order made by the Company Law Board [1][***] may be enforced by that Board 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 that Board to send, in the 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 situated, 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.

[2][**Provided** *that the provisions of this section shall not apply on and after the commencement of the Companies* (*Second Amendment*) *Act, 2002 (w.e.f. a date yet to be notified).* ]

1. The words and figures "under section 17, section 18, section 19, section 79, section 141 or section 186" omitted 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).

**635. ENFORCEMENT OF ORDERS OF ONE COURT BY OTHER COURTS**

(1) Where any order made by one Court is required to be enforced by another Court, a certified copyof the order shall be

produced to the proper officer of the Court required to enforce the order. (2) The production of such certified copy shall be sufficient evidence of the order.

(3) Upon the production of such certified copy, the Court shall take the requisite steps for enforcing the order, in the same manner as if it had been made by itself.

(4) Where any order made by the Company Law Board[2][*or Tribunal*] [1][***] is required to be enforced by a Court, a certified copy of the order shall be produced to the proper officer of the Court required to enforce the order and the provisions of sub-sections (2) and (3) shall, as far as may be, apply to every such order in the same manner and to the same extent as they apply to an order made by Court.

1. The words and figures "under section 17, section 18, section 19, section 79, section 141 or section 186" omitted 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).

**635A.PROTECTION OF ACTS DONE IN GOOD FAITH**

No suit, prosecution or other legal proceeding shall lie against the Government or any officer of Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder, or in respect of the publication by or under the authority of the Government or such officer of any report, paper or proceedings.

**635AA. NON-DISCLOSURE OF INFORMATION IN CERTAIN CASES**

Notwithstanding anything contained in any other law for the time being in force, the Registrar, any officer of Government or any other person shall not be compelled to disclose to any Court, Tribunal or other authority whence he got any information which -



(*a*) has led the Central Government to direct aspecial audit under section 233A or to order an investigation under section 235, 237, [1][or 247] ; or

(*b*)is or has been material or relevant in connection with such special audit or investigation.

**1.** Substituted for figures "247, 248 or 249" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

***Temporary protection of employees***

**635B. PROTECTION OF EMPLOYEES DURING INVESTIGATION BY INSPECTOR OR PENDENCY OF PROCEEDING BEFORE COURT IN CERTAIN CASES**

(1) If -

(*a*)during the course of any investigation of the affairs and other matters of or relating to a company**,** body or person under section 235, section 237 or section 239 or of the membership and other matters of or relating to a company, or the ownership of shares in or debentures of a company or body corporate, or the affairs and other matters of or relating to a company, body or person, under section 247 [1][***] ; or

(*b*) during the pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company under Chapter IVA ofPart VI,

such company, body or person proposes -

(*i*) to discharge, or

(*ii*) to punish, whether by dismissal, removal, reduction in rank or otherwise, any employee, the company, body or person, as the case may be, shall send by post to the [2][*Tribunal*] previous intimation in writing of the action proposed against the employee and if the [2][*Tribunal*] has any objection to the action proposed, it shall send by post notice thereof in writing to the company, body or person concerned.

(2) If the company, body or person concerned does not receive within thirty days of the sending of the previous intimation of the action proposed against the employee, any notice of the objection from the [3][*Tribunal* ]**,** then and only then, the company, body or person concerned may proceed to take against the employee the action proposed. (3) If the company, body or person concerned is dissatisfied with the objection raised by the [3][*Tribunal*], it may, within thirty days of the receipt of the notice of the objection**,** prefer an appeal to the [4][*Appllate Tribunal*] in the prescribed manner and on payment of the prescribed fee.

(4) The decision of the [4][*Appllate Tribunal*] on such appeal shall be final and be binding on the [3][*Tribunal*] and on the company, body or person concerned.

(5) For the removal of doubt, it is hereby declared that the provisions of this section shall have effect without prejudice to the provisions of any other law for the time being in force.

1. Words and figures ", section 248 or section 249" omitted 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 "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

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

***Reduction of fees payable to company***

**636. REDUCTION OF FEES, CHARGES, ETC., PAYABLE TO COMPANY**

(1) A company which is entitled to any specified fee, charge or other sum by virtue of any provision contained in this Act or in its articles, may reduce the amount thereof to such extent as it thinks fit ; and thereupon such provision shall, so long as the reduction is in force, have effect as if the reduced amount had been substituted for the fee, charge or sum specified in such provision.

(2) Any reduction made under sub-section (1) may, at any time, be cancelled or varied by thecompany.

***Delegation of powers and functions of Central Government***

**637. DELEGATION BY CENTRAL GOVERNMENT OF ITS POWERS AND FUNCTIONS UNDER ACT**

[1][(1) The Central Government may, by notification in the Official Gazette, and subject to such conditions, restrictions and limitations as may be specified therein, delegate any of its powers or functions under this Act (other than the power to appoint a person as public trustee under section 153A and the power to make rules), to such authority or officer as may be specified in the notification.]

(2) The powers and functions which cannot be delegated under [2][***] sub-section (1) are those conferred by or mentioned in the following provisions of this Act, namely, sections 10, 81, 89(4), 211(3) and (4), 212, 213, 235, 237, 239, 241, 242, 243, 244, 245, 247, [3][***] 250, 259, 268, 269, 274(2), 295, 300, 310, 311, [4][***] 349, [5][***] 372, 396, 399(4) and (5), 401, 408, [6][***] 410, 411(*b*), 448, 609, 613, 620, 638, 641 and 642.

(2A)[*Omitted by the Companies* (*Amendment*) *Act, 1988, w. e. f. 31-5-1991.*]

(3) A copy of every notification issued under sub-section (1) shall, as soon as may be after it is issued, be placed before both Houses of Parliament.



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

**2.** The words ``clause (*b*) of'' omitted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

**3.** Figure ``248, 249,'' omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

**4.** Figure ``324, 326, 328, 329, 332, 343, 345, 346, 347(2),'' omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

**5.** Figure ``352, 369,'' omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

**6.** Figure ``409,'' omitted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

***Grant of approval, etc., subject to conditions and levy of fees on applications***

**[1][637A. POWER OF CENTRAL GOVERNMENT OR TRIBUNAL TO ACCORD APPROVAL, ETC., SUBJECT TO CONDITIONS AND TO PRESCRIBE FEES ON APPLICATIONS**

(*1*) *Where the Central Government or Tribunal is required or authorised by any provision of this Act,* -

(a) *to accord approval, sanction, consent, confirmation or recognition to or in relation to, any matter* ; *or*

(b) *to give any direction in relation to any matter*; *or*

(c) *to grant any exemption in relation to any matter,*

*then, in the absence of anything to the contrary contained in such or any other provision of this Act, the Central Government or Tribunal may accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.*

(*2*) *Save as otherwise expressly provided in this Act, every application which may be, or is required to be, made to the Central Government or Tribunal under any provision of this Act-*

(a) *in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or Tribunal to, or in relation to, any matter* ; *or*

(b) *in respect of any direction or exemption to be given or granted by that Government or Tribunal in relation to any matter* ; *or*

(c) *in respect of any other matter,*

*shall be accompanied by such fee as may be prescribed* :

***Provided*** *that different fees may be prescribed for applications in respect of different matters or in case of applications by companies, for applications by different classes of companies.*]

1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution section 637A read as under :

"637A. Power of Central Government or Company Law Board to accord approval, etc., subject to

conditions and to prescribe fees on applications. - (1) Where the Central Government or Company Law Board is required or authorised by any provision of this Act, -

(a) to accord approval, sanction, consent, confirmation or recognition to or in relation to, any matter ; (b) to give any direction in relation to any matter ; or

(c) to grant any exemption in relation to any matter,

then, in the absence of anything to the contrary contained in such or any other provision of this Act, the Central Government or Company Law Board may accord, give or grant such approval sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.

(2) Save as otherwise expressly provided in this Act, every application which may be, or is required to be, made to the Central **Government or** Company Law Board under any provision of this Act - (a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or Board to, or in relation to, any matter ; or

(b) in respect of any direction or exemption to be given or granted by that Government or Board in relation to any matter ; or

(c) in respect of any other matter,

shall be accompanied by such fee as may be prescribed :

Provided that different fees may be prescribed for applications in respect of different matters or in case of applications by companies, for applications by different classes of companies."

**637AA. POWER OF CENTRAL GOVERNMENT TO FIX A LIMIT WITH REGARD TO REMUNERATION**

Notwithstanding anything contained in section 198, section 309 or section 637A, the Central Government may, while according its approval under section 269, to any appointment or to any remuneration under section 309, section 310, section 311 or section 387, fix the remuneration of the person so appointed or the remuneration, as the case may be, within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deemed fit and while fixing the remuneration, the Central Government shall have regard to -

(*a*) the financial position of the company ;



(*b*)the remuneration or commission drawn by the individual concerned in any other capacity, including his capacity as a sole selling agent ; (*c*)the remuneration or commission drawn by him from any other company ;

(*d*)professional qualifications and experience of the individual concerned ; (*e*)public policy relating to the removal of disparities in income.

**637B. CONDONATION OF DELAYS IN CERTAIN CASES**

Notwithstanding anything contained in this Act, -

(*a*)where any application required to be made to the Central Government under any provision of this Act in respect of any matter is not made within the time specified therein, that Government may, for reasons to be recorded in writing, condone the delay ;

(*b*)where any document required to be filed with the Registrar under any provision of this Act is not filed within the time specified therein, the Central Government may, for reasons to be recorded in writing, condone the delay.

***Annual report on working of Act***

**638. ANNUAL REPORT BY CENTRAL GOVERNMENT**

The Central Government shall cause a general annual report on the working and administration of this Act to be prepared and laid before both Houses of Parliament, within one year of the close of the year to which the report relates.

**639. ANNUAL REPORTS ON GOVERNMENT COMPANIES TO BE PLACED BEFORE PARLIAMENT, ETC** [*The section and heading above it, viz., "Annual reports on Government companies" omitted by the Companies* (*Amendment*) *Act, 1960.*]

***Validation of registration of firms in certain cases***

**640. VALIDATION OF REGISTRATION OF FIRMS AS MEMBERS OF CHARITABLE AND OTHER COMPANIES** Any firm which stood registered at the commencement of this Act, as a member of any association or company licensed under section 26 of the Indian Companies Act, 1913 (7 of 1913), shall be deemed to have been validly so registered with effect on and from the date of its registration.

***Computation of time for filing orders of Court*** [1]**[*or the*** [2]**(*Tribunal*)]**

[3]**[640A. EXCLUSION OF TIME REQUIRED IN OBTAINING COPIES OF ORDER OF COURT OR TRIBUNAL**

*Except as expressly provided in this behalf elsewhere in this Act, where by any provision of this Act, any order of the Court or*

*Tribunal is required to be filed with the Registrar, or a company or any other person within a period specified therein, then, in computing that period, the time taken in drawing up the order and in obtaining a copy thereof shall be excluded*.]

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. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution section 640A read as under : "640A. Exclusion of time required in obtaining copies of orders of Court or the Company Law Board. - Except as expressly provided in this behalf elsewhere in this Act where by any provision of this Act, any order of the Court or the Company Law Board is required to be filed with the Registrar, or a company or any other person within a periodspecified therein, then, in computing that period, the time taken in drawing up the order and in obtaining a copy thereof shall be excluded."

*Schedules, forms and rules*

**640B.FORMS OF, AND PROCEDURE IN RELATION TO, CERTAIN APPLICATIONS**

(1) Every application made to the Central Government under section 259, 268, 269, 310 [1][or 311] shall be in such form as may be prescribed.

(2) (*a*) Before any application is made by a company to the Central Government under any of the sections aforesaid, there shall be issued by or on behalf of the company a general notice to the members thereof, indicating the nature of the application proposed to be made.

(*b*) Such notice shall be published at least once in a newspaper in the principal language of the district in which the registered office of the company is situate and circulating in that district, and at least once in English in an English newspaper circulating in that district.

(*c*) Copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

(*d*) [2][***]



1. Substituted for ", 311, 326, 328, 329, 332, 343, 345, 346 or 352" 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. Prior to its omission clause (d) read as under : "(d) Nothing in clause (a), (b) or (c) shall apply to a private company which is not the managing agent of a public company."

**641. POWER TO ALTER SCHEDULES**

(1) Subject to the provisions of this section, the Central Government may, by notification in the Official Gazette, alter any of the regulations, rules, tables, forms and other provisions contained in any of the Schedules to this Act, except Schedules XI and XII.

(2) Any alteration notified under sub-section (1) shall have effect as if enacted in this Act and shall come into force on the date of the notification, unless the notification otherwisedirects :

***Provided*** that no such alteration in Table A of Schedule I shall apply to any company registered before the date of such alteration.

(3) Every alteration made by the Central Government under sub-section (1) shall be laid as soon as may be after it is made 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, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the alteration, or both Houses agree that the alteration should not be made, the alteration shall thereafter have effect only in such modified form or be of no effect, as the case may be**,** so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration.

**642. POWER OF CENTRAL GOVERNMENT TO MAKE RULES**

(1) In addition to the powers conferred by section 641, the Central Government may, by notification in the Official Gazette, make rules -

(*a*)for all or any of the matters which by this Act are to be, or may be**,** prescribed by the Central Government ; and (*b*)generally to carry out the purposes of this Act.

(2) Any rule made under sub-section (1) may provide that a contravention thereof shall be punishable with fine which may extend to [1][five thousand] rupees and where the contravention is a continuing one, with a further fine which may extend to [2][five hundred] rupees for every day after the first during which such contravention continues.

(3) Every rule made by the Central Government under sub-section (1) shall be laid as soon as may be after it is made 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, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

[3][(4) Every regulation made by the Securities and Exchange Board of India as under this Act shall be laid, soon as may be after it is made, 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, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.]

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

**[1][643. POWERS OF CENTRAL GOVERNMENT TO MAKE RULES RELATING TO WINDING UP**

(*1*) *The Central Government shall, make rules consistent with the Code of Civil Procedure, 1908* (*5 of 1908*), *providing for all matters relating to the winding up of companies, which by this Act, are to be prescribed, and may make rules providing for all such matters, as may be prescribed.*

(*2*) *In particular and without prejudice to the generality of the forgoing power, such rule may provide for all or any of the following matters, namely*:-

(i) *as to the mode of proceedings to be held for winding up of a company by the Tribunal* ;

(ii) *for the voluntary winding up of companies, whether by members or by creditors* ;

(iii) *for the holding of meetings of creditors and members in connection with proceedings under section 391* ; (iv) *for giving effect to the provisions of this Act as to the reduction of the capital* ;

(v) *generally for all applications to be made to the Tribunal under the provisions of this Act* ;

(vi) *the holding and conducting of meetings to ascertain the wishes of creditors and contributories* ;

(vii) *the settling of lists of contributories and the rectifying of the register of members where required and collecting and applying the assets* ;

(viii) *the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator* ; (ix) *the making of calls* ; *and*



(x) *the fixing of a time within which debts and claims shall be proved.*

(*3*) *All rules made by the Supreme Court on the matters referred to in this section as it stood immediately before the commencement of the Companies* (*Second Amendment*) *Act, 2002, and in force at such commencement shall continue to be in force, insofar as they are not inconsistent with the provisions of this Act, till such time the rules are made by the Central Government and any reference to the High Court in relation to winding up of a company in such rules shall be construed as a reference to the Tribunal.*]

1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution section 643 read as under:

"643. Power of Supreme Court to make Rules. - (1) The Supreme Court, after consulting the High Courts, -

(a) shall make rules providing for all matters relating to the winding- up of companies which, by this Act, are to be prescribed ; and may make rules providing for all such matters as may be prescribed, except those reserved to the Central Government by sub-section (5) of section 503, sub-section (3) of section 550, section 552 and sub-section (3) of section 555 ; and

(b) may make rules consistent with the Code of Civil Procedure, l908 (5 of 1908), -

(i) as to the mode of proceedings to be had for winding up a company in High Courts and in Courts subordinate thereto ;

(ii) for the voluntary winding up of companies, whether by members or by creditors ;

(iii) for the holding of meetings of creditors and members in connection with proceedings under section 391 ;

(iv) for giving effect to the provisions of this Act as to the reduction of the capital ; and (v) generally for all applications to be made to the Court under the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, the Supreme Court may, by such rules, enable or require all or any of the powers and duties conferred and imposed on the Court by this Act, in respect of the following matters, that is to say :

(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories ;

(b) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets ;

(c) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator ;

(d) the making of calls ; and

(e) the fixing of a time within which debts and claims shall beproved ;

to be exercised or performed by the official liquidator or any other liquidator as an officer of the Court, and subject to the control of the Court :

Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members or make any call.

(3) Until rules are made by the Supreme Court as aforesaid, all rules made by any High Court on the matters referred to in this section and in force at the commencement of this Act, shall continue to be in force insofar as they are not inconsistent with the provisions of this Act in that High Court and in Courts subordinate thereto.
(4) All rules made by the Central Government under sub-section (1) of section 549 and in force immediately before the commencement of the Companies (Amendment) Act, 1960 shall continue in force and be deemed to have been made by the Supreme Court unless and until they are superseded by rules made by the Supreme Court after such commencement."

***Repeals and savings***

**644. REPEAL OF ACTS SPECIFIED IN SCHEDULE XII**

The enactments mentioned in Schedule XII are hereby repealed.

**645. SAVING OF ORDERS, RULES, ETC., IN FORCE AT COMMENCEMENT OF ACT**

Nothing in this Act shall affect any order, rule, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done, under or in pursuance of any previous companies law ; but any such order, rule, regulation, appointment, conveyance, mortgage, deed, document, agreement, fee, resolution, direction, proceeding, instrument or thing shall, if in force at the commencement of this Act, continue to be in force, and so far as it could have been made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act, shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act.

**646. SAVING OF OPERATION OF SECTION 138 OF ACT 7OF 1913**

Nothing in this Act shall affect the operation of section 138 of the Indian Companies Act, 1913 (7 of 1913), as respects inspectors, or as respects the continuation of an inspection begun by inspectors, appointed before the commencement of this Act, and the provisions of this Act shall apply to or in relation to a report of inspectors



appointed under the said section 138 as they apply to or in relation to a report of inspectors appointed under section 235 or 237 of this Act.

**647. SAVING OF PENDING PROCEEDINGS FOR WINDING UP**

Where the winding up of a company has commenced before the commencement of this Act -
(*i*) sub-section (7) of section 555 shall apply in respect of any moneys paid into the Companies Liquidation Account whether before or after such commencement ; and
(*ii*) the other provisions with respect to winding up contained in this Act shall not apply, but the company shall be wound up in the same manner and with the same incidents as if this Act had not been passed :
***Provided*** that where the proceedings in any such winding up are pending at the commencement of the Companies (Amendment) Act, 1960, -
(*a*)sections 463, 502, 515 and 524 shall, as far as may be, also apply in relation thereto ;
(*b*)the liquidator appointed by the Court and functioning in any such winding up shall in such manner and at such time as may be prescribed by the Central Government, pay the moneys received by him as such liquidator, into the public account of India in the Reserve Bank of India.

**[1][647A. TRANSFER OF WINDING UP PROCEEDINGS TO TRIBUNAL**

*All proceedings* (*including proceedings relating to arbitration, compromises, arrangements and reconstruction and winding up of a company*) *pending before the commencement of the Companies* (*Second Amendment*) *Act, 2002 before any District Court or High Court, under this Act, or the Insurance Act, 1938* (*4 of 1938*)*or any other law for the time being in force other than under the Banking Regulation Act, 1949* (*10 of 1949*)*, shall be transferred to the Tribunal from the date to be notified by the Central Government, in the Official Gazette, and the Tribunal may proceed with the matter either* de novo *or from the stage it was so transferred* :
***Provided*** *that where the winding up of a company has commenced, subject to the supervision of the District Court or a High Court, before the commencement of the Companies* (*Second Amendment*) *Act, 2002, such winding up shall continue to be under the supervision of the District Court or the High Court, as the case may be, and the company shall be wound up in the same manner and in the same incidents as if the Companies* (*Second Amendment*) *Act, 2002 had not been passed.*]

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

**648. SAVING OF PROSECUTIONS INSTITUTED BY, LIQUIDATOR OR COURT UNDER SECTION 237 OF ACT 7 OF 1913**

Nothing in this Act shall affect any prosecution instituted or ordered by the Court to be instituted under section 237 of the Indian Companies Act, 1913 (7 of 1913) ; and the Court shall have the same power of directing how any costs, charges, and expenses properly incurred in any such prosecution are to be defrayed as it would have had, if this Act had not been passed.

**649. CONSTRUCTION OF REFERENCES TO FORMER ENACTMENTS IN DOCUMENTS**

Any document referring to any former enactment relating to companies shall be construed as referring to the corresponding enactment in this Act.

**650. CONSTRUCTION OF "REGISTRAR OF JOINT STOCK COMPANIES" IN ACT 21 OF 1860** [*Omitted by the Companies* (*Amendment*) *Act, 1960.*]

**651. CONSTRUCTION OF REFERENCES TO EXTRAORDINARY RESOLUTION IN ARTICLES, ETC**

Any reference to an extraordinary resolution in the articles of a company, or in any resolution passed in general meeting by the company, or in any other instrument, or in any law in force immediately before the commencement of this Act, shall, with effect on and from such commencement, be construed as a reference to a special resolution.

**[1][651A. REFERENCE OF WINDING UP OF COMPANIES IN OTHER LAWS**

*Unless the context otherwise requires, -*

(a) *any reference to the winding up of a company by a Court or High Court or winding up of a company subject to supervision of a Court or High Court in any other law* [*except the Banking Regulation Act, 1949* (*10 of 1949*)], *shall, insofar as it relates to winding up of a company, be construed as winding up of a company by the Tribunal in accordance with the provisions of this Act* ;

(b) *any reference to the Company Law Board in any other law, so far as it relates to the Company Law Board, shall be construed as the Tribunal under this Act.*]

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

**652. APPOINTMENT UNDER PREVIOUS COMPANIES LAWS TO HAVE EFFECT AS IF MADE UNDER ACT**

Any person appointed to any office under or by virtue of any previous companies law shall be deemed to have been appointed to that office under or by virtue of this Act.

**653. FORMER REGISTRATION OFFICES CONTINUED**



The offices existing at the commencement of this Act for the registration of companies shall be continued as if they had been established under this Act.

**654. REGISTERS UNDER PREVIOUS COMPANIES LAWS TO BE DEEMED TO BE PART OF REGISTERS UNDER ACT**

Any register kept under the provisions of any previous companies law shall be deemed to be part of the register to be kept under the corresponding provisions of this Act.

**655. FUNDS AND ACCOUNTS UNDER ACT TO BE IN CONTINUATION OF FUNDS AND ACCOUNTS UNDER PREVIOUS COMPANIES LAW**

All funds constituted and accounts kept under this Act shall be deemed to be in continuation of the corresponding funds constituted and accounts kept under previous companies laws.

**656. SAVING OF INCORPORATION UNDER REPEALED ACTS**

Nothing in this Act shall affect the incorporation of any company registered under any enactment hereby repealed.

**657. SAVING OF CERTAIN TABLES UNDER PREVIOUS COMPANIES LAWS**

Nothing in this Act shall affect -

(*a*)Table B in the Schedule annexed to Act No. 19 of 1857, or any part thereof, so far as the same applies to any company existing at the commencement of this Act ;

(*b*)Table A in the First Schedule annexed to the Indian Companies Act, 1882 (6 of 1882), or any part thereof, so far as the same plies to any company existing at the commencement of this Act ;

(*c*)Table A in the First Schedule to the Indian Companies Act, 1913 (7 of 1913), either as originally contained in that Schedule or as altered in pursuance of section 151 of that Act, so far as the same applies to any company existing at the commencement of this Act.

**658. SECTION 6 OF THE GENERAL CLAUSES ACT, 1897(10 OF 1897) TO APPLY IN ADDITION TO SECTIONS 645 TO 657 OF ACT**

The mention of particular matters in sections 645 to 657 or in any other provision of this Act shall not prejudice the general application of section 6of the General Clauses Act, 1897 (10 of 1897), with respect to the effect of repeals.

## *SCHEDULE I*

[*See* sections 2(*2*), 14, 28(1), 29 and 223]

## TABLE A

### *Regulations for management of a company limited by shares*

### *Interpretation*

**1.** (1) In these regulations -

(*a*)"the Act" means the Companies Act, 1956,

(*b*)"the seal" means the common seal of the company.

(2) Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

### *Share capital and variation of rights*

**2.** Subject to the provisions of section 80, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed on such terms and in such manner as the company before the issue of the shares may, by special resolution, determine.

**3.** (1) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, subject to the provisions of sections 106 and 107, and whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class.

(2) To every such separate meeting, the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class in question.

**4.** The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.



**5.** (1) The company may exercise the powers of paying commissions conferred by section 76, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by that section.

(2) The rate of the commission shall not exceed the rate of five per cent of the price at which the shares in respect whereof the same is paid are issued or an amount equal to five per cent of such price, as the case may be. (3) The commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in the one way and partly in the other.

(4) The company may also, on any issue of shares, pay such brokerage as may be lawful.

**6.** Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by, or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share, or any interest in any fractional part of a share, or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

**7.**(1) Every person whose name is entered as a member in the register of members shall be entitled to receive within three months after allotment or within two months after the application for the registration of transfer (or within such other period as the conditions of issue shall provide) -

(*a*)one certificate for all his shares without payment ; or

(*b*)several certificates, each for one or more of his shares, upon payment of one rupee for every certificate after the first.

(2) Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid-up thereon.

(3) In respect of any share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

**8.** If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding two rupees, and on such terms, if any, as to evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence, as the directors think fit.

### *Lien*

**9.** (1) The company shall have a first and paramount lien -

(*a*)on every share (not being a fully-paid share), for all moneys (whether presently payable or not) called, or payable at a fixed time, in respect of that share ; and

(*b*)on all shares (not being fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company :

***Provided*** that the Board of directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause.

(2) The company's lien, if any, on a share shall extend to all dividends payable thereon.

**10.** The company may sell, in such manner as the Board thinks fit, any shares on which the company has a lien : ***Provided*** that no sale shall be made -

(*a*)unless a sum in respect of which the lien exists is presently payable ; or

(*b*)until the expiration of fourteen days after a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share or the person entitled thereto by reason of his death or insolvency.

**11.** (1) To give effect to any such sale, the Board may authorise some person to transfer the shares sold to the purchaser thereof.

(2) The purchaser shall be registered as the holder of the shares comprised in any such transfer.

(3) The purchaser shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

**12.** (1) The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable.

(2) The residue, if any, shall, subject to a like lien for sums not presently payable as existed upon the shares before the sale, be paid to the person entitled to the shares at the date of the sale.

***Calls on shares***

**13.** (1) The Board may, from time to time, make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times :



***Provided*** that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call.

(2) Each member shall, subject to receiving at least fourteen days' notice specifying the time or times and place of payment, pay to the company, at the time or times and place so specified, the amount called on his shares. (3) A call may be revoked or postponed at the discretion of the Board.

**14.** A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed and may be required to be paid by instalments.

**15.** The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

**16.** (1) If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest thereon from the day appointed for payment thereof to the time of actual payment at five per cent per annum or at such lower rate, if any, as the Board may determine.

(2) The Board shall be at liberty to waive payment of any such interest wholly or in part.

**17**. (1) Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall, for the purposes of these regulations, be deemed to be a call duly made and payable on the date on which by the terms of issue such sum becomes payable. (2) In case of non-payment of such sum, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

**18.** The Board -

(*a*)may, if it thinks fit, receive from any member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him ; and

(*b*)upon all or any of the moneys so advanced, may (until the same would, but for such advance, become presently payable) pay interest at such rate not exceeding, unless the company in general meeting shall otherwise direct, six per cent per annum, as may be agreed upon between the Board and the member paying the sum in advance.

***Transfer of shares***

**19.**(1) The instrument of transfer of any share in the company shall be executed by or on behalf of both the transferor and transferee.

(2) The transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

**20.** Subject to the provisions of section 108, the shares in the company shall be transferred in the following form, namely : -

**[1]Form No. 7B**

**DATE OF PRESENTATION TO THE PRESCRIBED AUTHORITY**

***Share Transfer Form***

**[PURSUANT TO SECTION 108(1A) OF THE COMPANIES ACT, 1956]**

FOR THE CONSIDERATION stated below the ``Transferor(s)" named do hereby transfer to the ``Transferee(s)" named the shares specified below subject to the conditions on which the said shares are now held by the Transferor(s) and Transferee(s) do hereby agree to accept and hold the said shares subject to the conditions aforesaid.

| FULL NAME OF COMPANY | NAME OF THE RECOGNISED STOCK EXCHANGE WHERE DEALT IN, IF ANY |
|---|---|
| | |

DESCRIPTION OF EQUITY/PREFERENCE SHARE

| No. in Figures | | Number in words | | Consideration (in figures) | | Consideration (in words) | |
|---|---|---|---|---|---|---|---|
| Dirstinctive numbers | From | | | | | | |
| | To | | | | | | |
| Corresponding Certificate Nos | | | | | | | |
| | | | | | | | |

TRANSFEROR(S) [SELLER(S)] PARTICULARS Regd. Folio No. Signatre(s)

Name(s) in full



1..... 1.....

2..... 2.....

3..... 3.....

4..... 4.....

ATTESTATION

I, hereby attest the signature of the Transferor(s) herein mentioned

Signature ---------- Name ----------

Address/seal ----------

*Please *see* overleaf for instruction

Signature of witness

Name & address of witness

---

PIN----------

TRANSFEREE(S) [BUYER(S)' PARTICULARS Signature(s)

Name(s) in full

1.....

... 1.....

2.....

2.....

3..... 3.....

| | Occupation | Address | Father's/Husband's name |
|---|---|---|---|
| 1. | | | |
| 2. | | | |
| 3. | | | |

Transferee(s) existing Folio, if an, in sme order of names Value of Stamps affixed Rs.

*Dated this..... Day of..... One Thousand Nine Hundred..... Place.....*

| | |
|---|---|
| For office use only<br>Checked by.....<br>Signature tallied by.....<br>Entered in Register of Transfer No.<br>Approval date..... | Folio Company Code<br>Specimen Signature(s) of Transferes(s)<br>1.....<br>2.....<br>3..... |

*Continuation of front page* (*herein enter the Distinctive numbers when space on the front page is found to be insufficient)*

| | | | | | | |
|---|---|---|---|---|---|---|
| Dirstinctive numbers | From | | | | | |
| | To | | | | | |
| Corresponding Certificate Nos | | | | | | |

** INSTRUCTIONS FOR ATTESTATION*

Attestation, where required (thumb impressions, marks, signature difference, etc.) should be done by a Magistrate, Notary Public or Special Executive Magistrate or a similar authority holding a Public Office and authorised to use the



Seal of his office or a member of a recognised stock exchange through whom the shares are introduced or a manager of the transferor's bank.

***Note* :***Names must be rubber stamped preferably in a straight line. Chronological order should be maintained. Broker's Clearing Number should be stated when delivery is given by a Clearing Member Bank.*

| | | | |
|---|---|---|---|
| Name of deliver Broker or Clearing Number<br>Date | Power of Attorney | Probate | Death Certificate |
| | Letters of Administration | | |
| | Registered with the Compan<br>No.....Date..... | | |
| | (Signature [not initials] of Broker, Bank, Company. | | |
| | *Lodged by----------<br>Full Address---------- -<br>----------<br>----------<br>---------- | | |
| | ***Share certificates to be returned to***<br>(Fill in the name and address to which the Certificates are required to be returned)<br>Name and Address----------<br>----------<br>----------<br>---------- | | |
| | Share Transfer Stamps | | |

*To be filled only if the document are lodged by a person other than the transferee.

**1.** Substituted by Notification No. GSR 480(E) dated 24-4-1988.

**21.** The Board may, subject to the right of appeal conferred by section 111, decline to register - (*a*)the transfer of a share, not being a fully-paid share, to a person of whom they do not approve ; or (*b*)any transfer of shares on which the company has a lien.

**22.** The Board may also decline to recognise any instrument of transfer unless -

(*a*)a fee of two rupees is paid to the company in respect thereof ;

(*b*)the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer ; and (*c*) the instrument of transfer is in respect of only one class of shares.

**23.** Subject to the provisions of section 154, the registration of transfers may be suspended at such times and for such periods as the Board may from time to time determine :

***Provided*** that such registration shall not be suspended for more than thirty days at any one time or for more than forty-five days in the aggregate in any year.

**24.** The company shall be entitled to charge a fee not exceeding two rupees on the registration of every probate, letters of administration, certificate of death or marriage, power of attorney, or other instrument.

***Transmission of shares***

**25.** (1) On the death of a member, the survivor or survivors where the member was a joint holder, and his legal representatives where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares.

(2) Nothing in clause (*1*) shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

**26.** (1) Any person becoming entitled to a share in consequence of the death or insolvency of a member may, upon such evidence being produced as may from time to time properly be required by the Board and subject as hereinafter provided, elect, either -

(*a*)to be registered himself as holder of the share ; or

(*b*)to make such transfer of the share as the deceased or insolvent member could have made.

(2) The Board shall, in either case, have the same right to decline or suspend registration as it would have had, if the deceased or insolvent member had transferred the share before his death or insolvency.



**27.**(1) If the person so becoming entitled shall elect to be registered as holder of the share himself he shall deliver or sent to the company a notice in writing signed by him stating that he so elects.

(2) If the person aforesaid shall elect to transfer the share, he shall testify his election by executing a transfer of the share.

(3) All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or insolvency of the member had not occurred and the notice or transfer were a transfer signed by that member.

**28.** A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise anyright conferred by membership in relation to meetings of the company :

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

***Forfeiture of shares***

**29.** If a member fails to pay any call, or instalment of a call, on the day appointed for payment thereof, the Board may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

**30.** The notice aforesaid shall -

(*a*)name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made ; and

(*b*) state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made will be liable to be forfeited.

**31.** If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may, at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect.

**32.** (1) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit.

(2) At any time before a sale or disposal as aforesaid, the Board may cancel the forfeiture on such terms as it thinks fit.

**33.** (1) A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares.

(2) The liability of such person shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

**34.** (1) A duly verified declaration in writing that the declarant is a director *{,the managing agent, the secretaries and treasurers} the manager or the secretary, of the company, and that a share in the company has been duly forfeited on a date

stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

(2) The company may receive the consideration, if any, given for the share on any sale or disposal thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.

(3) The transferee shall thereupon be registered as the holder of the share.

(4) The transferee shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

**35.** The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

* Words should be omitted.

***Conversion of shares into stock***

**36.** The company may, by ordinary resolution, -

(*a*) convert any paid-up shares into stock ; and

(*b*)reconvert any stock into paid-up shares of any denomination.



**37.**The holders of stock may transfer the same or any part thereof in the same manner as, and subject to the same regulations under which, the shares from which the stock arose might before the conversion have been transferred, or as near thereto as circumstances admit :

***Provided*** that the Board may, from time to time, fix the minimum amount of stock transferable, so however that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

**38.** The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose ; but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

**39.** Such of the regulations of the company (other than those relating to share warrants), as are applicable to paid-up shares shall apply to stock and the words "share" and "shareholder" in those regulations shall include "stock" and "stock-holder" respectively.

***Share warrants***

**40.** The company may issue share warrants subject to, and in accordance with, the provisions of sections 114 and 115 ; and accordingly the Board may in its discretion, with respect to any share which is fully paid-up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence (if any) as the Board may, from time to time, require as to the identity of the person signing the application, and on receiving the certificate (if any) of the share, and the amount of the stamp duty on the warrant and such fee as the Board may from time to time require, issue a share warrant.

**41.** (1) The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending, and voting and exercising the other privileges of a member at any meeting held after the expiry of two clear days from the time of deposit, as if his name were inserted in the register of members as the holders of the shares included in the deposited warrant.

(2) Not more than one person shall be recognised as depositor of the share warrant.

(3) The company shall, on two days' written notice, return the deposited share warrant to the depositor.

**42.** (1) Subject as herein otherwise expressly provided, no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company.

(2) The bearer of a share warrant shall be entitled in all other respects to the same privilege and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

**43.** The Board may, from time to time, make rules as to the terms on which (if it shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss or destruction.

***Alteration of capital***

**44.** The company may, from time to time, by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as may be specified in the resolution.

**45.** The company may, by ordinary resolution, -
(*a*) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares ; (*b*) sub-divide its existing shares or any of them into shares of smaller amount than is fixed by the memorandum, subject, nevertheless, to the provisions of clause (*d*)of sub-section (1) of section 94 ;
(*c*) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

**46.** The company may, by special resolution, reduce in any manner and with, and subject to, any incident authorised and consent required by law, -
(*a*)its share capital ;
(*b*)any capital redemption reserve account ; or
(*c*) any share premium account.

***General meetings***



(2) If at any time there are not within India directors capable of acting who are sufficient in number to form a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board.

***Proceedings at general meetings***

**49.** (1) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(2) Save as herein otherwise provided, five members present in person (in the case of a public company - two members present in person, in the case of a private company) shall be a quorum.

**50.** The chairman, if any, of the Board shall preside as chairman at every general meeting of the company.

**51.** If there is no such chairman, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman of the meeting, the directors present shall elect one of their number to be chairman of the meeting.

**52.** If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

**53.** (1) The chairman may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place.

(2) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
(3) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
(4) Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

**54.** In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

**55.** Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

***Votes of members***

**56.** Subject to any rights or restrictions for the time being attached to any class or classes of shares, - (*a*)on a show of hands, every member present in person shall have one vote ; and
(*b*)on a poll the voting rights of members shall be as laid down in section 87.

**57.**In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.

For this purpose, seniority shall be determined by the order in which the names stand in the register of members.

**58.** Amember of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

**59.** No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

**60.** (1) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

(2) Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

**61.** The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll ; and in default the instrument of proxy shall not be treated as valid.



**62.** An instrument appointing a proxy shall be in either of the forms in Schedule IX to the Act or a form as near thereto as circumstances admit.

**63.** A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the shares in respect of which the proxy is given :

***Provided*** that no intimation in writing of such death, insanity, revo- cation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

***Board of directors***

**64.** The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.

**65.** (1) The remuneration of the directors shall, insofar as it consists of a monthly payment, be deemed to accrue from day-to-day.

(2) In addition to the remuneration payable to them in pursuance of the Act, the directors may be paid all travelling, hotel and other expenses properly incurred by them -

(*a*)in attending and returning from meetings of the Board of directors or any committee thereof or general meetings of the company ; or

(*b*)in connection with the business of the company.

**66.** The qualification of a director shall be the holding of at least one share in the company.

**67.**The Board may pay all expenses incurred in getting up and registering the company.

**68.** The company may exercise the powers conferred by section 50 with regard to having an official seal for use abroad, and such powers shall be vested in the Board.

**69.** The company may exercise the powers conferred on it by sections 157 and 158 with regard to the keeping of a foreign register ; and the Board may (subject to the provisions of those sections) make and vary such regulations as it may think fit respecting the keeping of any such register.

**70.**All cheques, promissory notes, drafts, hundis, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed drawn, accepted, endorsed, or otherwise executed, as the case may be, *{by the managing agent or secretaries and treasurers of the company, or where there is no managing agent or secretaries and treasurers}, by such person and in such manner as the Board shall from time to time by resolution determine.

* Words should be omitted

**71.** Every director present at any meeting of the Board or of a committee thereof shall sign his name in a book to be kept for that purpose.

**72.** (1) The Board shall have power at any time, and from time to time, to appoint a person as an additional director, provided the number of the directors and additional directors together shall not at any time exceed the maximum strength fixed for the Board by the articles.

(2) Such person shall hold office only up to the date of the next annual general meeting of the company but shall be eligible for appointment by the company as a director at that meeting subject to the provisions of the Act.

***Proceedings of Board***

**73.**(1) The Board of directors may meet for the despatch of business, adjourn and otherwise regulate its meetings, as it thinks fit.

(2) A director may, and the *{managing agent, secretaries and treasurers,} manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.

* Words should be omitted

**74.**(1) Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.

(2) In case of an equality of votes, the chairman of the Board, if any, shall have a second or casting vote.

**75.**The continuing directors may act notwithstanding any vacancy in the Board ; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.



**76.** (1) The Board may elect a chairman of its meetings and determine the period for which he is to hold office. (2) If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

**77.**(1) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.

(2) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.

**78.**(1) A committee may elect a chairman of its meetings.

(2) If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.

**79.**(1) A committee may meet and adjourn as it thinks proper.

(2) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

**80.** All acts done by any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.

**81.** Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the members of the Board or of a committee thereof, for the time being entitled to receive notice of a meeting of the Board or committee, shall be as valid and effectual as if it had been passed at a meeting of the Board or committee, duly convened and held.

***Manager or secretary***

**82.** Subject to the provisions of the Act, -
(1) a manager or secretary may be appointed by the Board for such term, at such remuneration and upon such conditions as it may think fit ; and any manager or secretary so appointed may be removed by the Board ;
(2) a director may be appointed as manager or secretary.

**83.** A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and the manager or secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the manager or secretary.

***The seal***

**84.** (1) The Board shall provide for the safe custody of the seal.

(2) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board or of a committee of the Board authorised by it in that behalf, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose and those two directors and the secretary or other person aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

***Dividends and reserve***

**85.** The company in general meeting may declare dividends, but no
dividend shall exceed the amount recommended by the Board.

**86.** The Board may from time to time pay to the members such interim dividends as appear to it to be justified by the profits of the company.

**87.**(1) The Board may, before recommending any dividend, set aside out of the profits of the company such sums as it thinks proper as a reserve or reserves which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the company may be properly applied, including provision for meeting contingencies or for equalising dividends and pending such application, may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the Board may, from time to time, think fit.

(2) The Board may also carry forward any profits which it may think prudent not to divide, without setting them aside as a reserve.

**88.** (1) Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares.

(2) No amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share.

(3) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid ; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

**89.** The Board may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

**90.** [*Omitted by Notification No. GSR 631, dated 23rd April, 1966.*]

**91.** (1) Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct.

(2) Every such cheque or warrant shall be made payable to the order of the person to whom it is sent.

**92.** Any one of two or more joint holders of a share may give effectual receipts for any dividends, bonuses or other moneys payable in respect of such share.

**93.** Notice of any dividend that may have been declared shall be given to the persons entitled to share therein in the manner mentioned in the Act.

**94.** No dividend shall bear interest against the company.

***Accounts***

**95.** (1) The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations, the accounts and books of the company, or any of them, shall be open to the inspection of members not being directors.

(2) No member (not being a director) shall have any right of inspecting any accounts or books or documents of the company except as conferred by law or authorised by the Board or by the company in general meeting.

***Capitalisation of profits***

**96.** (1) The company in general meeting may, upon the recommendation of the Board, resolve -

(*a*)that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts, or to the credit of the profit and loss account, or otherwise available for distribution ; and (*b*) that such sum be accordingly set free for distribution in the manner specified in clause (2) amongst the members who would have been entitled thereto, if distributed by way of dividend and in the same proportions.

(2) The sum aforesaid shall not be paid in cash but shall be applied, subject to the provision contained in clause (3), either in or towards -

(*i*)paying up any amounts for the time being unpaid on any shares held by such members respectively ;

(*ii*) paying up in full, unissued shares of the company to be allotted and distributed, credited as fully paid-up, to and amongst such members in the proportions aforesaid ; or

(*iii*)partly in the way specified in sub-clause (*i*) and partly in that specified in sub-clause (*ii*).

(3) A share premium account and a capital redemption reserve account may, for the purposes of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares. (4) The Board shall give effect to the resolution passed by the company in pursuance of this regulation.

**97.** (1) Whenever such a resolution as aforesaid shall have been passed, the Board shall -

(*a*)make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares, if any ; and

(*b*)generally do all acts and things required to give effect thereto.

(2) The Board shall have full power -

(*a*)to make such provision, by the issue of fractional certificates or by payment in cash or otherwise as it thinks fit, for the case of shares or debentures becoming distributable in fractions ; and also

(*b*)to authorise any person to enter, on behalf of all the members entitled thereto, into an agreement with the company providing for the allotment to them respectively, credited as fully paid-up, of any further shares to which they may be entitled upon such capitalisation, or (as the case may require) for the payment up by the company on their behalf, by the application thereto of their

respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares.



(3) Any agreement made under such authority shall be effective and binding on all such members.

***Winding up***

**98.** (1) If the company shall be wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act, divide amongst the members, *in specie* or kind, the whole or any part of the assets of the company, whether they shall consist of property of the same kind or not.

(2) For the purpose aforesaid, the liquidator may set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members.

(3) The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

***Indemnity***

**99.** Every officer or agent for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 633 in which relief is granted to him by the Court.

**TABLE B**

**MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES** ***1st*** - The name of the company is "The Eastern Steam Packet Company Limited".

***2nd*** - Theregistered office of the company will be situated in the State of Bombay.

***3rd***- (*a*) The main objects to be pursued by the company on its incorpora- tion are "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine".

(*b*) The objects incidental or ancillary to the attainment of the above main objects are "the acquisition, construction, building, setting up and

provision of establishments for repairing ships or boats, for the training of personnel required for the running of ships or boats and the doing of all such other things as are conducive to the attainment of the foregoing main objects". (*c*) The other objects for which the company is established are "carrying on the business of carriers by land, air and the running of hotels for tourists".

***4th***- The liability of the members is limited.

***5th*** - The share capital of the company is two hundred thousand rupees, divided into one thousand shares of two hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

| *Names, addresses, descriptions and occupations of subscribers* | *Number of shares taken by each subscriber* |
|---|---|
| 1. A.B. of....., Merchant | 200 |
| 2. C.D. of....., Merchant | 25 |
| 3. E.F. of....., Merchant | 30 |
| 4. G.H. of....., Merchant | 40 |
| 5. I.J. of....., Merchant | 15 |
| 6. K.L. of....., Merchant | 5 |
| 7. M.N. of....., Merchant | 10 |
| | Total Shares taken 325 |

Date.....day of.....19....

**TABLE C**

**MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL**

***Memorandum of association***

***1st*** - The name of the company is "The Mutual Calcutta Marine Association Limited".

***2nd*** - The registered office of the company will be situate in the State of West Bengal.

***3rd*** - (*a*) The main objects to be pursued by the company on its incorporation are "the mutual insurance of ships belonging to members of the company".



(*b*) The objects incidental or ancillary to the attainment of the above main objects are "providing for the welfare of employees or ex-employees of the company and the making, drawing, accepting, endorsing, executing and issuing of any negotiable or transferable documents and the doing of such other things as are conducive to the attainment of the foregoing main objects".
(*c*) The other objects for which the company is established are "building, equipping and maintaining charitable hospitals, running of schools and undertaking any other social service".
***4th*** - The liability of the members is limited.
***5th*** - Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding one hundred rupees.
We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

*Names, addresses, descriptions and occupations of subscribers*

1. A.B. of....., Merchant
2. C.D. of....., Merchant
3. E.F. of....., Merchant
4. G.H. of....., Merchant
5. I.J. of....., Merchant
6. K.L. of....., Merchant
7. M.N. of....., Merchant

Dated .....day of.....19.....



## ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

***Interpretation* 1.**

(1) In these articles -
(*a*)"the Act" means the Companies Act, 1956,
(*b*) "the seal" means the common seal of the company.

(2) Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

***Members***

**2.** The number of members with which the company proposes to be registered is 500, but the Board of directors may, from time to time, whenever the company or the business of the company requires it, register an increase of members.

**3.** The subscribers to the memorandum and such other persons as the Board shall admit to membership shall be members of the company.

***General meetings***

(2) If at any time there are not within India directors capable of acting, who are sufficient in number to form a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner as nearly as possible, as that in which such a meeting may be called by the Board.

***Proceedings at general meetings***

**6.** (1) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(2) Save as herein otherwise provided, five members present in person shall be a quorum.

**7.** (1) If within half an hour from the time appointed for holding the meeting, a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved.

(2) In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Board may determine.
(3) If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

**8.** The chairman, if any, of the Board shall preside as chairman at every general meeting of the company.

**9.** If there is no such chairman, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman of the meeting, the directors present shall elect one of their number to be chairman of the meeting.

**10.** If at any meeting no director is willing to act as chairman or if no director is presentwithin fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

**11.** (1) The chairman may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place.

(2) No business shall be transacted at any adjourn meeting other than the business left unfinished at the meeting from which the adjournment took place.

(3) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(4) Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

**12.** In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.



**13.** Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

***Votes of members***

**14.** Every member shall have one vote.

**15.** A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

**16.** No member shall be entitled to vote at any general meeting unless all sums presently payable by him to the company have been paid.

**17.** (1) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

(2) Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

**18.** A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed: ***Provided*** that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

***Board of directors***

**19.** The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.

**20.** (1) The remuneration of the directors shall, insofar as it consists of a monthly payment, be deemed to accrue from day-to-day.

(2) The directors may also be paid all travelling, hotel and other expenses properly incurred by them -

(*a*)in attending and returning from meetings of the Board or any committee thereof or general meetings of the company ; or

(*b*)in connection with the business of the company.

***Proceedings of meetings of Board***

**21.** (1) The Board of directors may meet for the despatch of business, adjourn and otherwise regulate its meetings, as it thinks fit.

(2) Adirector may, and the *{managing agent, secretaries and treasures,} manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.

* Words should be omitted

**22.** (1) Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.

(2) In case of an equality of votes, the chairman shall have a second or casting vote.

**23.** The continuing directors may act notwithstanding any vacancy in the Board ; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.

**24.** (1) The Board may elect a chairman of its meetings and determine the period for which he is to hold office. (2) If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

**25.** (1) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.

(2) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.

**26.** (1) A committee may elect a chairman of its meetings.



(2) If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.

**27.** (1) A committee may meet and adjourn as it thinks proper. (2) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

**28.** All acts done by any meeting of the Board or of a committee thereof, or by any person acting as a director, shall notwithstanding that it may be afterwardsdiscovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified be as valid as if every such director or such person had been duly appointed and was qualified to be a director.

**29.** Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the members of the Board or a committee thereof for the time being entitled to receive notice of a meeting of the Board or committee, shall be as valid and effectual as if it had been passed at a meeting of the Board or committee, duly convened and held.

***Manager or secretary***

**30.** (1) A manager or secretary may be appointed by the Board for such term, at such remuneration and upon such conditions as it may think fit ; and any manager or secretary so appointed may be removed by the Board.
(2) A director may be appointed as manager or secretary.

**31.** A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and the manager or secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the manager or secretary.

***The Seal***

**32.** (1) The Board shall provide for the safe custody of the seal.

(2) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board of directors, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose ; and those two directors and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their pre- sence.

*Names, addresses, descriptions and occupations of subscribers*

1. A.B. of....., Merchant
2. C.D. of....., Merchant
3. E.F. of....., Merchant
4. G.H. of....., Merchant
5. I.J. of....., Merchant
6. K.L. of....., Merchant
7. M.N. of....., Merchant

Dated .....day of.....19.....

**TABLE D**

**MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL**

***Memorandum of association***

***1st*** - The name of the company is "The Snowy Range Hotel Company Limited".

***2nd*** - The registeredoffice of the company will be situate in the State of West Bengal.

***3rd*** - (*a*) The main objects to be pursued by the company on its incorpora- tion are "the facilitating of travelling in the Snowy Range, by providing hotels and conveyances by sea and by land for the accommodation of travellers". (*b*) The objects

incidental or ancillary to the attainment of the above main objects are "conducting coaching classes in catering, hotel management, etc., and the doing of such other things as are conducive to the attainment of the foregoing main objects".
(*c*) The other objects for which the company is established are "running a publishing house and the publishing of periodical magazines/news- papers catering to various interests pertaining to the objects aforesaid".
***4th*** - The liability of the members is limited.
***5th*** - Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding fifty rupees.



***6th*** - The share capital of the company shall consists of five hundred thousand rupees, divided into five thousand shares of one hundred rupees each. We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

| *Names, addresses, descriptions and occupations of subscribers* | *Number of shares taken by each subscriber* |
|---|---|
| 1. A.B. of....., Merchant | 200 |
| 2. C.D. of....., Merchant | 25 |
| 3. E.F. of....., Merchant | 30 |
| 4. G.H. of....., Merchant | 40 |
| 5. I.J. of....., Merchant | 15 |
| 6. K.L. of....., Merchant | 5 |
| 7. M.N. of....., Merchant | 10 |
| Total Shares taken | 325 |

Date.....day of.....19....

Witness of the above signatures X.Y. of .....

**ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL**

**1.** The number of members with which the company proposes to be registered is 100, but the directors may from time to time register an increase of members.
**2.** All the articles of Table A in Schedule Iannexed to the Companies Act, 1956, shall be deemed to be incorporated with these articles and to apply to the company. *Names, addresses, descriptions and occupations of subscribers*

*Names, addresses, descriptions and occupations of subscribers*

1. A.B. of....., Merchant
2. C.D. of....., Merchant
3. E.F. of....., Merchant
4. G.H. of....., Merchant
5. I.J. of....., Merchant
6. K.L. of....., Merchant
7. M.N. of....., Merchant

Dated .....day of.....19.....

**TABLE E**

**MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY**

***Memorandum of association***

***1st*** - Thename of the company is "The Patent Stereotype Company".

***2nd***- The registered office of the company will be situate in the State of West Bengal.
***3rd***- (*a*) The main objects to be pursued by the company on its incorpora-tion are "the working of a patent method of founding and casting stereotype plates of which method P.Q. of Bombay, is the sole patentee".
(*b*) The objects incidental or ancillary to the attainment of the above main objects are "purchasing, taking on lease or licence or concession or otherwise, lands, buildings, works and any rights and privileges or interest therein for establishing the necessary workshops/factories and the doing of such other things as are conducive to the attainment of the foregoing main objects".
(*c*) The other objects for which the company is established are "conducting research in any field pertaining to the science of metallurgy and turning to account the results of the same".
We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite

our respective names. *Names, addresses descriptions and Number of shares occupations of subscribers taken by each subscriber*

| *Names, addresses, descriptions and occupations of subscribers* | *Number of shares taken by each subscriber* |
|---|---|
| 1. A.B. of....., Merchant | 3 |
| 2. C.D. of....., Merchant | 2 |
| 3. E.F. of....., Merchant | 1 |
| 4. G.H. of....., Merchant | 2 |
| 5. I.J. of....., Merchant | 2 |
| 6. K.L. of....., Merchant | 1 |
| 7. M.N. of....., Merchant | 1 |
| Total Shares taken | 12 |

Date.....day of.....19....



***Articles of Association of an unlimited company***

**1.** the number of members with which the company proposes to be registered is 20, but the Board may from time to time register an increase of members.

**2.** The share capital of the company is twenty thousand rupees, divided into twenty shares of one thousand rupees each.

**3.** The company may by special resolution -

(*a*) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe ;

(*b*)consolidate its shares into shares of a larger amount than its existing shares ;

(*c*) sub-divide its shares into shares of a smaller amount than its existing shares ;

(*d*)cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person ;

(*e*)reduce its share capital in any way.

**4.** All the articles of Table A in Schedule I to the Companies Act, 1956, except articles (36, 37, 38, 39, 44, 45 and 46) shall be deemed to be incorporated with these articles and to apply to the company.

*Names, addresses, descriptions and occupations of subscribers*

1. A.B. of....., Merchant
2. C.D. of....., Merchant
3. E.F. of....., Merchant
4. G.H. of....., Merchant
5. I.J. of....., Merchant
6. K.L. of....., Merchant
7. M.N. of....., Merchant

Dated .....day of.....19.....

**TABLE F**

**FORM OF STATEMENT TO BE PUBLISHED BY LIMITED BANKING COMPANIES, INSURANCE COMPANIES AND DEPOSIT, PROVIDENT OR BENEFIT SOCIETIES**

*The share capital of the company is Rs..... divided into ..... shares of Rs. ..... each. The number of shares issued is ..... Calls to the amount of Rs..... per share have been made, under which the sum of Rs. ..... has been received.

The liabilities of the company on the thirty-first day of December (or thirtieth day of June) were -

Debts owing to sundry persons by the company : Rs.

Under decree, .....

On mortgages or bonds,

On notes, bills or hundis,

.....

.....

On other contracts, .....

On estimated liabilities, .....

The assets of the company on that day were :

Government securities [stating them],

Bills of exchange, hundis, and promissory notes,

.....

.....

Cash at the bankers, .....

Other securities. .....

**SCHEDULE IA**

[*See* section 6(*c*)] **LIST OF RELATIVES**

1. Father.
2. Mother (including step-mother).
3. Son (including step-son).
4. Son's wife.
5. Daughter (including step-daughter).
6. Father's father.
7. Father's mother.
8. Mother's mother.
9. Mother's father.
10. Son's son.



11. Son's son's wife.
12. Son's daughter.
13. Son's daughter's husband.
14. Daughter's husband.
15. Daughter's son.
16. Daughter's son's wife.
17. Daughter's daughter.
18. Daughter's daughter's husband.
19. Brother (including step-brothers).
20. Brother's wife.
21. Sister (including step-sister).
22. Sister's husband.

23-49. [*Omitted by the Companies* (*Amendment*) *Act, 1965, w.e.f. 15-10-1965.*]

## SCHEDULE II

[*See* sections 43(2)(*a*) and 56]

## MATTERS TO BE SPECIFIED IN PROSPECTUS AND REPORTS TO BE SET OUT THEREIN

[1][PART I

**I.*General information***

(*a*)Name and address of registered office of the company.

(*b*)(*i*) Consent of the Central Government for the present issue and declaration of the Central Government about non-responsibility for financial soundness or correctness of statements.

(*ii*) Letter of intent/industrial licence and declaration of the Central Government about non-responsibility for financial soundness or correctness of statements.

(*c*)Names of regional stock exchange and other stock exchanges where application made for listing of present issue. (*d*) Provisions of sub-section (1) of section 68A of the Companies Act, relating to punishment for fictitious applications.

(*e*)Statement/declaration about refund of the issue if minimum sub- scription of 90 per cent is not received within 90 days from closure of the issue.

(*f*)Declaration about the issue of allotment letters/refunds within a period of 10 weeks and interest in case of any delay in refund at the prescribedrateundersection73(2)/(2A).

(*g*) Date of opening of the issue.

Date of closing of issue.

Date of earliest closing of the issue.

(*h*) Names and addresses of auditors and lead managers.

(*i*) Name and address of trustee under debenture trust deed (in case of debenture issue).

(*j*)WhetherratingfromCrisiloranyratingagencyhasbeenobtained fortheproposeddebenture/preferenceshares issue.

Ifnoratinghasbeenobtained,thisshouldbeansweredas"No".

If"yes"theratingshouldbeindicated.

(*k*)Underwriting oftheissue

(Namesandaddressesoftheunderwritersandtheamountunderwrittenbythem).

(Declarationbyboardofdirectorsthattheunderwritershave sufficientresourcestodischargetheirrespective obligations.)

[2][(*l*)a statementbytheboardofdirectorsstatingthat -

(*i*)allmoneysreceivedoutofissueofsharesordebenturestopublic shall betransferredtoa separatebankaccount otherthanthe bankaccountreferredtoinsub-section(3)ofsection73 ;

(*ii*)detailsof allmonies utilised out of the issue referredtoinsub-item (*i*) shallbe disclosed under an appropriate separate head in thebalance sheet ofthecompanyindicatingthepurposeforwhich suchmonieshadbeenutilised ; and

(*iii*) details of all unutilised monies out of the issue of share or debentures, if any, referred to in sub-item (*i*) shall be disclosed under an appropriate separate head in the balance sheet of the company indicating the

form in which such unutilised monies have been invested.]

**1.** Substituted by Notification No. SO 666(E) dated 3-10-1991.

**2.** Inserted by the Notification No. GSR 265(E) dated 15-5-1997.

**II.*Capital structure of the company***

(*a*)Authorised,issued,subscribed andpaid-upcapital.

(*b*)Sizeofpresentissuegivingseparatelyreservationforpreferential allotmenttopromotersandothers.

(*c*)Paid-upcapital

(*i*) afterthepresentissue

(*ii*)afterconversion ofdebentures(ifapplicable).



**III. *Terms of the present issue***

(*a*)Termsofpayments.

(*b*)Rightsoftheinstrumentholders.

(*c*)Howtoapply - availabilityofforms,prospectusandmodeofpayment.

(*d*)Anyspecial taxbenefitsforcompanyanditsshareholders.

**IV. *Particulars of the issue***

(*a*)Objects.

(*b*)Projectcost.

(*c*)Meansoffinancing(includingcontributionofpromoters).

**V. *Company, management and project***

(*a*)Historyandmainobjectsandpresentbusinessofthecompany.

(*b*)Subsidiary(ies)ofthecompany,ifany

(Forfinancialdata,refertoauditor'sreport inPartII).

(*c*)Promotersandtheirbackground.

(*d*)Names,addressesandoccupationofmanager,managingdirector andotherdirectorsincludingnominee-directors, whole-time directors (givingtheirdirectorshipsinothercompanies).

(*e*)Locationofproject.

(*f*)Plantandmachinery,technology,process,etc.

(*g*)Collaboration,anyperformance guaranteeorassistanceinmarketing by the collaborators.

(*h*)Infrastructurefacilitiesforraw materials and utilities like water, electricity, etc.

(*i*) Schedule of implementation of the project and progress made so far, giving details of land acquisition, civil works, installation of plant and machinery, trial production, date of commercial production, etc.

(*j*) The products :

(*i*) Nature of the products - consumer/industrial and end-users (*ii*)

Approach to marketing and proposed marketing set up.

(*iii*) Export possibilities and export obligations, if any (in case of a company providing any "service" particulars, as applicable, be furnished).

(*k*)Future prospects - expected capacity utilisation during the first three years from the date of commencement of production, and the expected year when the company would be able to earn cash profits and net profits.

Stock market data for shares/debentures of the company high/low price in each of the last three years and monthly high/low during the last six months (where applicable).

**VI. *Following particulars in regard to the company and other listed companies under the same management within the meaning of section 370(1B) which made any capital issue during the last three years :***

Name of the company

Year of issue

Type of issue (Public/rights/composite)

Amount of issue

Date of closure of issue

Date of completion of delivery of share/debenture certificates

Date of completion of the project, where object of the issue was financing of a project

Rate of dividend paid

**VII.** (*a*) Outstanding litigation pertaining to -

(*i*) matters likely to affect operation and finances of the company including disputed tax liabilities of any nature ; and (*ii*) criminal prosecution launched against the company and the directors for alleged offences under the enactments specified in paragraph 1 of Part I of Schedule XIII to the Companies Act, 1956.

(*b*)Particulars of default, if any, in meeting statutory dues, institutional dues, and towards instrument holders like debentures, fixed deposits, and arrears on cumulative preference shares, etc. (also give the same particulars about the companies promoted by the same private promoters and listed on stock exchanges).

(*c*) Any material development after the date of the latest balance sheet and its impact on performance and prospects of the company.

**VIII.** ***Management perception of risk factors*** **(*i.e., sensitivity to foreign exchange rate fluctuations, difficulty in availability of raw materials or in marketing of products, cost/time overrun, etc.*)**

**PART II**

**A.*General information***

**1.** Consent of directors, auditors, solicitors/advocates, managers to the issue, registrar of issue, bankers to the company, bankers to the issue and experts.

**2.** Expert opinion obtained, if any.

**3.** Change, if any, in directors and auditors during the last three years, and reasons thereof.

**4.** Authority for the issue and details of resolution passed for the issue.

**5.** Procedure and time schedule for allotment and issue of certificates.



**6.** Names and addresses of the company secretary, legal adviser, lead managers, co-managers, auditors, bankers to the company, bankers to the issue, and brokers to the issue.

**B.*Financial information***

Reports to be set out

**1.** A report by the auditors of the company with respect to -

(*a*)profits and losses and assets and liabilities, in accordance with sub-clause (2) or (3) of this clause, as the case may require ; and

(*b*)the rates of the dividends, if any, paid by the company in respect of each class of shares in the company for each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares for any of those years,

and, if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, containing a statement of that fact (and accompanied by a statement of the accounts of the company in respect of that part of the said period up to a date not earlier than six months of the date of issue of the prospectus indicating the profit or loss for that period and the assets and liabilities position as at the end of that period together with a certificate from the auditors that such accounts have been examined and found correct by them. The said statement may indicate the nature of provision or adjustments made or are yet to be made).

**2.** If the company has no subsidiaries, the report shall -

(*a*) so far as regards profits and losses, deal with the profits or losses of the company (distinguishing items of a non-recurring nature) for each of the five financial years immediately preceding the issue of the prospectus ; and (*b*)so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.

**3.** If the company has subsidiaries, the report shall -

(*a*)so far as regards profits and losses, deal separately with the company's profits or losses as provided by sub-clause (2) and in addition deal either -

(*i*) as a whole with the combined profits or losses of its subsidiaries so far as they concern members of the company ; or

(*ii*)individually with the profits or losses of each subsidiary, so far as they concern members of the company ; or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company, and, so far as they concern members of the company, with the combined profits or losses of its subsidiaries ; and

(*b*)so far as regards assets and liabilities, deal separately with the company's assets andliabilities as provided by sub-clause (2) and in addition, deal either -

(*i*) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities ; or

(*ii*)individually with the assets and liabilities of each subsidiaries ;

and shall indicate as respects the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

**4.** If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly -

(*i*)in the purchase of any business ; or

(*ii*)in the purchase of an interest in any business and by reason of that purchase, or anything to be done in consequence thereof, or in connection therewith ; the company will become entitled to an interest as respects either the capital or profits and losses or both, in such business exceeding fifty per cent, thereof ; a report made by accountants (who shall be named in the prospectus)

upon -
(*a*)the profits or losses of the business for each of the five financial years immediately preceding the issue of the prospectus ; and
(*b*)the assets and liabilities of the business at the last date to which the accounts of the business were made up, being a date not more than one hundred and twenty days before the date of the issue of the prospectus.
**5.** (1) If -
(*a*)the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate ; and (*b*)by reason of that acquisition or anything to be done in consequence thereof or in connection therewith, that body corporate will become a subsidiary of the company ;
a report made by accountants (who shall be named in the prospectus) upon -
(*i*) the profits or losses of the other body corporate for each of the five financial years immediately preceding the issue of the prospectus ; and
(*ii*)the assets and liabilities of the other body corporate at the last date to which its accounts were made up.
(2) The said report shall -
(*a*)indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with for holders of other shares, if the company had at all material times held the shares to be acquired ; and
(*b*)where the other body corporate has subsidiaries deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by sub-clause (2) above in relation to the company and its subsidiaries.



**6.** Principal terms of loan and assets charged as security.
**C.*Statutory and other information***
**1.** Minimum subscription.
**2.** Expenses of the issue giving separately fee payable to :
(*a*)Advisers.
(*b*)Registrars to the issue.
(*c*) Managers to the issue.
(*d*)Trustees for the debenture-holders.
**3.** Underwriting commission and brokerage.
**4.** Previous issue for cash.
**5.** Previous public or rights issue, if any :
(during last five years)
(*a*)Date of allotment : Closing date :
Date of refunds :
Date of listing on the stock exchange :
(*b*)If the issue(s) at premium or discount and the amount thereof.
(*c*)The amount paid or payableby way of premium, if any, on each share which had been issued within the two years preceding the date of the prospectus or is to be issued, stating the dates or proposed dates of issue and, where some shares have been or are to be issued at a premium and other shares of the same class at a lower premium, or at part or at a discount, the reasons for the differentiation and how any premiums received have been or are to be disposed of.
**6.** Commission or brokerage on previous issue.
**7.**Issue of shares otherwise than for cash.
**8.** Debentures and redeemable preference shares and other instruments issued by the company outstanding as on the date of prospectus and terms of issue.
**9.** Option to subscribe.
[1]**[9A.**The details of option to subscribe for securities to be dealt with in a depository.]

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

**10.** Purchase of property :
(*i*) As respects any property to which this clause applies -
(*a*) the names, addresses, descriptions and occupations of the vendors ;
(*b*)the amount paid or payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so paid or payable to each vendor, specifying separately the amount, if any, paid or payable for goodwill ;
(*c*)the nature of the title or interest in such property acquired or to be acquired by the company ;
(*d*)short particulars of every transaction relating to the property completed within the two preceding years, in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter, or a director or proposed

director of the company had any interest, direct or indirect, specifying the date of the transaction and thename of such promoter, director or proposed director and stating the amount payable by or to such vendor, promoter, director or proposed director in respect of the transaction.

(*ii*) The property to which sub-clause (*i*)applies, is a property purchased or acquired by the company or proposed to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, other than property -

(*a*)the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract ; or (*b*)as respects which the amount of the purchase money is not material.

(*iii*) For the purpose of this clause, where a vendor is a firm, the members of the firm shall not be treated as separate vendors.

(*iv*)If the company proposes to acquire a business which has been carried on for less than three years, the length of time during which the business has been carried on.

**11.** (*i*) Details of directors, proposed directors, whole-time directors, their remuneration, appointment and remuneration of managing directors, interests of directors, their borrowing powers and qualification shares.

Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter or officer and consideration for payment of giving of the benefit.

(*ii*) The dates, parties to, and general nature of -

(*a*)every contract appointing or fixing the remuneration of a managing director or manager whenever entered into, that is to say, whether within or more than, two years before the date of the prospectus ;

(*b*)every other material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of the prospectus.

A reasonable time and place at which any such contract or a copy thereof may be inspected.

(*iii*) Full particulars of the nature and extent of the interest, if any, of every director or promoter -

(*a*) in the promotion of the company ; or

(*b*)in any property acquired by the company within two years of the date of the prospectus or proposed to be acquired by it.



Where the interest of such a director or promoter consists in being a member of a firm or company, the nature and extent of the interest of the firm or company, with a statement of all sums paid or agreed to be paid to him or to the firm or company in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm or company, in connection with the promotion or formation of the company.

**12.** Rights of members regarding voting, dividend, lien on shares and the process for modification of such rights and forfeiture of shares.

**13.** Restrictions, if any, on transfer and transmission of shares/debentures and on their consolidation/splitting. **14.** Revaluation of assets, if any (during last five years).

**15.** Material contracts and inspection of documents, *e.g.*,

*A.* Material contracts.

*B*. Documents.

*C*. Time and place at which the contracts together with documents will be available for inspection from the date of prospectus until the date of closing of the subscription list.

**PART III**

**PROVISIONS APPLYING TO PARTS I AND II OF THE SCHEDULE**

**16.** Every person shall, for the purpose of this Schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase or for any option of purchase, of any property to be acquired by the company, in any case where -

(*a*)the purchase money is not fully paid at the date of the issue of the prospectus ;

(*b*)the purchase money is to be paid or satisfied, wholly or in part, out of the proceeds of the issue offered for subscription by the prospectus;

(*c*)the contract depends for its validity or fulfilment on the result of that issue.

**17.** Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

**18.** If in the case of a company which has been carrying on business, or of a business which has been carried on for less than five financial years, the accounts of the company or business have only been made up in respect of four such years, three such years, two such years or one such year, Part II of this Schedule shall have effect as if references to four financial years, three

financial years, two financial years or one financial year, as the case may be, were substituted for references to five financial years.

**19.** Where the five financial years immediately preceding the issue of the prospectus which are referred to in Part II of this Schedule or in this Part cover a period of less than five years, references to the said five financial years in either Part shall have effect as if references to a number of financial years the aggregate period covered by which is not less than five years immediately preceding the issue of the prospectus were substituted for references to the five financial years aforesaid.

**20.** Any report required by Part II of this Schedule shall either -

(*a*)indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary ; or

(*b*) make those adjustments and indicate that adjustments have been made.

**21.** Any report by accountants required by Part II of this Schedule -

*(a)* shall be made by accountants qualified under this Act for appoint- ment as auditors of the company ; and (*b*)shall not be made by any accountant who is an officer or servant ; or a partner or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company.

For the purposes of this clause, the expression "officer" shall include a proposed director but not an auditor.

**22.** Inspection of documents :

Reasonable time and place at which copies of all balance sheets and profit and loss accounts, if any, on which the report of the auditors is based, and material contracts and other documents may be inspected.

***Note***: Term ``year'' wherever used hereinearlier, means financial year.

**Declaration**

1[*That all the relevant provisions of the Companies Act, 1956, and the guidelines issued by the Government or the guidelines issued by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992, as the case may be, have been complied with and no statement made in prospectus is contrary to the provisions of the Companies Act, 1956 or the Securities and Exchange Board of India Act, 1992 or rules made there under or guidelines issued, as the case may be*]

*Place* : ..... .....

*Date* : ..... *Signature of directors*

1. Substituted by Notification No. GSR 650(E) dated 17-9-2002.

**SCHEDULE III**

[*See* section70]

**FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A COMPANY WHICH DOES NOT ISSUE A PROSPECTUSOR WHICH DOES NOT GO TO ALLOTMENT ON A PROSPECTUS ISSUED, AND REPORTS TO BE SET OUT THEREIN**

**PART I**

**FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN**

**THE COMPANIES ACT, 1956**

***Statement in lieu of prospectus delivered for registration by***

**……**

**…**(Insert the name of the company)

**PURSUANT TO SECTION 70 OF THE COMPANIES ACT, 1956**

Delivered for registration by.....

The nominal share capital of the company Rs. .....

Divided into
.....Shares of Rs. ..... each
..... " " " ..... "
..... " " " ..... "
.....shares of Rs .....each
Amount (if any) of above capital which consists of redeemable preference shares The earliest date on which the company has power to redeem these shares.

Names, addresses, descriptions and occupations of-
(*a*) directors or proposed directors ;
(*b*) managing director or proposed managing director ;
(*c*) *{, managing agent or proposed managing agent ;
(*d*) secretaries and treasures or proposed secretaries and treasurers}; (*e*) manager or proposed manager.

Any provision in the articles of the company, or in any contract irrespective of the time when it was entered into, as to the appointment of and remuneration payable to the persons referred to in (*a*), (*b*), (*c*), (*d*)and (*e*) above.

If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

Number and amount of shares and debentures agreed to be issued as fully or partly paid-up otherwise than in cash. credited as paid.

1. .....share of Rs ..... fully paid
2. .....shares upon which, Rs. ..... per share
3. .....debentures. Rs .....

4.Consideration :

The consideration for the intended issue of those shares and debentures.

Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from, a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

1. ..... shares of Rs. ..... and debentures of Rs. .....

Period during which the option is exercisable. 2. Until

Price to be paid for shares or debentures subscribed for or acquired under the option. 3.

Consideration for the option or the right to option. 4. Consideration.....



Persons to whom the option or the right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures. 5. Names and addresses -

Names, occupations and addresses of vendors of property purchased or acquired, or proposed to be

purchased or acquired by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material.

Amount (in cash, shares or debentures) payable to each separate vendor.

Amount (if any) paid or payable (in cash, shares or debentures) for each such property, specifying amount (if any) paid or payable for goodwill.

Total purchase price :
Rs. .....

Cash Rs. .....

Shares Rs. .....

Debentures Rs. .....

Good will Rs. .....

Short particulars of every transaction relating to each such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest, direct or indirect.

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company ;
or

Amount paid..... Amount payable.....

Rate of the commission Rate per cent

The number of shares, if any, which persons have agreed to subscribe for a commission.

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the five years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than five years and the accounts of which have only been made up in respect of four years, three years, two years or one year, the above requirements shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years, and in any such case the statement shall say how long the business to be acquired has been carried on.

Where the financial year with respect to which the accounts of the business have been made up is greater or less than a year, references to five years, four years, three years, two years, and one year in this paragraph shall have effect as if references to such number of financial years as in the aggregate, cover a period of not less than five years, four years, three years, two years or one year, as the case may be, were substituted for references to three years, two years and one year, respectively.

Estimated amount of preliminary expenses. Rs. .....

By whom those expenses have been paid or are payable.

Amount paid or intended to be paid to any promoter.

Consideration for the payment

Name of promoter..... Amount Rs. .....

Consideration.....

Any other benefit given or intended to be given to any promoter Name of promoter..... Nature and value of benefit.....
Consideration for the benefit Consideration.....

Dates of, parties to, and general nature of :
(*a*)contract appointing or fixing the remuneration of directors, managing director *{, managing agent, secretaries and treasurers,} or manager ; and
(*b*)every other material contract (other than (*i*) contracts entered into in the ordinary course of the business intended to be carried on by the company, or (*ii*) entered into more than two years before the delivery of this statement).

Time and place at which (1) the contracts or copies thereof or (2)(*i*) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (*ii*) in the case of a contract wholly or partly in a language other than English, a copy of a translation thereof in English or embodying a translation in English of the parts in the other language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, may be inspected. Names and addresses of the auditors of the company (if any).

Full particulars of the nature and extent of the interest of every director, managing director *{, managing agent, secretaries and treasurers} or manager in the promotion of or in the property proposed to be acquired by the company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

(Signatures of the persons above named as directors or proposed directors, or of their agents authorised in writing.)

.....

.....

.....

Date.....

* Words should be omitted

**PART II**

**REPORTS TO BE SET OUT**

**1.** Where it is proposed to acquire a business, a report made by accountants (who shall be named in the statement) upon -
(*a*)the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar ; and
(*b*)the assets and liabilities of the business as at the last date to which the accounts of the business were made up. **2.** (1) Where it is proposed to acquire shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants (who shall be named

in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-clause (2) or (3) of this clause, as the case may require, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be



acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in sub-clause (1) shall -

(*a*)so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar;

(*b*)so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate as at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in sub-clause (1) shall -

(*a*) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by sub-clause (2), and in addition deal either -

(*i*) as a whole with the combined profits or losses of its subsidiaries so far as they concern members of the other body corporate ; or

(*ii*)individually with the profitsor losses of each subsidiary, so far as they concern members of the other body corporate ;

or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate, and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries ; and

(*b*)so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by sub-clause (2) and, in addition, deal either -

(*i*) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities ; or

(*ii*)individually with the assets and liabilities of each sub- sidiary ; and shall indicate, as respects the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

**PART III**

**PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE**

**3.** (1) In this Schedule, the expression "vendor" includes a vendor as defined in Part III of Schedule II.

(2) Clause 31 of Schedule II shall apply to the interpretation of Part II of this Schedule as it applies to the interpretation of Part II of Schedule II.

**4.** If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five financial years, the accounts of the business or body corporate have only been made up in respect of four such years, three such years, two such years or one such year, Part II of this Schedule shall have effect as if references to four financial years, three financial years, two financial years or one financial year, as the case may be, were substituted for references to five financial years.

**5.** Any report required by Part II of this Schedule shall either -

(*a*)indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the person making the report necessary ; or

(*b*)make those adjustments and indicate that adjustments have been made.

**6.** Any report by accountants required by Part II of this Schedule - (*a*) shall be made by accountants qualified under this Act for appointment as auditors of a company ; and

(*b*)shall not be made by any accountant who is an officer or servant, or a partner or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company.

For the purposes of this clause, the expression "officer" shall include a proposed director but not an auditor.

**SCHEDULE IV**

**Form of Statement in lieu of prospectus to be delivered to Registrar by a private company on becoming a public company and reports to be set out therein**

**[See section 44(2)(b)]**

**PART I**

**Form of statement and particulars to be contained therein**

**The Companies Act, 1956**

**Statement in lieu of prospectus delivered for registration by**

**……**

**(Insert the name of the company)**
**Pursuant to clause (b) of sub-section (2) of section 44 of the Companies Act, 1956**

Delivered for registration by

| | | |
|---|---|---|
| Delivered for registration by | | ..... |



| | |
|---|---|
| The nominal share capital of the company Divided into | Rs……shares of Rs…….each……,, ,, ,,……,, ,, ,,……,, ,, ,,…… |
| Amount (if any) of above capital which consists of redeemable preference shares. | .....shares of Rs…….each |
| The earliest date on which the company has power to redeem these shares | |
| Names, addresses, descriptions and occupations of- | |
| (a)directors or proposed directors; | |
| (b)managing director or proposed managing director; | |
| (c)[1][***] | |
| (d)[2][***] | |
| (e)manager or proposed manager. | |
| Any provision in the articles of the company, or in any contract irrespective of the time when it was entered into as to the appointment of and remuneration payable to the persons referred to in (a), (b) [3][***] and (e) above | |
| Amount of shares issued. | |
| Amount of commission paid or payable in connection therewith. | …….shares |
| Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement. | |
| Unless more than two years have elapsed since the date on which the company was entitled to commence business:- | |
| Amount of preliminary expenses. | |
| By whom those expenses have been paid or are payable. | |
| Amount paid or intended to be paid to any promoter. | Rs. …… |
| Consideration for the payment. | |
| Any other benefit given or intended to be given to any promoter. | Name of promoter …….Amount Rs……. |
| | Consideration ……. |
| Consideration for the benefit. | Name of promoter .....Nature and value ……. of benefit ……. |
| If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively. | Consideration ……. |
| Number and amount of shares and debentures issued within the two years preceding the date of that statement as fully or partly paid-up otherwise than for cash or agreed to be so issued at the date of this statement. | 1. …….shares of Rs. ……. fully paid2. …….share upon which Rs. ……. per share credited as paid.3. ……. debentures of Rs. ……. each |
| Consideration for the issue of those shares or debentures. | 4. Consideration: |
| Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from, a person to whom they have been allotted or agreed to be allotted with a view to his offering them or sale. | 1. ……. shares of Rs. ……. and ……. debentures of Rs. ……. |
| Period during which the option is exercisable. | |
| Price to be paid for shares or debentures subscribed for or acquired under the option. | 2. Until |
| Consideration for the option or right to option. | 3 |
| | 4. Consideration: |

| | |
|---|---|
| Persons to whom the option or the right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures. | 5. Names and addresses……. |
| Names, addresses, descriptions and occupations of vendors of property (1) purchased or acquired by the company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company, except where the contract for its purchase or | |



| | |
|---|---|
| acquisition was entered into in the ordinary course of business and there is no connection between the transaction and the company ceasing to be a private company or where the amount of the purchase money is not material. | |
| Amount (in cash, shares or debentures) paid or payable to each separate vendor. | Total purchase price Rs. ……. |
| Amount paid or payable in cash, shares or debentures for each such property, specifying the amount paid or payable for goodwill.Short particulars of every transaction relation to each such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest direct or indirect. | Cash Rs. ……. <br> Shares Rs……. <br> Debentures Rs……. <br> Goodwill Rs……. |
| Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or rate of the commission. | Amount paid ……. <br> Amount payable ……. <br> Rate per cent ……. |
| The number of shares, if any, which persons have agreed to subscribe for a commission. | |
| If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the five years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than five years, and the accounts of which have only been made-up in respect of four years, three years, two years or one year, the above requirements shall have effect as if references to four years, three years, two years, or one year, as the case may be, were substituted for references to five years, and in any such case, the statement shall say how long the business to be acquired has been carried on. | |
| Where the financial year with respect to which the accounts of the business have been made-up is greater or less than a year, references, to five years, four years, three years, two years and one year in this paragraph shall have effect as if references to such number of financial years as, in the aggregate, cover a period of not less than five years, four years, three years, two years or one year, as the case may be, were substituted for references to three years, two years and one year respectively. | |
| Dates of, parties to, and general nature of- | |
| (a) contract appointing or fixing the remuneration of directors, managing director 3[***] or manager; and | |
| (b) every other material contract [other than (i) contracts entered into in the ordinary course of the business intended to be carried on by the company or (ii) entered into more than two years before the delivery of this statement.] | |
| Time and place at which (1) the contracts or copies thereof; or (2)(i) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (ii) in the case of a contract wholly or partly in a language other than English, a copy of translation thereof in English or embodying a translation in English of the parts in the other language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, may be inspected. | |
| Names and addresses of the auditors of the company. | |

| | |
|---|---|
| Full particulars of the nature and extent of the interest of every director, managing director [2][***] or manager, in any property purchased or acquired by the company within the two years preceding the date of this statement or proposed to be purchased or acquired by the company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him | |



| | |
|---|---|
| as, a director, or otherwise for services rendered or to be rendered to the company by him or by the firm. | |
| Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the five financial years immediately preceding the date of this statement or since the incorporation of the company, whichever period is shorter. | |
| Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years. | |

**1 Omitted by Act No. 17 of 1969, w.e.f. 3rd. April, 1970.**

**2 Omitted by Act No. 17 of 1969, w.e.f. 3rd. April, 1970.**

**3 Omitted by Act No. 17 of 1969, w.e.f. 3rd. April, 1970.**

**PART II**

**Report to be set out**

1. If unissued shares or debentures of the company are to be applied in the purchase of a business, a report made by accountants (who shall be named in the statement) upon-

(a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and

(b) the assets and liabilities of the business as at the last date to which the accounts of the business were made-up.

2.

(1) If unissued shares or debentures of the company are to be applied directly or indirectly in any manner resulting in the acquisition of shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-clause (2) or (3) of this clause, as the case may require, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in sub-clause (1) shall-

(a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and

(b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate as at the last date to which the accounts of the body corporate were made-up.

(3) If the other body corporate has subsidiaries, the report referred to in sub-clause (1) shall-

(a) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by sub-clause (2), and in addition deal either-

(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern



members of the other body corporate; or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body

corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries; and

(b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by sub-clause (2) and in addition, deal either-

(i) as whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate; assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary; and shall indicate, as respects the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

**PART III**

**Provisions applying to Parts I and II of this Schedule**

3. (1) In this Schedule, the expression "vendor" includes a vendor as defined in Part III of Schedule II.

(2) Clause 31 of Schedule II shall apply to the interpretation of Parts I and II of this Schedule as it applies to the interpretation of Part II of Schedule II.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five financial years, the accounts of the business or body corporate have only been made-up in respect of four such years, three such years, two such years or one such year, Parts I and II of this Schedule shall have effect as if reference to four financial years, three financial years, two financial years or one financial year, as the case may be, were substituted for references to five financial years.

5. Any report required by Part II of this Schedule shall either-

(a) indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary; or

(b) make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II of this Schedule shall-

(a) be made by accountants qualified under this Act for appointment as auditors of a company; and

(b) shall not be made by any accountant who is an officer or servant or a partner or in the employment of an officer or servant, of the company, or of the company's subsidiary or holding company or of a subsidiary of the company's holding company.

For the purposes of this clause, the expression "officer" shall include a proposed director but not an auditor.

**[1]*SCHEDULE V***

[*See* section 159]

**ANNUAL RETURN**

**CONTENTS AND FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL**

**PART I**

**CONTENTS**

1. The address of the registered office of the company.

2. A summary specifying the following in respect of each class of shares :
(*a*) the amount of the authorised share capital of the company and the number of shares into which it is divided ; (*b*)the number of shares issued, from the date of commencement of the company to the date of the company's last annual general meeting ;
(c) the number of shares subscribed up to the date aforesaid ;
(*d*)the paid-up share capital up to that date.

3. The total number of non-convertible, partly convertible and fully convertible debentures issued and outstanding on the date referred to in sub-clause (*b*) of clause 2.



4. Particulars of the total amount of the indebtedness of the company on the date referred to in sub-clause *(b)* of clause 2 in respect of all charges including mortgages which are required to be registered with the Registrar under this Act.

5. A list -
(*a*)containing the names and addresses of all persons who, on the date of the company's last annual general meeting are members or debenture holders of the company and of persons who have ceased to be members or debenture holders on or before that day and since the date of the annual general meeting with reference to which the last return was submitted or in the case of the first return, since the incorporation of the company ;
(*b*)stating the number of shares or debentures held by each of the existing members or debenture holders, as the case may be, at the date referred to in sub-clause (*b*) of clause 2, specifying the number of shares or debentures transferred since the date of the

annual general meeting with reference to which the last return was submitted or in the case of the first return, since the date of the incorporation of the company by persons who are still members or debenture holders respectively, the dates of registration of transfers, and the names of transferees and the relevant folio containing particulars thereof ;

(*c*) if the names aforesaid are not arranged in alphabetical order having annexed thereto an index sufficient to enable the name of any person therein to be easily found.

6. Particulars specifying name, nationality, date of birth, date of appoint- ment, Election Commission's Identity Card No. if issued and resi- dential address with respect to the persons who at the date of the company's last annual general meeting are the directors of the company and with respect to any person who at the date is the manager or the secretary of the company together with all such particulars, with respect to those who had ceased to hold such office that is the office of the director, manager or secretary on or before the date of the last annual general meeting and since the date of the annual general meeting with respect to which the last return was submitted or in the case of the first return, since the incorporation of the company.

7.Information whether the shares of the company are listed on a recognised stock exchange.

1. Substituted by Notification No. GSR 389(E), dated 15-5-1995.

**FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL ANNUAL RETURN**

The Companies Act, 1956
(1 of 1956)
***SCHEDULE V***
[*See* section 159]
Part II

I. Registration Details
Registration No.--------
Registration date -------(dd/mm/yy)

If Yes, Stock Exchange Code (Totals) (Refer Code List 2)

AGM Held Y - Yes---- N - No-----

State Code ----------(Refer Code List) Whether shares listed on Recognised stock exchange(s) ---- Y - Yes N - No
A------- B-------

Date of AGM / Due date ---------(dd/mm/yy)

II. Name and registered office address of company :
Company Name----------
Address ----------
Town/City----------
State ---------- Pin Code ----------
Telephone (with STD) Area Code ---------Number ----------
Fax Number ----------
Mail address----------

III. Capital structure of the company (amount in Rs. thousand)
Authorised share capital break up

Type of Shares
No. of shares
Nominal value (in Rs.)
(*i*) Equity
---
---
(*ii*) Preference
---
---



Total authorised capital
---
Issued share capital break up
(*i*) Equity
---
---

(*ii*) Preference
---
---
Total authorised capital
---
Subscribed share capital break up
Type of Shares
No. of shares
Nominal value (in Rs.)
(*i*) Equity
---
---
(*ii*) Preference
---
---
Total authorised capital
---
Paid up share capital breaking
Types of shares
No. of shares
Amount paid up (in Rs.)
(*i*) Equity
---
---
(*ii*) Preference
---
---
Total Paid-up capital
---
Debentures break up
Type of debenture
No. of debentures
Nominal value (in Rs.)
(*i*) Non-convertible
---
---
(*ii*) Partly convertible
---
---
(*iii*) Fully convertible
---
---
Total Amount
---
IV. Directors/manager/secretary information (past and present) [Refer clause 6 of Part (*I*) of Schedule V] Name: ----------(surname) ----------(Middle Name)----------(First name)
Nationality I - Indian --------
F - Foreign-------
Date of Birth----------(dd/mm/yy)
Designation
C - Chairman-*Cum*-Managing Director ,W - Whole-time Director, S - Secretary, R - Manager



D - Director, M - Managing Director
Date of Date of appointment----------(dd/mm/yy)
Date of Ceasing ----------(dd/mm/yy)

Election Commission Identity Card No. (if issued)]
---
Name: ----------(surname) ----------(Middle Name)----------(First name)
Nationality I - Indian --------
F - Foreign-------
Date of Birth----------(dd/mm/yy)
Designation
C - Chairman-*Cum*-Managing Director ,W - Whole-time Director, S - Secretary, R - Manager D - Director, M - Managing Director
Date of Date of appointment----------(dd/mm/yy)
Date of Ceasing ----------(dd/mm/yy)
Election Commission Identity Card No. (if issued)]
---
Name: ----------(surname) ----------(Middle Name)----------(First name)
Nationality I - Indian --------
F - Foreign-------
Date of Birth----------(dd/mm/yy)
Designation
C - Chairman-*Cum*-Managing Director ,W - Whole-time Director, S - Secretary, R - Manager D - Director, M - Managing Director
Date of Date of appointment----------(dd/mm/yy)
Date of Ceasing ----------(dd/mm/yy)
Election Commission Identity Card No. (if issued)]
---
Name: ----------(surname) ----------(Middle Name)----------(First name)
Nationality I - Indian --------
F - Foreign-------
Date of Birth----------(dd/mm/yy)
Designation
C - Chairman-*Cum*-Managing Director ,W - Whole-time Director, S - Secretary, R - Manager D - Director, M - Managing Director
Date of Date of appointment----------(dd/mm/yy)
Date of Ceasing ----------(dd/mm/yy)
Election Commission Identity Card No. (if issued)]
---
Name: ----------(surname) ----------(Middle Name)----------(First name)
Nationality I - Indian --------
F - Foreign-------
Date of Birth----------(dd/mm/yy)
Designation
C - Chairman-*Cum*-Managing Director ,W - Whole-time Director, S - Secretary, R - Manager D - Director, M - Managing Director
Date of Date of appointment----------(dd/mm/yy)
Date of Ceasing ----------(dd/mm/yy)
Election Commission Identity Card No. (if issued)]
---

Residential Address
---
Town/City
---
District
---
State
---
Pin Code
---

Residential Address
---
Town/City
---
District
---
State
---
Pin Code
---
Residential Address
---
Town/City
---
District
---
State
---
Pin Code
---

**Note* : Additional Sheets may be attached if needed.

V. Details of shares/debentures held at date of AGM*

Ledger Folio of share/debenture holder----------
Share/debenture
holder's name----------(surname) ----------(Middle Name)----------(First name)
Father's name/ Husband' name ----------
Type of share/ debentures 1 - Equity, 2 - Preference shares 3 - Debentures, 4 - Stock
Number of shares/ debentures held/stock, if any
Amount per share (in Rs.) ----------

Ledger Folio of share/debenture holder----------
Share/debenture
holder's name----------(surname) ----------(Middle Name)----------(First name)
Father's name/ Husband' name ----------
Type of share/ debentures 1 - Equity, 2 - Preference shares 3 - Debentures, 4 - Stock
Number of shares/ debentures held/stock, if any
Amount per share (in Rs.) ----------

Ledger Folio of share/debenture holder----------
Share/debenture
holder's name----------(surname) ----------(Middle Name)----------(First name)
Father's name/ Husband' name ----------
Type of share/ debentures 1 - Equity, 2 - Preference shares 3 - Debentures, 4 - Stock
Number of shares/ debentures held/stock, if any
Amount per share (in Rs.) ----------

*Note* : Separate sheet may be attached if needed. If number of such shareholders exceed 10, if so desired, a text file may be submitted on a floppy or a cartridge tape in the format given in Annexure III.

Address
---
Town/City
---
District
---
State
---
Pin Code
---

Address
---
Town/City
---



District
---
State
---
Pin Code
---
Address
---
Town/City
---
District
---
State
---
Pin Code
---

VI. Details of shares/debentures transfers since date of last AGM (or in the case of the first return at any time since the incorporation of the company)*

Date of Previous AGM ----------(dd/mm/yy)

Date of registration of transfer of shares----------(dd/mm/yy)
Type of Transfer 1- Equity, 2 - Preference shares, 3 - Debentures, 4 - Stock
Number of shares/ debentures transferred
Amount per share (in Rs.)
Ledger folio of transferor ----------
Transferor's name ----------(surname) ----------(Middle Name)----------(First name)
Ledger folio transferee ----------
Transferee's name ----------(surname) ----------(Middle Name)----------(First name)

Date of registration of transfer of shares----------(dd/mm/yy)
Type of Transfer 1- Equity, 2 - Preference shares, 3 - Debentures, 4 - Stock
Number of shares/ debentures transferred
Amount per share (in Rs.)
Ledger folio of transferor ----------
Transferor's name ----------(surname) ----------(Middle Name)----------(First name)
Ledger folio transferee ----------
Transferee's name ----------(surname) ----------(Middle Name)----------(First name)

**Note* : Separate sheet may be attached if needed. If number of such transactions exceed 10. If so desired a text file may be submitted on a floppy or cartridge in the Format given in Annexure IV.

VII. Indebtedness of the company (amount in Rs. thousands) [secured loans including interest outstanding/accrued but not due for payment].

Amount ----------

VIII. Equity share capital break up (Percentage of total equity)

(*i*) Government [Central & State(s)]---------
(*ii*) Government Companies ---------
(*iii*) Public financial institutions---------
(*iv*) Nationalised/Other banks---------
(*v*) Mutual funds ---------
(*vi)* Venture capital ---------
(*vii*) Foreign holdings(FIIs/FCs/FFIs/NRIs/OCBs)---------
(*viii*) Bodies corporate (not mentioned above) ---------
(*ix*) Directors/relatives of directors---------
(*x*) Other top 50 shareholders(Other than those listed above)---------

We;We certify that :

(((*a*) the return states the facts as they stood on the date of the annual general meeting aforesaid, correctly and completely ;

(*b*)since the date of the last annual return the transfer of all shares,debentures, the issue of all further certificates of shares and debentures have been appropriately recorded in the books maintained for the purpose ;

11[(*c*) *the whole of amounts envisaged in clause* (a) *to* (e) *of sub section* (*2*) *of section 205C of the Companies Act, 1956 remaining unpaid or unclaimed for a period of seven years from the date they become payable by a company have been credited to the Investor Education and Protection Fund* ;]

(*d*)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 ;



(*e*) 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 (*1*) of section 3 are not to be included in reckoning the number of fifty ;

(*f*)since the date of annual general meeting with reference to which the first return was submitted or in the case of a first return since the date of the incorporation of the private company, no public company or deemed public company has or have held twenty-five per cent or more of its paid-up share capital ;

(*g*) the company did not have an average turnover of Rs. 10 crore orr more during the relevant period ;

(*h*)since the date of the annual general meeting with reference to which the last annual return was submitted or since the date of incorporation of the company, if it is first return, the company did not hold twenty-five per cent or more of the paid-up share capital of one or more public companies ; and

(*i*) the private company did not accept or renew or invite deposits from the public.

*signed*
*Director*
.....
*Director/Managing Director/Manager/Secretary*
.....
*Secretary in whole-time practice*
.....
*CP No.*
.....

1. Substituted by Notification No. GSR 751(E) dated 2-11-2002.

***Note*** : Certificates to be given by a director and manager/secretary or by two directors where there is no manager or secretary. In the case of a company whose shares are listed on a recognised stock exchange, the certificates shall also be signed by a secretary in whole-time practice.

**ANNEXURE I**

**CODE LIST 1 : STATE**

| **CODES** State Code | State Name |
|---|---|
| 01 | Andhra Pradesh |
| 02 | Assam |
| 03 | Bihar |
| 04 | Gujarat |
| 05 | Haryana |
| 06 | Himachal Pradesh |
| 07 | Jammu &Kashmir |
| 08 | Karnataka |
| 09 | Kerala |
| 10 | Madhya Pradesh |
| 11 | Maharashtra |
| 12 | Manipur |
| 13 | Meghalaya |
| 14 | Nagaland |
| 15 | Orissa |
| 16 | Punjab |
| 17 | Rajasthan |
| 18 | Tamil Nadu |
| 20 | Uttar Pradesh |

| | |
|---|---|
| 21 | West Bengal |
| 22 | Sikkim |
| 23 | Arunachal Pradesh |
| 24 | Goa |
| 52 | Andaman Islands |
| 53 | Chandigarh |
| 54 | Dadra Islands |
| 55 | Delhi |
| 56 | Daman & Diu |
| 57 | Lakshwadeep |
| 58 | Mizoram |
| 59 | Pondicherry |

***ANNEXURE II***

**CODE LIST 2 : STOCK EXCHANGE**

**CODES** Exchange Code Stock Exchange



A1 Bombay Stock Exchange
B2 OTCEI
A2 Delhi
B2 Nagpur
A4 Calcutta
B4 Coimbatore
A8 Madras
B8 Cochin
A16 Bangalore
B16 MP
A32 Hyderabad
B32 Jaipur
A64 Ahmedabad
B64 Rajkot
A128 Pune
B128 Gauhati
A256 Kanpur
B256 Bhubaneshwar
A512 Ludhiana
B512 Magadh
A1024 National Stock Exchange
B1024 Vadodara
B2048 Rajkot

***Note***: If listed in more than one exchange, add the respective codes to arrive at the totals under the same category.

For example a company listed in Bombay, Pune, Nagpur and Cochinn will fill in the exchange codes as follows :

***ANNEXURE III***

**SHARES/DEBENTURES HELD : (FORMAT FOR FLOPPIES)**

I. Registration Details :

| Field | Type | Length | Format/value |
|---|---|---|---|
| State Code | Number | 2 | - |
| Registration No. | Number | 6 | - |
| Date of AGM | Date | 8 | (DD/MM/YY) |
| Date of last AGM | Date | 8 | (DD/MM/YY) |

***Note*** **:** The first text file cid.txt will contain the data for above field for company identification.

**V.** Shares held by Shareholders :

| *Field* | *Type* | *Length* | *Format/Value* |
|---|---|---|---|
| Ledger folio of shareholder | Character | 8 | - |
| Name of shareholder | Character | 20 | Surname/Middle Name/First Name |
| Father's/Husband's name | Character | 20 | Surname/Middle Name First Name |
| Residential address | Character | 40 | - |

| | | | |
|---|---|---|---|
| Town/City | Character | 20 | - |
| State | Character | 20 | - |
| Pin Code | Number | 6 | - |
| Type of share/debenture | Number | 1 | 1- Equity, 2- Preference, 3- Debentures, 4- Stock |
| Number of shares/debenture | Number | 6 | Amount per share |
| Debenture | Number | 6 | |

***Note* :**The second text files shh.txt will contain the data for above fields for the shareholders/debenture holders.

The files may be submitted 5.25" or 3.5" floppies (preferably 3.5") or 60/150 MB Normal Cartridge Tapes (mini Cartridges not acceptable). The Floppies/Cartridges may be formatted in Dos/Unix.

***ANNEXURE IV***

**SHARES TRANSFERRED : (FORMAT FOR FLOPPIES)**

**I.** Registration Details:

| Field | Type | Length | Format/value |
|---|---|---|---|
| State Code | Number | 2 | - |
| Registration No. | Number | 6 | - |



| | | | |
|---|---|---|---|
| Date of AGM | Date | 8 | (DD/MM/YY) |
| Date of last AGM | Date | 8 | (DD/MM/YY) |

***Note* :** The first text file cid.txt will contain the data for above field for company identification.

**VI.** Transactions after the last AGM :

| Field | Type | Length | Format/value |
|---|---|---|---|
| Date of transfer of shares | Date | 8 | (DD/MM/YY) |
| Type of share/debenture | Number | 1 | 1- Equity, 2- Preference, 3- Debentures, 4- Stock |
| Number of share/debentures | Number | 6 | - |
| Amount per shares/debenture | Number | 6 | - |
| Ledger folio of transferor | Character | 8 | - |
| Name of transferor | Character | 20 | Surname/Middle Name/First Name |
| Ledger folio of transferee | Character | 8 | - |
| Name of transferee | Character | 20 | Surname/Middle Name/First Names |

Note : The second text file.sht.txt will contain the date for above fields for each such share transfer.

The files ma be sumitted in 5.25" or 3.5" floppies (preferably 3.5") or 60/150 MB Normal Cartridge Tapes (mini Cartridge not acceptable).

***SCHEDULE VI***

[*See* section 211]

GENERAL INSTRUCTIONS FOR PREPARATION OF BALANCE SHEET AND STATEMENT OF PROFIT AND LOSS OF A COMPANY IN ADDITION TO THE NOTES INCORPORATED ABOVE THE HEADING OF BALANCE SHEET UNDER PARTS A AND B

**GENERAL INSTRUCTIONS**

**1.** Where compliance with the requirements of the Act including Accounting Standards as applicable to the companies require any change in treatment or disclosure including addition, amendment, substitution or deletion in the head/sub-head or any changes inter se, in the financial statements or statements

forming part thereof, the same shall be made and the requirements of the Schedule VI shall stand modified accordingly.

**2.** The disclosure requirements specified in Part I and Part II of this Schedule are in addition to and not in substitution of the disclosure requirements specified in the Accounting Standards prescribed under the Companies Act, 1956. Additional disclosures specified in the Accounting Standards shall be made in the notes to accounts or by way of additional statement unless required to be disclosed on the face of the Financial Statements. Similarly, all other disclosures as required by the Companies Act shall be made in the notes to accounts in addition to the requirements set out in this Schedule.

**3.** Notes to accounts shall contain information in addition to that presented in the Financial Statements and shall provide where required (*a*) narrative descriptions or disaggregations of items recognized in those statements and (*b*) information about items that do not qualify for recognition in those statements.

Each item on the face of the Balance Sheet and Statement of Profit and Loss shall be cross-referenced to any related information in the notes to accounts. In preparing the Financial Statements including the notes to accounts, a balance shall be maintained between providing excessive detail that may not assist users of financial statements and not providing important information as a result of too much aggregation.

**4.** Depending upon the turnover of the company, the figures appearing in the Financial Statements may be rounded off as below:

| Turnover | Rounding off |
|---|---|
| (*i*) less than one hundred crore rupees | To the nearest hundreds, thousands, lakhs or millions, or decimals thereof. |
| (*ii*) one hundred crore rupees or more | To the nearest, lakhs, millions or crores, or decimals thereof. |

1 Substituted vide Notification No. S.O. 447(E) dated 28-2-2011. The notification shall come into force for the Balance sheet and

Profit and Loss Account to be prepared for the financial year commencing on or after 1-4-2011.



Once a unit of measurement is used, it should be used uniformly in the Financial Statements.

**5.** Except in the case of the first Financial Statements laid before the Company (after its incorporation) the corresponding amounts (comparatives) for the immediately preceding reporting period for all items shown in the Financial Statements including notes shall also be given.

**6.** For the purpose of this Schedule, the terms used herein shall be as per the applicable Accounting Standards.

Notes

This part of Schedule sets out the minimum requirements for disclosure on the face of the Balance Sheet, and the Statement of Profit and Loss (hereinafter referred to as "Financial Statements" for the purpose of this Schedule) and Notes. Line items, sub-line items and sub-totals shall be presented as an addition or substitution on the face of the Financial Statements when such presentation is relevant to an understanding of the company's financial position or performance or to cater to industry/sector-specific disclosure requirements or when required for compliance with the amendments to the Companies Act or under the Accounting Standards.

**PART I – Form of BALANCE SHEET**

Name of the Company…….

Balance Sheet as at ……

| | | |
|---|---|---|
| | | (Rupees in……) |

| Particulars | Note No. | Figures as at the end of current reporting period | Figures as at the end of the previous reporting period |
|---|---|---|---|
| 1 | 2 | 3 | 4 |
| **I. EQUITY AND LIABILITIES** | | | |
| **Shareholders' funds** | | | |
| Share capital | | | |
| Reserves and surplus | | | |
| Money received against share warrants | | | |
| **Share application money pending allotment** | | | |
| **Non-current liabilities** | | | |
| Long-term borrowings | | | |
| Deferred tax liabilities (Net) | | | |
| Other Long term liabilities | | | |
| Long-term provisions | | | |
| **Current liabilities** | | | |
| Short-term borrowings | | | |
| Trade payables | | | |
| Other current liabilities | | | |
| Short-term provisions | | | |
| **TOTAL** | | | |
| **II. ASSETS** | | | |
| **Non-current assets** | | | |
| (1) (*a*) Fixed assets | | | |
| Tangible assets | | | |

| | | | |
|---|---|---|---|
| Intangible assets | | | |
| Capital work-in-progress | | | |
| Intangible assets under development | | | |
| Non-current investments | | | |
| Deferred tax assets (net) | | | |
| Long-term loans and advances | | | |
| Other non-current assets | | | |
| (2) | | | |
| **Current assets** | | | |
| Current investments | | | |
| Inventories | | | |
| Trade receivables | | | |
| Cash and cash equivalents | | | |
| Short-term loans and advances | | | |
| Other current assets | | | |
| **TOTAL** | | | |

See accompanying notes to the financial statements

**Notes**

**GENERAL INSTRUCTIONS FOR PREPARATION OF BALANCE SHEET**

**1.** An asset shall be classified as current when it satisfies any of the following criteria:

(*a*) it is expected to be realized in, or is intended for sale or consumption in, the company's normal operating cycle;

(*b*) it is held primarily for the purpose of being traded;

(*c*) it is expected to be realized within twelve months after the reporting date; or

(*d*) it is cash or cash equivalent unless it is restricted from being exchanged or used to settle a liability for at least twelve months after the reporting date.

All other assets shall be classified as non-current.

**2.** An operating cycle is the time between the acquisition of assets for processing and their realization in cash or cash equivalents. Where the normal operating cycle cannot be identified, it is assumed to have a duration of 12 months.

**3.** A liability shall be classified as current when it satisfies any of the following criteria:

(*a*) it is expected to be settled in the company's normal operating cycle;

(*b*) it is held primarily for the purpose of being traded;

(*c*) it is due to be settled within twelve months after the reporting date; or

(*d*) the company does not have an unconditional right to defer settlement of the liability for at least twelve months after the reporting date. Terms of a liability that could, at the option of the counterparty, result in its settlement by the issue of equity instruments do not affect its classification.

All other liabilities shall be classified as non-current.

**4.** A receivable shall be classified as a 'trade receivable' if it is in respect of the amount due on account of goods sold or services rendered in the normal course of business.

**5.** A payable shall be classified as a 'trade payable' if it is in respect of the amount due on account of goods purchased or services received in the normal course of business.

**6.** A company shall disclose the following in the notes to accounts:

A. Share Capital

for each class of share capital (different classes of preference shares to be treated separately):

(*a*) the number and amount of shares authorized;

(*b*) the number of shares issued, subscribed and fully paid, and subscribed but not fully paid;

(*c*) par value per share;

(*d*) a reconciliation of the number of shares outstanding at the beginning and at the end of the reporting period;

(*e*) the rights, preferences and restrictions attaching to each class of shares including restrictions on the distribution of dividends and the repayment of capital;

(*f*) shares in respect of each class in the company held by its holding company or its ultimate holding company including shares held by or by subsidiaries or associates of the holding company or the ultimate holding company in aggregate;

(*g*) shares in the company held by each shareholder holding more than 5 per cent shares specifying the number of shares held;

(*h*) shares reserved for issue under options and contracts/commitments for the sale of shares/disinvestment, including the terms and amounts;

(*i*) for the period of five years immediately preceding the date as at which the Balance Sheet is prepared:

- „ Aggregate number and class of shares allotted as fully paid up pursuant to contract(s) without payment being received in cash.
- „ Aggregate number and class of shares allotted as fully paid up by way of bonus shares.
- „ Aggregate number and class of shares bought back.

(*j*) terms of any securities convertible into equity/preference shares issued along with the earliest date of conversion in descending order starting from the farthest such date.

(*k*) calls unpaid (showing aggregate value of calls unpaid by directors and officers)

(*l*) forfeited shares (amount originally paid up)

B. Reserves and Surplus

(*i*) Reserves and Surplus shall be classified as:

(*a*) Capital Reserves ;

(*b*) Capital Redemption Reserve;

(*c*) Securities Premium Reserve;

(*d*) Debenture Redemption Reserve;

(*e*) Revaluation Reserve;

(*f*) Share Options Outstanding Account;

(*g*) Other Reserves – (specify the nature and purpose of each reserve and the amount in respect thereof);

(*h*) Surplus*i.e.* balance in Statement of Profit & Loss disclosing allocations and appropriations such as dividend, bonus shares and transfer to/from reserves etc.

(Additions and deductions since last balance sheet to be shown under each of the specified heads) (*ii*) A reserve specifically represented by earmarked investments shall be termed as a ‘fund’.

(*iii*) Debit balance of statement of profit and loss shall be shown as a negative figure under the head ‘Surplus’. Similarly, the balance of ‘Reserves and Surplus’, after adjusting negative balance of surplus, if any, shall be shown under the head ‘Reserves and Surplus’ even if the resulting figure is in the negative.

C. Long-Term Borrowings

(*i*) Longterm borrowings shall be classified as:

(*a*) Bonds/debentures.

(*b*) Term loans

„ from banks.

„ from other parties.

(*c*) Deferred payment liabilities.

(*d*) Deposits.

(*e*) Loans and advances from related parties.

(*f*) Long-term maturities of finance lease obligations.

(*g*) Other loans and advances (specify nature).

(*ii*) Borrowings shall further be sub-classified as secured and unsecured. Nature of security shall be specified separately in each case.

(*iii*) Where loans have been guaranteed by directors or others, the aggregate amount of such loans under each head shall be disclosed.

(*iv*) Bonds/debentures (along with the rate of interest and particulars of redemption or conversion, as the case may be) shall be stated in descending order of maturity or conversion, starting from farthest redemption or conversion date, as the case may be. Where bonds/debentures are redeemable by instalments, the date of maturity for this purpose must be reckoned as the date on which the first instalment becomes due.

(*v*) Particulars of any redeemed bonds/ debentures which the company has power to reissue shall be disclosed.

(*vi*) Terms of repayment of term loans and other loans shall be stated.

(*vii*) Period and amount of continuing default as on the balance sheet date in repayment of loans and interest, shall be specified separately in each case.

D. Other Long-term Liabilities

Other Long-term Liabilities shall be classified as:

(*a*) Trade payables

(*b*) Others

E. Long-term provisions

The amounts shall be classified as:

(*a*) Provision for employee benefits.

(*b*) Others (specify nature).

F. Short-term borrowings

(*i*) Short-term borrowings shall be classified as:

(*a*) Loans repayable on demand

„ from banks.

„ from other parties.

(*b*) Loans and advances from related parties.

(*c*) Deposits.

(*d*) Other loans and advances (specify nature).

(*ii*) Borrowings shall further be sub-classified as secured and unsecured. Nature of security shall be specified separately in each case.

(*iii*) Where loans have been guaranteed by directors or others, the aggregate amount of such loans under each head shall be disclosed.

(*iv*) Period and amount of default as on the balance sheet date in repayment of loans and interest, shall be specified separately in each case.

G. Other current liabilities



The amounts shall be classified as:

(*a*) Current maturities of long-term debt;

(*b*) Current maturities of finance lease obligations;

(*c*) Interest accrued but not due on borrowings;

(*d*) Interest accrued and due on borrowings;

(*e*) Income received in advance;

(*f*) Unpaid dividends;

(*g*) Application money received for allotment of securities and due for refund and interest accrued thereon. Share application money includes advances towards allotment of share capital. The terms and conditions including the number of shares proposed to be issued, the amount of premium, if any, and the period before which shares shall be allotted shall be disclosed. It shall also be disclosed whether the company has sufficient authorized capital to cover the share capital amount resulting from allotment of shares out of such share application money. Further, the period for which the share application money has been pending beyond the period for allotment as mentioned in the document inviting application for shares along with the reason for such share application money being pending shall be disclosed. Share application money not exceeding the issued capital and to the extent not refundable shall be shown under the head Equity and share application money to the extent refundable *i.e.*, the amount in excess of subscription or in case the requirements of minimum subscription are not met, shall be separately shown under 'Óther current liabilities';

(*h*) Unpaid matured deposits and interest accrued thereon;

(*i*) Unpaid matured debentures and interest accrued thereon;

(*j*) Other payables (specify nature).

H. Short-term provisions

The amounts shall be classified as:

(*a*) Provision for employee benefits.

(*b*) Others (specify nature).

I. Tangible assets

(*i*) Classification shall be given as:

(*a*) Land.

(*b*) Buildings.

(*c*) Plant and Equipment.

(*d*) Furniture and Fixtures.

(*e*) Vehicles.

(*f*) Office equipment.

(*g*) Others (specify nature).

(*ii*) Assets under lease shall be separately specified under each class of asset.

(*iii*) A reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations and other adjustments and the related depreciation and impairment losses/reversals shall be disclosed separately.

(*iv*) Where sums have been written off on a reduction of capital or revaluation of assets or where sums have been added on revaluation of assets, every balance sheet subsequent to date of such write-off, or addition shall show the reduced or increased figures as applicable and shall by way of a note also show the amount of the reduction or increase as applicable together with the date thereof for the first five years subsequent to the date of such reduction or increase.

J. Intangible assets



(*i*) Classification shall be given as:

(*a*) Goodwill.

(*b*) Brands /trademarks.

(*c*) Computer software.

(*d*) Mastheads and publishing titles.

(*e*) Mining rights.

(*f*) Copyrights, and patents and other intellectual property rights, services and operating rights.

(*g*) Recipes, formulae, models, designs and prototypes.

(*h*) Licenses and franchise.

(*i*) Others (specify nature).

(*ii*) A reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations and other adjustments and the related amortization and impairment losses/reversals shall be disclosed separately.

(*iii*) Where sums have been written off on a reduction of capital or revaluation of assets or where sums have been added on revaluation of assets, every balance sheet subsequent to date of such write-off, or addition shall show the reduced or increased figures as applicable and shall by way of a note also show the amount of the reduction or increase as applicable together with the date thereof for the first five years subsequent to the date of such reduction or increase.

K. Non-current investments

(*i*) Non-current investments shall be classified as trade investments and other investments and further classified as:

(*a*) Investment property;

(*b*) Investments in Equity Instruments;

(*c*) Investments in preference shares;

(*d*) Investments in Government or trust securities;

(*e*) Investments in debentures or bonds;

(*f*) Investments in Mutual Funds;

(*g*) Investments in partnership firms;

(*h*) Other non-current investments (specify nature).

Under each classification, details shall be given of names of the bodies corporate (indicating separately whether such bodies are (*i*) subsidiaries, (*ii*) associates, (*iii*) joint ventures, or (*iv*) controlled special purpose entities) in whom investments have been made and the nature and extent of the investment so made in each such body corporate (showing separately investments which are partly-paid). In regard to investments in the capital of partnership firms, the names of the firms (with the names of all their partners, total capital and the shares of each partner) shall be given.

(*ii*) Investments carried at other than at cost should be separately stated specifying the basis for valuation thereof.

(*iii*) The following shall also be disclosed:

(*a*) Aggregate amount of quoted investments and market value thereof;

(*b*) Aggregate amount of unquoted investments;

(*c*) Aggregate provision for diminution in value of investments L.

Long-term loans and advances

(*i*) Long-term loans and advances shall be classified as:

(*a*) Capital Advances;

(*b*) Security Deposits;



(*c*) Loans and advances to related parties (giving details thereof);

(*d*) Other loans and advances (specify nature).

(*ii*) The above shall also be separately sub-classified as:

(*a*) Secured, considered good;

(*b*) Unsecured, considered good;

(*c*) Doubtful.

(*iii*) Allowance for bad and doubtful loans and advances shall be disclosed under the relevant heads separately.

(*iv*) Loans and advances due by directors or other officers of the company or any of them either severally or jointly with any other persons or amounts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

M. Other non-current assets

Other non-current assets shall be classified as:

(*i*) Long-term Trade Receivables (including trade receivables on deferred credit terms);

(*ii*) Others (specify nature);

(*iii*) Long-term Trade Receivables, shall be sub-classified as:

(*i*) (*a*) Secured, considered good;

(*b*) Unsecured considered good;

(*c*) Doubtful

(*ii*) Allowance for bad and doubtful debts shall be disclosed under the relevant heads separately.

(*iii*) Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

N. Current Investments

(*i*) Current investments shall be classified as:

(*a*) Investments in Equity Instruments;

(*b*) Investment in Preference Shares;

(*c*) Investments in government or trust securities;

(*d*) Investments in debentures or bonds;

(*e*) Investments in Mutual Funds;

(*f*) Investments in partnership firms;

(*g*) Other investments (specify nature).

Under each classification, details shall be given of names of the bodies corporate (indicating separately whether such bodies are (*i*) subsidiaries, (*ii*) associates, (*iii*) joint ventures, or (*iv*) controlled special purpose entities) in whom investments have been made and the nature and extent of the investment so made in each such body corporate (showing separately investments which are partly-paid). In regard to investments in the capital of partnership firms, the names of

the firms (with the names of all their partners, total capital and the shares of each partner) shall be given.

(*ii*) The following shall also be disclosed:

(*a*) The basis of valuation of individual investments;

(*b*) Aggregate amount of quoted investments and market value thereof;

(*c*) Aggregate amount of unquoted investments;

(*d*) Aggregate provision made for diminution in value of investments.



O. Inventories

(*i*) Inventories shall be classified as:

(*a*) Raw materials;

(*b*) Work-in-progress;

(*c*) Finished goods;

(*d*) Stock-in-trade (in respect of goods acquired for trading);

(*e*) Stores and spares;

(*f*) Loose tools;

(*g*) Others (specify nature).

(*ii*) Goods-in-transit shall be disclosed under the relevant sub-head of inventories.

(*iii*) Mode of valuation shall be stated.

P. Trade Receivables

(*i*) Aggregate amount of Trade Receivables outstanding for a period exceeding six months from the date they are due for payment should be separately stated.

(*ii*) Trade receivables shall be sub-classified as:

(*a*) Secured, considered good;

(*b*) Unsecured, considered good;

(*c*) Doubtful.

(*iii*) Allowance for bad and doubtful debts shall be disclosed under the relevant heads separately. (*iv*) Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

Q. Cash and cash equivalents

(*i*) Cash and cash equivalents shall be classified as:

(*a*) Balances with banks;

(*b*) Cheques, drafts on hand;

(*c*) Cash on hand;

(*d*) Others (specify nature).

(*ii*) Earmarked balances with banks (for example, for unpaid dividend) shall be separately stated.

(*iii*) Balances with banks to the extent held as margin money or security against the borrowings, guarantees, other commitments shall be disclosed separately.

(*iv*) Repatriation restrictions, if any, in respect of cash and bank balances shall be separately stated.

(*v*) Bank deposits with more than 12 months maturity shall be disclosed separately.

R. Short-term loans and advances

(*i*) Short-term loans and advances shall be classified as:

(*a*) Loans and advances to related parties (giving details thereof);

(*b*) Others (specify nature).

(*ii*) The above shall also be sub-classified as:

(*a*) Secured, considered good;

(*b*) Unsecured, considered good;

(*c*) Doubtful.

(*iii*) Allowance for bad and doubtful loans and advances shall be disclosed under the relevant heads separately.

(*iv*) Loans and advances due by directors or other officers of the company or any of them either



severally or jointly with any other person or amounts due by firms or private companies respectively in which any director is a partner or a director or a member shall be separately stated.

S. Other current assets (specify nature).

This is an all-inclusive heading, which incorporates current assets that do not fit into any other asset categories.

T. Contingent liabilities and commitments

(to the extent not provided for)

(*i*) Contingent liabilities shall be classified as:

(*a*) Claims against the company not acknowledged as debt;

(*b*) Guarantees;

(*c*) Other money for which the company is contingently liable

(*ii*) Commitments shall be classified as:

(*a*) Estimated amount of contracts remaining to be executed on capital account and not provided for;

(*b*) Uncalled liability on shares and other investments partly paid;

(*c*) Other commitments (specify nature).

U. The amount of dividends proposed to be distributed to equity and preference shareholders for the period and the related amount per share shall be disclosed separately. Arrears of fixed cumulative dividends on preference shares shall also be disclosed separately.

V. Where in respect of an issue of securities made for a specific purpose, the whole or part of the amount has not been used for the specific purpose at the balance sheet date, there shall be indicated by way of note how such unutilized amounts have been used or invested.

W. If, in the opinion of the Board, any of the assets other than fixed assets and non-current investments do not have a value on realization in the ordinary course of business at least equal to the amount at which they are stated, the fact that the Board is of that opinion, shall be stated.

**PART II – Form of STATEMENT OF PROFIT AND LOSS** Name of the Company…….

Profit and loss statement for the year ended ……

| | | | | (Rupees in……) | | |
|---|---|---|---|---|---|---|
| | Particulars | Note No. | | Figures for the current reporting period | | Figures for the previous reporting period |
| I. | Revenue from operations | | | xxx | | xxx |
| II. | Other income | | | xxx | | xxx |

| | | | | | | |
|---|---|---|---|---|---|---|
| III. | Total Revenue (I + II) | | | xxx | | xxx |
| IV. | Expenses: | | | | | |
| | Cost of materials consumed | | | xxx | | xxx |
| | Purchases of Stock-in-Trade | | | xxx | | xxx |
| | Changes in inventories of finished goods work-in-progress and Stock-in-Trade | | | xxx | | xxx |
| | Employee benefits expense | | | | | |



| | | | | | | |
|---|---|---|---|---|---|---|
| | Finance costs | | | | | |
| | Depreciation and amortization expense | | | | | |
| | Other expenses | | | | | |
| | Total expenses | | | xxx | | xxx |
| V. | Profit before exceptional and extraordinary items and tax (III-IV) | | | xxx | | xxx |
| VI. | Exceptional items | | | xxx | | xxx |
| VII. | Profit before extraordinary items and tax (V - VI) | | | xxx | | xxx |
| VIII. | Extraordinary Items | | | xxx | | xxx |
| IX. | Profit before tax (VII- VIII) | | | xxx | | xxx |
| X | Tax expense: | | | | | |
| | (1) Current tax | | xxx | | xxx | |
| | (2) Deferred tax | | xxx | | xxx | |
| XI | Profit (Loss) for the period from continuing operations (VII-VIII) | | | xxx | | xxx |
| XII | Profit/(loss) from discontinuing operations | | | xxx | | xxx |
| XIII | Tax expense of discontinuing operations | | | xxx | | xxx |
| XIV | Profit/(loss) from Discontinuing operations (after tax) (XII-XIII) | | | xxx | | xxx |
| XV | Profit (Loss) for the period (XI + XIV) | | | xxx | | xxx |
| XVI | Earnings per equity share: | | | | | |
| | (1) Basic | | | xxx | | xxx |
| | (2) Diluted | | | xxx | | xxx |

**See accompanying notes to the financial statements**

**GENERAL INSTRUCTIONS FOR PREPARATION OF STATEMENT OF PROFIT AND LOSS**

1.The provisions of this Part shall apply to the income and expenditure account referred to in sub-section (2) of section 210 of the Act, in like manner as they apply to a statement of profit and loss.

2.(A) In respect of a company other than a finance company revenue from operations shall disclose separately in the notes revenue from

(*a*) sale of products;

(*b*) sale of services;

(*c*) other operating revenues;

Less:

(*d*) Excise duty.



(B) In respect of a finance company, revenue from operations shall include revenue from

(*a*) Interest; and

(*b*) Other financial services

Revenue under each of the above heads shall be disclosed separately by way of notes to accounts to the extent applicable.

3.Finance Costs

Finance costs shall be classified as:

(*a*) Interest expense;

(*b*) Other borrowing costs;

(*c*) Applicable net gain/loss on foreign currency transactions and translation.

4. Other income

Other income shall be classified as:

(*a*) Interest Income (in case of a company other than a finance company);

(*b*) Dividend Income;

(*c*) Net gain/loss on sale of investments

(*d*) Other non-operating income (net of expenses directly attributable to such income).

5.Additional Information

A Company shall disclose by way of notes additional information regarding aggregate expenditure and income on the following items:-

(*i*) (*a*)Employee Benefits Expense [showing separately (*i*) salaries and wages, (*ii*) contribution to provident and other funds, (*iii*) expense on Employee Stock Option Scheme (ESOP) and Employee Stock Purchase Plan (ESPP), (*iv*) staff welfare expenses].

(*b*) Depreciation and amortization expense;

(*c*) Any item of income or expenditure which exceeds one per cent of the revenue from operations or Rs.1,00,000, whichever is higher;

(*d*) Interest Income;

(*e*) Interest Expense;

(*f*) Dividend Income;

(*g*) Net gain/ loss on sale of investments;

(*h*) Adjustments to the carrying amount of investments;

(*i*) Net gain or loss on foreign currency transaction and translation (other than considered as finance cost);

(*j*) Payments to the auditor as (*a*) auditor, (*b*) for taxation matters, (*c*) for company law matters, (*d*) for management services, (*e*) for other services, (*f*) for reimbursement of expenses;

(*k*) Details of items of exceptional and extraordinary nature;

(*l*) Prior period items;

(*i*) (*a*) In the case of manufacturing companies,-

(1) Raw materials under broad heads.

(2) goods purchased under broad heads.

(*b*) In the case of trading companies, purchases in respect of goods traded in by the company under broad heads.

(*c*) In the case of companies rendering or supplying services, gross income derived form services rendered or supplied under broad heads.

(*d*) In the case of a company, which falls under more than one of the categories mentioned in (*a*), (*b*) and (*c*) above, it shall be sufficient compliance with the requirements herein if purchases, sales



and consumption of raw material and the gross income from services rendered is shown under broad heads.

(*e*) In the case of other companies, gross income derived under broad heads.

(*ii*) In the case of all concerns having works-in-progress, works-in-progress under broad heads.

(*iii*) (*a*) The aggregate, if material, of any amounts set aside or proposed to be set aside, to reserve, but not including provisions made to meet any specific liability, contingency or commitment known to exist at the date as to which the balance-sheet is made up.

(*b*) The aggregate, if material, of any amounts withdrawn from such reserves.

(*iv*) (*a*) The aggregate, if material, of the amounts set aside to provisions made for meeting specific liabilities, contingencies or commitments.

(*b*) The aggregate, if material, of the amounts withdrawn from such provisions, as no longer required.

(*v*) Expenditure incurred on each of the following items, separately for each item:- (*a*) Consumption of stores and spare parts.

(*b*) Power and fuel.

(*c*) Rent.

(*d*) Repairs to buildings.

(*e*) Repairs to machinery.

(*f*) Insurance .

(*g*) Rates and taxes, excluding, taxes on income.

(*h*) Miscellaneous expenses.

(*vi*) (*a*) Dividends from subsidiary companies.

(*b*) Provisions for losses of subsidiary companies.

(*vii*) The profit and loss account shall also contain by way of a note the following information, namely:-

(*a*) Value of imports calculated on C.I.F. basis by the company during the financial year in respect of –

I. Raw materials;

II. Components and spare parts;

III. Capital goods;

(*b*) Expenditure in foreign currency during the financial year on account of royalty, know-how, professional and consultation fees, interest, and other matters;

(*c*) Total value if all imported raw materials, spare parts and components consumed during the

financial year and the total value of all indigenous raw materials, spare parts and components similarly consumed and the percentage of each to the total consumption;

(*d*) The amount remitted during the year in foreign currencies on account of dividends with a specific mention of the total number of non-resident shareholders, the total number of shares held by them on which the dividends were due and the year to which the dividends related;

(*e*) Earnings in foreign exchange classified under the following heads, namely:-

I. Export of goods calculated on F.O.B. basis;

II. Royalty, know-how, professional and consultation fees;

III. Interest and dividend;

IV. Other income, indicating the nature thereof

**Note:-Broad heads shall be decided taking into account the concept of materiality and presentation of true and fair view of financial statements,".**

**2.** This notification shall come into force for the Balance Sheet and Profit and Loss Account to be prepared for the financial year commencing on or after 1-4-2011.



***SCHEDULE VII***

[*See* sections 368 and 379]

**RESTRICTIONS ON POWERS OF MANAGING AGENTS/ SECRETARIES AND TREASURERS**

The managing agents/secretaries and treasurers shall not exercise any of the following powers except after obtaining the previous approval of the Board of directors of the company in regard to each such exercise :

(1)[*Omitted by the Companies* (*Amendment*) *Act, 1960.*]

(2) Power to appoint as an officer or member of the staff of the company, payable from its funds (as distinguished from the funds of the managing agent/secretaries and treasurers or from out of any remuneration payable to him/them by the company), any person -

(*a*)on a remuneration or scale of remuneration exceeding the limits laid down by the Board in this behalf ; or (*b*) who is a relative of the managing agent, or where the managing agent is /secretaries and treasurers are a firm, of any partner in the firm ; or where the managing agent is/ secretaries and treasurers are a private company, of any director or member or such company ;

(3) Power to purchase capital assets for the company except where the purchase price is within the limits prescribed by the Board in this behalf ;

(4) Power to sell the capital assets of the company, except where the sale price is within the limits prescribed by the Board in this behalf ;

(5) Power to compound, or sanction the extension of time for the satisfaction or payment of, any claim or demand of the company against (including any debt claimed to be due to it from) the managing agent/secretaries and treasurers or any associate of the managing agent/secretaries and treasurers ;

(6) Power to compound any claim or demand made against the company (including any debt claimed to be due from it) by the managing agent/secretaries and treasurers or any associate of the managing agents/secretaries and treasurers.

*Schedule VII should be omitted

**SCHEDULE VIII**

[*See* sections 347 and 379]

**DECLARATIONS TO BE MADE BY FIRMS, PRIVATE COMPANIES AND OTHER BODIES CORPORATE ACTING AS MANAGING AGENTS/SECRETARIES AND TREASURERS**

***Definition***

**1.** (1) In this Schedule, "relevant date" means -

(*a*) in the case of a firm or body corporate holding office at the commencement of this Act as the managing agent/secretaries and treasurers of a company, the date of such commencement ; and

(*b*) in the case of a firm or body corporate appointed or re-appointed after the commencement of this Act as the managing agent/secretaries and treasurers of a company, the date of such appointment, or re-appointment. (2) For the purposes of sub-clause (1), the expressions "re-appointment" and "re-appointed" shall have the same meaning as they have for the purposes of sub-section (1) of section 328.

* Note: Schedule VIII should be omitted.

***Firms***

**2.** Every firm acting as the managing agent/secretaries and treasurers of any company or companies shall file with each company, whether public or private, of which it acts as such, a declaration specifying -

(*a*)the names of the partners constituting the firm on the relevant date ;

(*b*) the share, or the extent of the interest, of each partner in the firm, on the relevant date ;

(*c*) the names of persons, if any, other than partners who are interested, on the relevant date, in any share of, or amount

forming part of, the remuneration payable to the managing agent/secretaries and treasurers by the company ; and the extent of the interest of each such person in such remuneration.

**3.** The declaration shall be signed by a partner of the firm and shall be filed within one month of the relevant date. **4.** If any change occurs in regard to any of the matters specified in clause 2 after the relevant date, a declaration specifying the change and signed by a partner of the firm shall be filed, within three weeks of the occurrence of the change, with each of the companies referred to in that clause

***Private companies***

**5.** Every private company which acts as managing agent/secretaries and treasurers of any other company or companies, whether public or private, shall, file with each of those companies, a declaration specifying -

(*a*)the names of the members of the private company on the relevant date ;

(*b*)where the private company has a share capital, the shares held by each member of the company, on that date ;

(*c*)where the private company has no share capital, the extent of the interest of each member of the company in it on that date ;

(*d*)the manner in which each such member holds his shares or interest, that is to say, whether he holds the same beneficially, or on behalf of or in trust for any other person ; and in the latter case, the name or names of the person or persons on whose behalf or in trust for whom the shares or interest is held and the extent of the interest of each such person ;

(*e*)the names of the directors of the private company, and the name of its managing director, if any ;

(*f*)the names of persons, if any, who are interested in any share of, or amount

forming part of, the remuneration payable to the private company by the company under its management, otherwise than as members of the private company ; and the extent of the interest of each such person in such remuneration ;

(*g*) that no arrangement has been entered into to the knowledge of the private company, under which the control of the private company is vested in any persons other than the members of the company and the persons referred to in sub-clause (*d*):

***Provided*** that the obligation to furnish information on the matters specified in sub-clauses (*d*)and (*f*) shall extend only to such particulars relating to those matters as are within the knowledge of the private company.

**6.** The declaration shall be signed by a director of the private company and shall be filed within two months of the relevant date.

**7.** If, to the knowledge of the private company, there is a sale or transfer of any shares in the company or an agreement has been entered into, for the sale or transfer of any such shares, or any other change occurs in regard to any of the matters specified in clause 5, a declaration specifying the sale, transfer, agreement or change and signed by a director of the company shall be filed, within six weeks thereof, with each of the companies referred to in that clause.

**8.** Where any shares are sold or transferred or agreed to be sold or transferred, the declaration referred to in clause 7 shall specify the name of the person or persons who part with or have agreed to part with the shares and also the name or names of the person or persons who acquire or have agreed to acquire them, with full details of the sale, transfer or agreement.

***Other bodies corporate***

**9.** The provisions of clauses 5 to 8 shall apply to every body corporate (other than a private company) acting as the managing agent/secretaries and treasurers of any company, unless it is exempt from the operation of the provisions of this Schedule by virtue section 347/section 379 read with section 347.

***General***

**10.** (1) All declarations filed with any company in pursuance of this Schedule shall be open to inspection, and extracts may be taken therefrom and copies thereof may be required, by any member of the company to the same extent, in the same manner and on payment of the same fee as in the case of the register of members of the company. (2) All such declarations shall also be open to inspection by any director of the company, free of charge.

## *SCHEDULE IX*

[*See* article 62 of the Table A and also section 176(6)]

**FORM OF PROXY**

**I**

**GENERAL FORM**

"……Name of Company

I/We..... of ..... in the district of ..... being a member/members of the above-named Company hereby appoint ..... of ..... in the district of ..... or failing him..... of.....in the district of ..... as my/our proxy to vote for me/us on my/our behalf at the annual general meeting/ general meeting (not being an annual general meeting) of the company to be held on the ..... day of ..... and at any adjournment thereof.

Signed this ..... day of ..... 20....."

**II**

**FORM FOR AFFORDING MEMBERS AN OPPORTUNITY OF VOTING FOR OR AGAINST A RESOLUTION**

**"**.....Name of Company

I/We ..... of ..... in the district of ..... ....., being a member/members of the above-named Company, hereby appoint ..... in the district of ..... or failing him, ..... of..... in the district of ....., as my/our proxy to vote for me/us on my/our behalf at the annual general meeting/general meeting (not being an annual general meeting) of the company, to be held on the ..... day of ..... 20 ..... and at any adjournment thereof.

Signed this..... day of ..... 20....."

[This form is to be used †in favour of/†against the resolution. Unless otherwise instructed the proxy will act as he thinks fit.



†Strike out whichever is not desired.

## [1][*SCHEDULE X*

[*See* sections 574 and 611]

**TABLE OF FEES TO BE PAID TO THE REGISTRAR**

| | Amount of fees to be paid (Rs.) |
|---|---|
| **I.**In respect of a company having a share capital : | |

| | |
|---|---|
| **1.** For registration of a company whose nominal share capital does not exceeds Rs. 1,00,000<br>**2.** For registration of a company whose nominal share capital exceeds Rs. 1,00,000, the above fee of Rs. 4,000 with the following additional fees regulated according to the amount of nominal capital : | 4000 |
| (*a*) for every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 1,00,000 upto Rs. 5,00,000. | 300 |
| (*b*) for every Rs. 10,000 of nominal share capital or part of Rs 10,000 after the first Rs. 5,00,000 upto Rs. 50,00,000. | 200 |
| (*c*) for every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 50,00,000 upto Rs. one crore. | 100 |
| (*d*) for every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 1 crore.<br>***Provided*** that where the additional fees, regulated according to the amount of the nominal capital of a company, exceeds a sum of rupees two crore, the total amount of additional fees payable for the registration of such company shall not, in any case, exceed rupees two crore.<br>**[3.*** [2]For filing a notice of any increase in the nominal share capital of a company, the difference between the fees payable on the increased share capital on the date of filing the notice for the registration of a company and the fees payable on existing authorised capital, at the rates prevailing on the date of filing the notice.]<br>**4.** For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee is charged for registering a new company.<br>**5.** For filing, registering or recording any document by this Act required or authorised to be filed, registered or recorded - | 50 |
| (*a*) in respect of a company having a nominal share capital of less than Rs. 1,00,000. | 100 |
| (*b*) in respect of a company having a nominal share capital of Rs. 1,00,000 or more but less than Rs.5,00,000. | 200 |
| (*c*)in respect of a company having a nominal share capital of Rs. 5,00,000 or more but less than Rs.25,00,000 | 300 |
| (*d*)in respect of a company having a nominal share capital of Rs. 25,00,000 or more.<br>**6.** For making a record of or registering any fact by this Act required or authorised to be recorded or registered by the Registrar - | 500 |
| (*a*)in respect of a company having a nominal share capital of less than Rs. 1,00,000 | 100 |
| (*b*) in respect of a company having a nominal share capital of Rs. 1,00,000 or more but less than Rs.5,00,000 | 200 |
| (*c*) in respect of a company having a nominal share capital of Rs. 5,00,000 or more but less than Rs.25,00,000 | 300 |



| | |
|---|---|
| (*d*) in respect of a company having a nominal share capital of Rs. 25,00,000 or more | 500 |
| **II.** Inrespectofa companynothavinga share capital : | |
| **7.** For registration of a company whose number of members as stated in the articles of association, does not exceed 20 | 1000 |
| **8.** For registration of a company whose number of members as stated in the articles of association, exceeds 20 but does not exceed 100<br>**9.** For registration of a company whose number of members as stated in the articles of association, exceeds 100 but is not stated to be unlimited, the above fee of Rs.2,500 with an additional Rs. 10 for every 50 members, or less number than 50 members, after the first 100. | 2500 |

| | |
|---|---|
| **10.** For registration of a company in which the number of members is stated in the articles of association to be unlimited.<br>**11.** For registration of any increase in the number of members made after the registration of the company, the same fees as would have been payable in respect of such increase, if such increase had been stated in the articles of association at the time of registration :<br>***Provided*** that no company shall be liable to pay on the whole a greater fee than Rs. 5,000 in respect of its number of members, taking into account the fee paid on the first registration of the company.<br>**12.** For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company. | 5000 |
| **13.** For filing or registering any document by this Act required or authorised to be filed or registered with the Registrar. | 50 |
| **14.** For making a record of or registering any fact by this Act required or authorised to be recorded or registered by the Registrar.] | 50 |

**1.** Substituted by Notification No. S.O. 419(E) dated 27-4-2000 w.e.f. 1-5-2000 **2.** Modified by Notification No. SO 658(E), dated 12-7-2000.

***** For refund of excess registration fees (for Form No 5) refer Circular No 7/2003 dated 27-01-2003 given in section 611 [Departmental Clarification].

***SCHEDULE XI***

[*See*section406]

**FORM IN WHICH SECTIONS 539 TO 544 OF ACT ARE TO APPLY TO CASES WHERE AN APPLICATION IS MADE UNDER SECTION 397 OR 398**

**539.** *Penaltyfor falsificationofbooks*- Ifwithintenttodefraudordeceiveany person,anyofficerormemberofa companyinrespectofwhichanapplication hasbeenmadeundersection397or398 -

(*a*)destroys,mutilates,alters,falsifiesorsecretsanybooks,papersor securities,orisprivytothedestruction, mutilation,alteration, falsification,orsecretingofanybooks,papersorsecurities ;or

(*b*)makes,orisprivytothemakingof,anyfalseorfraudulententryinany register,booksofaccountordocument belongingtothecompany, heshallbepunishablewithimprisonmentfora termwhichmayextendto sevenyears,and shallalsobeliabletofine.

**540.** *Penaltyforfraudsbyofficers*- Ifanyperson,beingatthetimeofthe commissionoftheallegedoffence,an officerofa companyinrespectofwhich the 1[*Tribunal*]subsequentlymakesanorderundersection397 or398,-

(*a*)has,byfalsepretencesorbymeansofanyotherfraud,inducedany persontogivecredittothecompany ;

(*b*)withintenttodefraudcreditorsofthecompany,hasmadeorcaused tobemadeanygiftortransferoforcharge on,orhascausedor connivedatthelevyingofanyexecutionagainstthepropertyofthe company ;or

(*c*)withintenttodefraudcreditorsofthecompany,hasconcealedor removedanypartofthepropertyofthe company sincethedateof anyunsatisfiedjudgmentororder forpaymentofmoneyobtained againstthecompany,orwithintwo monthsbeforethatdate ; heshallbepunishablewithimprisonmentfora termwhichmayextendtotwo yearsandshallalsobeliabletofine. **541.** *Liabilitywhereproperaccountsnotkept*- (1)Whereanapplicationhas beenmadetothe1[*Tribunal*]under section397 or 398 inrespect ofa company,ifitisshownthatproperbooksofaccountwerenotkeptbythe company throughouttheperiodoftwoyearsimmediatelyprecedingthe makingoftheapplication,ortheperiodbetweenthe



incorporationofthe companyandthemaking oftheapplication,whicheverisshorter,everyofficer ofthecompany whoisindefaultshall,unlessheshowsthatheactedhonestly andthatinthecircumstancesinwhichthebusinessof thecompanywas carried on,thedefault wasexcusable,bepunishablewithimprisonmentfora termwhichmay extendtooneyear.

(2)Forthepurposesofthissection,properbooksofaccountshallbedeemed nottohavebeenkeptinthecaseof anycompany,iftherehavenotbeen kept -

(*a*)suchbooksofaccountasarenecessarytoexhibitandexplainthe transactionsandfinancialpositionofthe businessofthecompany, includingbookscontainingentriesmadefromday-to-dayinsufficient detailofallcash receivedandallcashpaid ;and

(*b*)wherethebusinessofthecompanyhasinvolveddealingsingoods, statementsoftheannualstocktakingsand (exceptinthecaseof goodssoldbywayofordinaryretailtrade)ofallgoodssoldand purchasedshowingthegoods andthebuyersandsellersthereofin sufficientdetailtoenablethosegoodsandthosebuyersandsellersto be identified.

**542.** *Liabilityforfraudulentconductofbusiness*- (1)Ifinthecourseofthe proceedingsonanapplicationmadetothe 1[*Tribunal*] under section 397 or 398 in respect of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company, or any other persons, or for any fraudulent purpose, the 1[*Tribunal*] may, if it thinks it proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts orotherliabilitiesofthecompanyasthe1[*Tribunal*] may direct.

(2)(*a*)Wherethe1[*Tribunal*]makesanysuchdeclaration,itmay givesuchfurtherdirectionsasitthinksproperforthe purposeofgivingeffect tothat declaration.

(*b*)Inparticular,the1[*Tribunal*] may makeprovisionformakingthe liabilityofanysuchpersonunderthedeclarationa chargeonanydebtor obligationduefromthecompanytohim,oronanymortgageorchargeorany interestinany mortgageorchargeonanyassetsofthecompanyheldbyor vestedinhim,oranypersononhisbehalf,orany personclaimingasassignee fromorthroughthepersonliableoranypersonactingonhisbehalf.

(*c*)The1[*Tribunal*] may,fromtimetotime,makesuchfurther orderasmaybenecessary forthepurposeofenforcing anychargeimposed underthissub-section.

(*d*)For the purposeofthissub-section,theexpression"assignee"includesany persontowhomorinwhosefavour,by thedirectionsofthepersonliable,the debt,obligation,mortgageorchargewascreated,issuedortransferredorthe interestwascreated,butdoesnotincludeanassigneeforvaluableconsideration(notincludingconsiderationbyway ofmarriage)giveningoodfaithand withoutnoticeofanyofthemattersonthegroundofwhichthedeclarationis made.

(3)Whereanybusinessofa companyiscarriedonwithsuchintentorforsuch purposeasismentionedinsub-section(1),everypersonwhowasknowinglya partytothecarryingonofthebusinessinthemanneraforesaid,shall be punishablewithimprisonmentfora termwhichmayextendtotwoyears,or withfinewhichmayextendtofive thousandrupees,orwithboth.

(4) Thissection shallapply,notwithstandingthatthepersonconcernedmay becriminallyliableinrespectofthe matteronthegroundofwhichthe declarationistobemade.

**543.** *Powerof* 1[*Tribunal*] *to assess damages against delinquent directors, etc.* - (1) If, in the course of the proceedings on an application made to the 1[*Tribunal*] under section 397 or 398, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director *{, managing agent, secretaries and treasurers}, manager or officer of

the company -

(*a*)hasmisappliedorretainedorbecomeliableoraccountableforany moneyorpropertyofthecompany ;or (*b*)hasbeenguiltyofany misfeasanceorbreachoftrustinrelationtothe company.

The[1][*Tribunal*] may,ontheapplicationofanycreditoror member,examineintotheconductofsuchperson,director *{,managingagent, secretariesandtreasurers},managerorofficeraforesaid,andcompelhimto repayorrestorethe moneyorpropertyoranyparttherefrespectively,with interestatsuchrateasthe[1][*Tribunal*] thinks justorto contribute suchsumtotheassetsofthecompanybywayofcompensationinrespectof themisapplication,retainer, misfeasanceorbreachoftrustasthe[1][*Tribunal*]thinksjust.

(2) This section shall apply notwithstanding that the matter is one for which the person concerned may be criminally liable.

**544.***Liability under sections 542 and 543 to extend to partners or directors in firm or company* - Where a declaration under section 542 or an order under section 543 is or may be made in respect of a firm or body corporate, the [1][*Tribuna*l] shall also have power to make a declaration under section 542 or pass an order under section 543, as the case may be, in respect of any person who is a partner in that firm or a director of that body corporate.

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

*Words should be omitted

***SCHEDULE XII***

[*See* section 644]

**ENACTMENTS REPEALED**



| Year | No. | Subject to shout title |
|---|---|---|
| 1 | 2 | 3 |
| 1913 | VII | The Indian Companies Act, 1913. |
| 1942 | LIV | The Registration of Transferre Companies Ordinance. |
| 1951 | LII | The Indian Companies (Amendment) Act, 1951. |
| 1952 | LI | The Indian Companies (Amendment) Act, 1952.w |
| | | |

[1]***[SCHEDULE XIII***

[*See* sections 198, 269, 310 and 311]

**CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR WHOLE-TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE CENTRAL GOVERNMENT**

[2]**[PART I**

**APPOINTMENTS**

No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely :-

(*a*) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely : -

(*i*) the Indian Stamp Act, 1899 (2 of 1899),

(*ii*) the Central Excises and Salt Act, 1944 (1 of 1944),

(*iii*) the Industries (Development and Regulation) Act, 1951 (65 of 1951),

(*iv*) the Prevention of Food Adulteration Act, 1954 (37 of 1954),

(*v*) the essential Commodities Act, 1955 (10 of 1955),

(*vi*) the Companies Act, 1956 (1 of 1956),

(*vii*) the securities Contracts (Regulation) Act, 1956 (42 of 1956),

(*viii*) the Wealth-tax Act, 1957 (27 of 1957),

(*ix*) the Income-tax Act, 1961 (43 of 1961),

(*x*) the Customs Act, 1962 (52 of 1962),

(*xi*) the monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969),

(*xii*) the Foreign Exchange Regulation Act, 1973 (46 of 1973),

(*xiii*) the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986),

(*xiv*) the Securities and Exchange Board of India Act, 1992 (15 of 1992),

(*xv*) the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) ;

(*b*) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) :

***Provided*** that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (*a*) or sub-paragraph (*b*), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval ;

[3][(*c*) he has completed age of 25 years and has not attained the age of 70 years :

***Provided*** that where -

(*i*) he has not completed the age of 25 years, but has attained the age of majority ; or

(*ii*) he has attained the age of 70 years ; and

where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment ;

(*d*) where he is a managerial person in more than one company he draws remuneration from one or more companies subject to the ceiling provided in Section III of Part II ;]

(*e*) he is resident in India.

*Explanation*[4][*I*] : For the purpose of this Schedule, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India, -

(*i*) for taking up employment in India, or

(*ii*)for carrying on a business or vocation in India.

[4][Explanation II : *This condition shall not apply to the companies in special Economic Zones as notified by Department of Commerce from time to time* :

***Provided*** *that a person, being a non-resident in India shall enter Indiaonly after obtaining a proper employment visa from the concerned Indian Mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and terms and conditions of such person's appointment*.]

1. Substituted by the Notification No. 510(E) dated 14-7-1993. 2.
Substituted by GSR 48(E) dated 1-2-1994.



3. Substituted for the following sub-paragraphs (*c*) and (*d* ) by Notification No. GSR 418(E) dated 12-9-1996 :

"(*c*) he has completed the age of twenty-five years and has not attained the age of seventy years or the age of retirement, if any, specified by the company, whichever is earlier;

(*d*) where he is managerial person in more than one company, he opts to draw remuneration from only one company ;"

4. Inserted by Notification No. GSR 670(E) dated 30-9-2002

**PART II**

**REMUNERATION**

**Section *I - Remuneration payable by companies having profits***

Subject to the provisions of sections 198 and 309, a company having profits in a financial year may pay any remuneration, by way of salary, dearness allowance, perquisites, commission and other allowances, which shall not exceed five per cent of its net profits for one such managerial person, and if there is more than one such managerial person, ten per cent for all of them together.

***Section II - Remuneration payable by companies having no profits or inadequate profits*** [1][1. *Notwithstanding anything contained in this Part, where in any financial year during the currency of tenure of the managerial person, a company has no profits or its profits are inadequate, it may pay remuneration to a managerial person by way of salary, dearness allowance, perquisites and any other allowances*, -

**(A)** *not exceeding the ceiling limit of Rs. 24,00,000 per annum or Rs. 2,00,000 per month calculated on the following scale* :-

| Where the effective capital of company is | Monthly remuneration payable shall not exceed (Rupees) |
|---|---|
| (i) *less than rupees 1 crore* | *75,000* |
| (ii) *rupees 1 crore or more but less than rupees 5 crore* | *1,00,000* |
| (iii) *rupees 5 crore or more but less than rupees 25 crore* | *1,25,000* |
| (iv) *rupees 25 crore or more but less than rupees 50 crore* | *1,50,000* |
| (v) *rupees 50 crore or more but less than rupees 100 crore* | *1,75,000* |
| (vi) *rupees 100 crore or more* | *2,00,000* |

**Provided** *that the ceiling limits specified under this sub-paragraph shall apply, if -*

(i) *payment of remuneration is approved by a resolution passed by the Remuneration Committee* ;

(ii) *the company has not made any default in repayment of any of its debts* (*including public deposits*) *or debentures or interest payable thereon for acontinuous period of thirty days in the preceding financial year before the date of appointment of such managerial person.*

**(*B*)** *not exceeding the ceiling limit of Rs.48,00,000 per annum or Rs. 4,00,000 per month calculated on the following scale* : -

| Where the effective capital of company is | Monthly remuneration payable shall not exceed (Rupees) |
|---|---|
| (i) *less than rupees 1 crore* | *1,50,000* |
| (ii) *rupees 1 crore or more but less than rupees 5 crore* | 2,00,000 |
| (iii) *rupees 5 crore or more but less than rupees 25 crore* | 2,50,000 |
| (iv) *rupees 25 crore or more but less than rupees 50 crore* | 3,00,000 |
| (v) *rupees 50 crore or more but less than rupees 100 crore* | 3,50,000 |
| (vi) *rupees 100 crore or more* | 4,00,000 : |

**Provided** *that the ceiling limits specified under this sub-paragraph shall apply, if -*

(i) *payment of remuneration is approved by a resolution passed by the Remuneration Committee* ;

(ii) *the company has not made any default in repayment of any of its debts* (*including public deposits*) *or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person* ;

(iii) *a special resolution has been passed at the general meeting of the company for payment of remuneration for a period not exceeding three years*;

(iv) *a statement along with a notice calling the general meeting referred to in clause* (*iii*) *is given to the shareholders containing the following information, namely* ; -

**I. General Information :**

(1) *Nature of industry*

(2) *Date or expected date of commencement of commercial production*

(3) *In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus.*
(4) *Financial performance based on given indicators*
(5) *Export performance and net foreign exchange collaborations* (6)
*Foreign investments or collaborators, if any.*
**II. Information about the appointee :**
(1) *Background details*
(2) *Past remuneration*
(3) *Recognition or awards*
(4) *Job profile and his suitability*
(5) *Remuneration proposed*
(6) *Comparative remuneration profile with respect to industry, size of the company, profile of the position and person* (*in case of expatriates the relevant details would be w.r.t. the country of his origin*)



(7) *Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personnel, if any.*
**III. Other information :**
(1) *Reasons of loss or inadequate profits*
(2) *Steps taken or proposed to be taken for improvement*
(3) *Expected increase in productivity and profits in measurable terms.*
**IV. Disclosures :**
(1) *The shareholders of the company shall be informed of the remuneration package of the managerial person.* (2) *The following disclosures shall be mentioned in the Board of director's report under the heading "Corporate Governance", if any, attached to the annual report* : -
(i) *All elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors* ;
(ii) *Details of fixed component and performance linked incentives along with the performance criteria* ;
(iii) *Service contracts, notice period, severance fees* ;
(iv) *Stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.*
(*C*) *exceeding the ceiling limit of Rs. 48,00,000 per annum or Rs. 4,00,000 per month calculated on the following scale* ***if the company is a listed company or a subsidiary of a listed company3*** *:-*

| Where the effective capital of company is | Monthly remuneration payable shall not exceed (Rupees) |
|---|---|
| (i) *less than rupees 1 crore* | 1,50,000 |
| (ii) *rupees 1 crore or more but less than rupees 5 crore* | 2,00,000 |
| (iii) *rupees 5 crore or more but less than rupees 25 crore* | 2,50,000 |
| (iv) *rupees 25 crore or more but less than rupees 50 crore* | 3,00,000 |
| (v) *rupees 50 crore or more but less than rupees 100 crore* | 3,50,000 |
| (vi) *rupees 100 crore or more* | 4,00,000 |

**Provided** *that the ceiling limits specified under this sub-paragraph shall apply, if -*
(i) *payment of remuneration is approved by a resolution passed by the Remuneration Committee* ;
(ii) *the company has not made any default in repayment of any of its debts* (*including public deposits*) *or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person* ;
(iii) *a special resolution has been passed at the general meeting of the company for payment of remuneration for a period not exceeding three years*;
(iv) *a statement along with a notice calling the general meeting referred to in clause* (iii) *is given to the shareholders containing the following information, namely* ; -
**I. General Information :**
(*1*) *Nature of industry*
(*2*) *Date or expected date of commencement of commercial production.*
(*3*) *In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus.*
(*4*) *Financial performance based on given indicators*
(*5*) *Export performance and net foreign exchange collaborations* (*6*)
*Foreign investments or collaborators, if any.*
**II. Information about the appointee :**
(*1*) *Background details*
(*2*) *Past remuneration*
(*3*) *Recognition or awards*

(*4*) *Job profile and his suitability*
(*5*) *Remuneration proposed*
(*6*) *Comparative remuneration profile with respect to industry, size of the company, profile of the position and person* (*in case of expatriates the relevant details would be w.r.t. the country of his origin*)
(*7*) *Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personnel, if any.*
**III. Other information :**
(*1*) *Reasons of loss or inadequate profits*
(*2*) *Steps taken or proposed to be taken for improvement*
(*3*) *Expected increase in productivity and profits in measurable terms.*
**IV. Disclosures :**
(1) *The shareholders of the company shall be informed of the remuneration package of the managerial person.* (2) *The following disclosures shall be mentioned in the Board of director's report under the heading "Corporate Governance", if any attached to the annual report* : -
(i) *All elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors* ;
(ii) *Details of fixed component and performance linked incentives along with the performance criteria* ;
(iii) *Service contracts, notice period, severance fees* ;
(*iv*) *Stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.*
***Provided further*** *that the conditions specified in sub-paragraph* (*C*) *shall apply in the case the effective capital of the company is negative* :



***Provided*** *also that the prior approval of the Central Government is obtained for payment of remuneration on the above scale.*
[2][(***D*** ) *not exceeding Rs. 2,40,00,000 per annum or Rs. 20,00,000 per month in respect of Companies in Special Economic Zones as notified by Department of Commerce from time to time* :
**Provided** *that these companies have not raised any money by public issue of shares or debentures in India* : **Provided further** *that such companies have not made any default in India in repayment of any of its debts* (*including public deposits*) *or debentures or interest payable thereon for a continuous period of thirty days in any financial year.*] **2.** A managerial person shall also be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in paragraph 1 of this section :
(*a*) contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961,
(*b*) gratuity payable at a rate not exceeding half a month's salary for each completed year of service, and
(*c*) encashment of leave at the end of the tenure.
**3.** In addition to the perquisites specified in paragraph 2 of this section, an expatriate managerial person (including a non-resident Indian) shall be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in paragraph 1 of this section :
(*a*) *Children's education allowance* : In case of children studying in or outside India, an allowance limited to a maximum of Rs. 5,000 per month per child or actual expenses incurred, whichever in less. Such allowance is admissible upto a maximum of two children.
(*b*) *Holiday passage for children studying outside India/family staying, abroad* : Return holiday passage once in a year by economy class or once in two years by first class to children and to the members of the family from the place of their study or stay abroad to India if they are not residing in India with the managerial person.
(*c*) *Leave travel concession* : Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.
*ExplanationI* . - For the purposes of section II of this part, "effective capital" means the aggregate of the paid-up share capital (excluding share application money or advances against shares, amount, if any, for the time being standing to the credit of share premium account, reserves and surplus (excluding revaluation reserve), long-term loans and deposits repayable after one year (excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in the case of investment by an investment company whose principal business is acquisition of shares, stock debentures or other securities), accumulated losses and preliminary expenses not written off.
*Explanation II* . - (*a*) Where the appointment of the managerial person is made in the year in which company has been incorporated, the effective capital shall be calculated as on the date of such appointment ; (*b*) In any other case, the effective capital shall be calculated as on the last date of the financial year preceding the financial year in which the appointment of the managerial person is made.
*Explanation III* . - For the purposes of section II of this part, family means the spouse, dependent children and dependent parents of the managerial person.
[2][Explanation IV. - *For the purposes of this section, "Remuneration Committee" means*

***(i) [in respect of a listed company, a committee which consists of atleast three non-executive independent directors including nominee directors, if any; and***

**(ii) *in respect of any other company, a Remuneration Committee of Directors]*[3].**

Explanation V . - *For the purposes of this clause, the Remuneration Committee while approving the remuneration under this section, shall*, -

(a) *take into account, financial position of the company, trend in the industry, appointee's qualification, experience, past performance, past remuneration, etc.*

(b) *be in a position to bring about objectivity in determining the remuneration package while striking a balance between the interest of the company and the shareholders.*

*Explanation VI . - for the purposes of Paragraph 1, "negative effective capital" means the effective capital which is calculated* : -

(a) *in accordance with the provisions contained in* Explanation I *of this Part* ;

(b) *less than zero.*]

1. Substituted by Notification No. GSR 36(E) dated 16-1-2002
2. Inserted By the Notification No. GSR 565(E), dated 14-8-2002
3. **Inserted vide Notificaiton no. G.S.R. 70(E) dated 8th February, 2011**

[1]***[SECTION III - REMUNERATION PAYABLE TO A MANAGERIAL PERSON IN TWO COMPANIES***

Subject to the provisions of sections I and II, a managerial person shall draw remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.]

1. Inserted By the Notification No. GSR 418(E), dated 12-9-1996.

**PART III**

**PROVISIONS APPLICABLE TO PARTS I AND II OF THIS SCHEDULE**

1. The appointment and remuneration referred to in Parts I and II of this Schedule shall be subject to approval by a resolution of the shareholders in general meeting.

2. The auditor or the secretary of the company or where the company has not appointed a secretary, a secretary in whole-time practice shall certify that the requirements of this Schedule have been complied with and such certificate



shall be incorporated in the return filed with the Registrar under sub-section (2) of section 269.]

[1]***SCHEDULE XIV***

[*See* sections205and 350]

**RATES OF DEPRECIATION**

| Nature of assets | Single Shift | | Double Shift | | Triple Shift | |
|---|---|---|---|---|---|---|
| | WDV | SLM | WDV | SLM | WDV | SLM |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| **I.** (*a*)BUILDINGS (other than factory buildings) [NESD] | | | | | | |
| (*b*) FACTORY BUILDINGS | | | | | | |
| (*c*) PURELY TEMPORARY ERECTIONS such as wooden structures | | | | | | |
| **II.** PLANT AND MACHINERY [2][(*i*) *Generalrate applicableto, -* | | | | | | |
| (*a*) plant and machinery (not being a ship) other than continuous process plant for which no special rate has been prescribed under (*ii*) below : | | | | | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| (*b*) continuous process plant, [3][***] for which no-special rate has been prescribed under (*ii*) below [NESD]. (*ii*) *Special rates* **A.1.** Cinematograph films - Machinery used in the production and exhibition of | | | | | | |
| (*a*) Recording equipment, reproducing equip-ment developing machines, printing mac-hines, editing machines, synchronisers andstudiolights exceptbulbs. (*b*) Projecting equipment offilm exhibiting concerns. | | | | | | |
| [2]**[3.** Electrical machinery, X-ray and electro-therapeutic | | | | | | |



| | | | | | | |
|---|---|---|---|---|---|---|
| apparatus and accessories thereto, medical, diagnostic equipments, namely, cat-scan, ultrasound machines, ECG monitors, etc. [NESD]. | | | | | | |
| **4.** Juice boiling pans (karhais) [NESD]. | | | | | | |
| **5.** Motor-cars, motor-cycles, scooters and other mopeds [NESD]. | | | | | | |
| **6.** Electrically operated vehicles including battery powered or fuel cell powered vehicles [NESD]. | | | | | | |
| **7.** Sugarcane crushers (indi - genous kolhus | | | | | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| **8.** Glass manufacturing concerns except direct fire glass melting furnaces Recuperative and regenerative glass melting furnaces - | | | | | | |
| **9.** Machinery used in the manufacture of electronic goods and components | | | | | | |
| **B.1.** [4][Aeroplanes, aero engines, simulators, visual system and quick engine change equipment [NESD]. **2.** Concrete pipes manufacture moulds [NESD]. **3.** Drum container manu- facture-dies [NESD]. **4.** Earth-moving machinery employed in heavy construction works, such as dams, tunnels, canals, etc. [NESD]. **5.** Glass manufacturing concerns except direct fire glass melting furnaces - Moulds [NESD]. **6.** Moulds in iron | | | | | | |



| | | | | | | |
|---|---|---|---|---|---|---|
| foundries [NESD]. | | | | | | |

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| **7.** Mineral oil concerns - Field operations (above ground) - Portable boilers, drilling tools, well-head tanks, rigs, etc. [NESD].<br>**8.** Mines and quarries - portable underground machinery and earth-moving machinery used in open cast mining [NESD].<br>**9.** Motor buses and motor lorries other than those used in a business of running them on hire [NESD].<br>**9A.** Motor tractors, harvesting combines [NESD].<br>**10.** Patterns, dies and template, [NESD].<br>**11.** Ropeway structures - Ropeways, ropes and trestle sheaves | | | | | | |
| **12.** Shoe and other leather goods factories - Wooden lasts used in the manufacture of shoes .<br>**C. 1.** [5]**[***]**<br>**2.** Motor buses, motor lorries and motor taxis used in a business of running them on hire [NESD] | | | | | | |
| **3.** Rubber and plastic goods factories moulds [NESD]<br>**4.** Data processing machines including computers [NESD]<br>**5.** Gas cylinders including valves and | | | | | | |
| **D.1** Artificial silk manufacturing machinery wooden parts | | | | | | |

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|---|---|---|---|---|---|---|
| **2.** Cinematograph films - Bulbs of studio lights<br>**3.** Flour mills - Rollers<br>**4.** Glass manufacturing concerns - Direct fire glass melting furnaces. | | | | | | |
| [6][**4A.** Float Glass Melting Furnaces (NESD)<br>**5.** Iron and Steel industries<br><br>-Rolling mill rolls<br>**6.** Match factories - Wooden match | | | | | | |
| **7.** Mineral oil concerns - (*a*) Plant used in field operations (below ground) - Distribution - returnable packages ; (*b*) Plant used in field operations (below ground) but not including assets used in field operations (distribution) - Kerbside pumps including underground tanks and fittings.<br>**8.** Mines and quarries - (*a*) Tubs, winding ropes, haulage ropes and sand stowing pipes, (*b*) Safety lamps.<br>**9.** Salt works - Salt pans, reservoirs and condensers, etc., made of earthy, sandy or clay material or any other similar material<br>**10.** Sugar works - | | | | | | |
| **III. FURNITURE AND FITTINGS**<br>[2][**1.** General Rates [NESD]<br>**2.** Rate for furniture and fittings used in hotels, restaurants and boarding houses ; schools, colleges and other educational | | | | | | |

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| houses ; theatres and circuses ; and for furniture and fittings let out on hire for use on the occasion of | | | | | | |
| marriages and similar functions [NESD]<br>**IV. SHIPS**<br>**1.** Ocean-going ships - | | | | | | |
| (*i*)Fishingvessels with woodenhull [NESD] | | | | | | |
| (*ii*) Dredgers, tugs, barges, survey launches andother similar shipsusedmainly for dredging purposes [NESD] | | | | | | |
| (*iii*)Othership s [NESD]<br>**2.** Vessels ordinarily operating on inlandwaters - | | | | | | |
| (*i*)Speedboats [NESD] | | | | | | |
| (*ii*)Othervessels [NESD] | | | | | | |

- WDV means written down value.
- SLM means straight line method.

**1.** Inserted by the Companies (Amendment) Act, 1988 w.r.e.f. 2-4-1987.
**2.** Substituted by GSR 756(E), dated 16-12-1993.
**3.** The words "other than those" omitted by Notification No. GSR 101(E), dated 1-3-1995.
**4.** Substituted by Notification No. GSR 788(E), dated 4-11-1994.
**5.** Omitted by Notification No. GSR 788(E), dated 4-11-1994.
**6.** Inserted by Notification No. GSR 500(E), dated 18-8-1998.

**NOTES**

1."Buildings"includeroads,bridges,culverts,wellsandtube-wells.

2."Factorybuildings"doesnotincludeoffices, godowns,officers'andemployees' quarters,roads,bridges,culverts, wellsandtube-wells.

3."Speedboat"meansa motorboatdrivenbya highspeedinternalcombustion enginecapableofpropellingtheboat at aspeedexceeding24kilometresperhour instillwaterandsodesignedthatwhenrunningata speedit will plane, *i.e.,* itsbow willrisefromthewater.

4.Where,duringanyfinancialyear,anyadditionhasbeenmadetoanyasset,or whereanyassethasbeensold, discarded,demolishedordestroyed,thedepreciation onsuchassetsshallbecalculatedon a*prorata*basisfromthe dateofsuchaddition or,asthecasemaybe,uptothedateonwhichsuchassethasbeensold,discarded, demolishedordestroyed.

5.Thefollowinginformationshouldalsobedisclosedintheaccounts :

(*i*)depreciationmethodsused ;and

(*ii*)depreciationratesortheusefullivesoftheassets,iftheyaredifferentfrom theprincipalratesspecifiedinthe Schedule.

6.Thecalculationsoftheextradepreciationfordoubleshiftworkingandfortriple shiftworkingshallbemade separately intheproportionwhichthenumberofdays forwhichtheconcernworkeddouble shiftortripleshift,asthe casemaybe,bears tothenormalnumberofworkingdaysduringtheyear.Forthispurpose,the normalnumberof workingdaysduringtheyearshallbedeemedtobe -

(*a*) in the caseofa seasonalfactoryorconcern,thenumberofdaysonwhichthe factoryorconcernactuallyworked duringtheyearor180days,whicheveris greater;

(*b*)inanyothercase,thenumberofdaysonwhichthefactoryorconcern actuallyworkedduringtheyearor240 days,whicheverisgreater.

Theextrashiftdepreciationshallnotbechargedinrespectofanyitemof machineryorplantwhichhasbeen specifically,exceptedbyinscriptionofthe letters"NESD"(meaning"noextrashiftdepreciation")againstitinsub-itemsabove andalsoinrespectofthefollowingitemsofmachineryandplanttowhichthe generalrateofdepreciation of1[13. 91] percentapplies -

(*1*) Accountingmachines.

(*2*)Air-conditioningmachineryincludingroomair-conditioners.
(*3*)Buildingcontractor'smachinery.
(*4*)Calculatingmachines.
(*5*)Electricalmachinery - switchgearandinstruments,transformersandother stationaryplantandwiringandfittingof electriclightandfaninstallations.
(*6*)Hydraulicworks,pipelinesandsluices.
(*7*) Locomotives,rollingstocks,tramwaysandrailwaysusedbyconcerns, excludingrailwayconcerns.
(*8*)Mineraloilconcerns - fieldoperations :
(*a*) [2][***]
(*b*)Primemovers
(*c*) [2][***]
(*d*)Storagetanks (aboveground)
(*e*)Pipelines (aboveground)
(*f*)Jettiesanddrydocks
(*9*) Mineraloilconcerns - fieldoperations(distribution) - kerbside pumps includingundergroundtanksandfittings.
(*10*)Mineraloilconcerns - refineries:
(*a*) [2][***]
(*b*) Primemovers
(*c*)[2][***]
[3][(*d*)LPG Plant]
(*11*) Minesandquarries :
(*a*)Surfaceandundergroundmachinery(otherthanelectricalmachinery and portable underground machinery) (*b*)Head-gears
(*c*)Rails
(*d*)[2][***]
(*e*)Shaftsandinclines
(*f*)Tramwaysonthesurface
(*12*)Neo-postfrankingmachines.
(*13*)Officemachinery.
(*14*)Overheadcablesandwires.
(*15*)Railwaysidings.
(*16*)Refrigerationplantcontainers,etc.(otherthanracks).
(*17*)Ropewaystructures :
(*a*)Trestleandstationsteelwork.
(*b*)Drivingandtensiongearing.
(*18*)Saltworks - Reservoirs,condensers,saltpans,delivery channelsandpiersif constructedofmasonry,concrete, cement,asphaltorsimilarmaterials ; bargesandfloatingplant ;piers,quaysandjetties ;andpipelinesfor conveying brineifconstructedofmasonry,concrete,cement,asphaltor similarmaterials.
(*19*)Surgicalinstruments.
(*20*) Tramwayselectricandtramwaysrunbyinternalcombustionengines - permanent- way :cars- cartrucks,car bodies,electricalequipmentand motors ; tramcarsincludingenginesandgears.
(*21*)Typewriters.
(*22*)Weighingmachines.
(*23*)Wirelessapparatusandgear,wirelessappliancesand accessories.]
(*24*)[2][***]
[4]**[7.** "Continuous process plant" means a plant which is required and designed to operate 24 hours a day.
**8.** Notwithstanding anything mentioned in this Schedule, depreciation on assets, whose actual cost does not exceed five thousand rupees, shall be provided depreciation at the rate of hundred per cent :]
[5][***Provided*** that where the aggregate actual cost of individual items of plant and machinery costing Rs. 5,000 or less constitutes more than 10 per cent of the total actual cost of plant and machinery, rates of depreciation applicable to such items shall be the rates as specified in Item II of the Schedule.]

**1.** Substituted for "15" by GSR 756(E), dated 16-12-1993.
**2.** Omitted by GSR 756(E), dated 16-12-1993.
**3.** Inserted by GSR 416(E), dated 14-5-1993.
**4.** Inserted by GSR 756(E), dated 16-12-1993.
**5.** Inserted by Notification No. GSR 101(E), dated 1-3-1995.

## [1][*SCHEDULE XV*

[*See* section 108B(2)(*b*)]

**1.** Arms and ammunition and allied items of defence equipment, defence aircrafts and warships. **2.** Atomic energy.

**3. to 6** [2] **[ ]**

**7.** Minerals specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953.

**8.** Railway transport.]

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

2**.** Omitted by Notification No. GSR 686(E) dated 21-9-2001. Prior to omission S.No. 3, 4, 5, 6 stood as under : **3.** Coal and lignite. **4.** Mineral oils **5**. Mining of iron ore, manganese ore, chrome ore, gypsum, sulphur, gold and diamond. **6**. Mining of copper, lead, zinc, tin, molybdenum and wolfram.

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